

**114 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-6607-2024
Date of decision: 19.04.2024

Ramesh Kumar and othersPetitioners

versus

State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Ajit Sihag, Advocate
for the petitioners.

Ms. Upasana Dhawan, AAG, Haryana.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing of impugned order dated 01.10.2021 (Annexure P-2) passed by respondent No.4/DCO, impugned order dated 20.07.2022 (Annexure P-5) passed by respondent No.3/SCO and impugned order dated 15.12.2023 (Annexure P-6) passed by respondent No.2/CCO vide which application of respondents No.5 to 10 regarding providing of a new outlet was allowed which is illegal, unjust and against the law.

2. It has been submitted by counsel for the petitioners that the petitioners are the small and poor farmers and are cultivating their agricultural lands through Outlet RD-19829-TC Puthi Minor. He has submitted that due to the party faction in the Village, respondents No.5 to 11 who are the shareholders of Outlet No.RD-12229-L Puthi Minor, filed an application for providing a new Outlet RD-19829-TL Puthi Minor for 437.13/437.13 acre area after splitting the chak of Outlet RD-12229-L Puthi Minor. It was falsely contended by the respondents that their area was not receiving proper irrigation from the existing source whereas their land was getting proper irrigation from the Outlet. He submits that

respondent No.4-DCO on receiving the application for new Outlet RD 19829-TL Puthi Minor issued notice to the interested shareholders whereas no notice was issued to the shareholders of Outlet RD-19829-TC who had the objections regarding creating of a new Outlet after transferring the land of 349.84 acres area of Outlet RD-19829-TC. He has submitted that the scheme as required under the Haryana Canal Drainage Act (for short 'the Act') neither was framed nor published in accordance with Section 18(1) of the Act. He has submitted that no proper service was effected on the petitioners and thus, without entertaining the objections, new Outlet RD-19829-TL was illegally sanctioned vide order dated 01.10.2021 passed by respondent No.4. It is submitted that aggrieved by the same, the petitioners filed the appeal before respondent No.3. However, respondent No.3 without appreciating the objections taken by the petitioners illegally dismissed the same vide his order dated 20.07.2022. Still aggrieved, petitioners filed the appeal under Section 20(2) of the Act before respondent No.2 but respondent No.2 equally had fallen in error in not appreciating the arguments raised by counsel for the petitioners and thus, illegally dismissed the same vide his impugned order dated 15.12.2023. It has been submitted by counsel for the petitioners that the impugned orders are unsustainable in the eyes of law as the same have not been passed by following the due procedure as established under the Act. He has submitted that neither any scheme was framed nor the same was published. It is submitted that no notice was issued to the petitioners before approving the new Outlet RD-19829-TL on the demand of the respondents. He has submitted that on transfer of the area about 350 acres to the new Outlet the irrigation water meant for the petitioners would be reduced and thus, the petitioners would be seriously prejudiced with the

order passed by the three authorities below who failed to appreciate the same. He thus, submitted that the impugned orders being unsustainable in the eyes of law deserve to be *set aside*.

3. This Court has interacted with Mr. Sandeep, SDO, Petwar, present in the Court. On hearing counsel for the petitioners and the officer present in the Court, it is apparent that the application under Section 18(2) of the Act was filed by the respondents for providing the new Outlet RD 19829-TL for 437.13 acres area after splitting the chak of Outlet RD 12229/L and 19829-TC. On filing of the application, the case was investigated by Zileadar Hansi who prepared the scheme and submitted the same to the SDCO Petwar. Both of them recommended the case in favour of the better irrigation. The draft scheme was prepared and issued for publication. The statements of the shareholders were recorded. It was found from the report submitted that the irrigation of the area under the new proposed Outlet RD-19829-TL was 163% and that of RD-12229-L was 135% with help of 10 nos. tubewells. The irrigation of existing source outlet RD-19829-TC was 171% and that of RD-12229-L was 152%. Thus, on evaluation of the reports filed, the demand raised by the respondents was found to be genuine and hence, the same was approved by the Divisional Canal Officer. It was assailed by the petitioners by way of appeal before the learned Superintending Canal Officer, the parties were heard and the case was re-appreciated however, finding no merit in the same, learned Superintending Canal Officer upheld the order passed by the Divisional Canal Officer. Still aggrieved, the appeal was filed before the learned Chief Canal Officer but they failed to justify their appeal and hence the same was dismissed and thus all the three authorities have given concurrent findings in favour of the respondents on the basis

of the investigation report produced on record.

4. This Court has interacted with the Officer present in the Court who apprised the Court that the scheme was framed keeping in view the interest of both the sides. He has submitted that implementation of the scheme would be monitored by the respondents-authorities for one year and if any flaw is found in the same than the necessary remedial action would be taken and thus, it would be ensured that no prejudice is caused to either of the parties.

5. On hearing, this Court has found that on the application filed by the respondents, the due process was followed as the case was duly investigated and the requisite reports were sought and on their evaluation the scheme was approved. All the three authorities have taken concurrent view in favour of the same. As observed above, the Officer present has also ensured the Court that as per the procedure working of the scheme would be monitored for next one year and on finding any flaw, necessary remedial action would be taken to rectify the same. Thus, this Court does not find any infirmity in the impugned orders passed by the Authorities below and hence, the petition being devoid of any merits is dismissed. However, as submitted by the Officer present that the necessary remedial action would be taken within one year in case any exigency so arise. Thus, the petitioners would be at liberty to avail his remedies if any cause of action accrues to them after one year from the implementation of the scheme.

19.04.2024
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No