

110 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-9210-2024 (O/M)

Date of decision : 01.10.2024

Ram Kumar

..... Petitioner

Versus

Superintending Canal Officer and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Navdeep Singh Dhillon, Advocate
for the petitioner.

Mr. Nirmaljit Singh Diwana, Senior DAG Punjab.

Mr. S.P.S. Tinna, Advocate
for respondent No. 4.

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HARSH BUNGER, J. (ORAL)

1. Petitioner (Ram Kumar) has filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside the order dated 19.06.2018 (Annexure P-3), passed by learned Divisional Canal Officer, Abohar Canal Division, Abohar (in short 'DCO') under Section 68 (5) of Northern India Canal and Drainage Act, 1873 (in short '1873 Act'), whereby an order dated 07.03.2018 (Annexure P-2), passed by learned Deputy Collector, Canal Division, Drainage Water Supply Construction Circle, Ferozepur (in short 'Deputy Collector') directing shifting of Nakka for supply of water to the petitioner, was set aside.

1.1 A further prayer has been made by the petitioner for setting aside the order dated 09.12.2022 (Annexure P-5), passed by the learned Superintending Canal Officer, Ferozepur (in short 'SCO'), whereby an appeal filed by the petitioner against the order dated 19.06.2018 (Annexure P-3), was dismissed.

2. Briefly, the petitioner (Ram Kumar) filed an application under Section 68 of 1873 Act, seeking shifting of Nakka for supply of water at 141/M-6, 141M/11 instead of 140M/10-12, which was 1 killa prior to the existing Nakka. The aforesaid demand of the petitioner was contested by respondent No. 4 (Chander Pal son of Surja Ram), inter alia, on the plea that on the proposed site where shifting of Nakka was being sought by the petitioner, there was a dickey (*place for storing water made in the ground*) made by the petitioner and if the Nakka is shifted to the said site then the whole water will fall in the said dickey, whereas the condition of the said dickey was not good.

2.1 It appears that the demand of petitioner for shifting of Nakka, as noticed above, was allowed by the Deputy Collector, vide his order dated 07.03.2018 (Annexure P-2).

2.2 Feeling aggrieved against the aforesaid order dated 07.03.2018 (Annexure P-2), an appeal was preferred by respondent No. 4 (Chander Pal), inter alia, on the plea that on an earlier occasion also, the petitioner had submitted an application before the Deputy Collector to give Nakka at 140M/10-141M/15, which was rejected on 25.06.2012 as there was a dickey at the said place, whereas vide impugned order dated 07.03.2018 (Annexure P-2), Deputy Collector has changed his earlier decision. It further appears from para-5 of the writ

that if the turn of the petitioner is changed as per order dated 07.03.2018 then respondent No. 4 will face loss of irrigation as he will get vacant water course at the time of start of his turn and precious time will be lost and wasted while irrigating his field.

2.3 It transpires that the learned DCO, vide his order dated 19.06.2018 (Annexure P-3), allowed the appeal, filed by respondent No. 4 and set aside the order dated 07.03.2018 (Annexure P-2) by holding as under :-

“ After considering all the facts, the undersigned reached on the conclusion that the demand of appellant is admissible because the land, where the respondent want to get his Nakka sanction, there is Dickey at that place and respondent will give water to the appellant in said dickey, due to which, the appellant will get lower level of the water and excess water will be wasted in filling of water course, due to which the irrigation of appellant will be suffered. Therefore while admitting the demand of appellant, this appeal under Section 68 (5) of Northern India Canal and Drainage Act of 1873 Amended 23 of 1965, is hereby allowed and order dated 07.03.2018 passed by the Deputy Collector, Abohar is hereby dismissed.”

2.4 Being dis-satisfied with the order dated 19.06.2018 (Annexure P-3), the petitioner preferred an appeal before the learned SCO, who vide his order dated 09.12.2022 (Annexure P-5), dismissed the same.

3. In the aforementioned circumstances, the petitioner has filed the instant civil writ petition for the relief(s), as noticed above.

4. Learned counsel for petitioner submits that the Canal

Authorities below have erred in law and fact in passing the impugned

orders (Annexure P-3 and Annexure P-5) and a well reasoned and justified order dated 07.03.2018 (Annexure P-2), passed by learned Deputy Collector, was wrongly set aside. It is submitted that petitioner had sought shifting of turn of water from Nakka 140M/10-12 to 141M/6, 141M/11 as while irrigating his land from Nakka No. 140M/10-12, he had to irrigate excess land of 1 acre as his land starts 1 killa prior to the existing Nakka. It is further submitted that the water dickey was about 100 ft. away from the water course and the water is not falling in the said dickey. With the aforesaid submissions, it is prayed that the impugned orders be set aside and order dated 07.03.2018 (Annexure P-2) be maintained.

5. Heard.

6. In the present case, the aforesaid submissions raised on behalf of the petitioner have been duly considered and dealt with by the learned SCO, vide its order dated 09.12.2022 (Annexure P-5), by holding as under :-

“ORDER DATED 09.12.2022 :- During hearing of the appeal, the appellant and his counsel had stated that my turn of water is approved at Sr. No. 62, but my Nakka to give water is wrongly made, due to which, I am facing difficulties while irrigating my land because my area starts one Killa Ahead and I have to irrigate excess area of one Killa, therefore my Nakka to give water be allowed at 141M/6-140M/11 instead of 140M/10-12. The respondent and his counsel appeared during hearing of the case and stated that where the appellant want to get his Nakka allowed, there is dickey at that place and when the applicant will left water in the dickey then we will get low level of water, due to which our irrigation will suffer. Therefore the Deputy

Collector had rejected their demand on 25.06.2012 and they have not raised any objection in this regard in any higher court. Therefore the detailed arguments of appellant, his counsel, respondent and counsel for the respondent are heard and on perusal of record, it has found that the demand of the appellant is not valid because there is dickey at the place, where appellant want to get his Nakka sanction and due to said Dickey, the respondent will get lower level of water and excess water will be wasted in filling of said Dickey. Therefore while taking action under Section 68 (6) of the Northern India Canal and Drainage Act No. 8-1873 and Section 68 (6) of Punjab Amendment Act, 23-1965, the appeal of the appellant is hereby dismissed and order dated 19.06.2018 passed by Divisional Canal Officer, Abohar Canal Division, Abohar is upheld.”

7. The learned counsel for the petitioner has failed to dislodge the aforesaid observations and findings of fact returned by the learned SCO by referring to any material whatsoever. It is not disputed that the canal authorities are the best judges for the situation at the spot. In my considered view, if on consideration of the matter, it has been found that with the shifting of Nakka, as claimed by the petitioner, respondent No. 4 will get lower level of water and excess water would be wasted on account of existence of dickey, no fault can be found with the impugned orders.

8. In ***Sham Sunder v. Superintending Canal Officer, Ferozepur, 2001(4) RCR (Civil) 35***; a Division Bench of this Court observed as under:-

“5. Even otherwise, we find no ground to interfere. The Canal Authorities are the best judges for the situation at the spot. If on a consideration of the matter it has been found

that the fields of the petitioner can be properly irrigated from the existing outlet, this court cannot interfere in proceedings under Article 226 of the Constitution unless it is shown that the order is patently illegal and arbitrary. Nothing of the sort has been pointed out...”

9. In view of the above discussion, I do not find any merit in the instant civil writ petition, resultantly, the same is dismissed.

10. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

01.10.2024
sjks

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