

119 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-8549-2024
Date of decision: 25.04.2024

Balkar Singh and anotherPetitioners

versus

Superintending Canal Officer and another Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Surinder Pal Singh Tinna, Advocate
for the petitioners.

Mr. Navneet Singh, Senior DAG, Punjab with
Mr. Ramanpreet Mann, DCO, Rajasthan Feeder Division,
respondent No.2 in person.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the *ex parte* order dated 29.01.2024 (Annexure P-6) passed by respondent No.1 and order dated 28.07.2023 (Annexure P-4) passed by respondent No.2 whereby respondents No.1 and 2 have illegally and arbitrarily ordered for the conversion of area from command area to uncommand area without following the procedure laid down under Section 20 and Rule 79(a) to 79(i) of the Northern India Canal and Drainage Act, 1873 and Rules made thereunder.

The precise submissions made by counsel for the petitioners is that the respondents prepared the case regarding conversion of an area measuring 53.24 acres from command area to uncommand area on *suo moto* basis without there being any application/complaint. The Field Staff submitted the report without taking into account the actual position existing on the spot and without associating the petitioners or other affected shareholders. Thereafter, the procedure commenced in the Court of respondent No.2 and after hearing the case, notice was issued. He submits that without appreciating the controversy involved in the present case and in

violation of the provisions of the Act, the proceedings were carried out and the impugned order dated 28.07.2023 was passed by the learned Divisional Canal Officer. He submits that aggrieved by the same, petitioners filed the appeal in the Court of respondent No.1 who illegally dismissed the same vide impugned order dated 29.01.2024. It is submitted that neither the petitioners were provided opportunity of hearing and to submit their objections nor appreciated the fact as per the "Farmers Solar Power Scheme 2015". It is submitted that the impugned orders have been passed in violation of the principles of natural justice and the statutory provisions and as such the same deserve to be *set aside*.

Learned State counsel has opposed the submissions made by counsel for the petitioners and has submitted that the impugned orders have been passed after following the due process. It is submitted that in view of the policy launched by the State, the case was investigated and the site plan was perused. On appreciation of the same, it was found that according to chakbandi, the area which had come under the Solar Plant was liable to be made uncommand. Thus, the area measuring 53.54 acres has been made uncommandable on temporary basis under Section 20 of the Act. Once the Solar Plant is removed, the objector on submitting the application can get the area restored. He submits that both the Courts have passed the order after appreciating the requisite record and site inspection report. Thus, it is submitted that the petition being devoid of any merits deserves to be dismissed.

The Court issued notice to the State and respondent No.2 was directed to be present in the Court and thus, Mr. Ramanpreet Mann, DCO, Rajasthan Feeder Division is present in person in the Court.

This Court has heard counsel for the parties, the Officer present in the Court and with their able assistance, perused the record. It is apparent that the respondents-State had launched the Farmers Solar Power Scheme, 2015 and in view of the same, petitioners had used their land for this scheme. Thus, the petitioners had given their land measuring 53.54 acres to the solar company on lease for 25 years. As a result, the solar plants have been installed at the spot. Hence, the land was found to be no more cultivable and thus, the necessary decision was taken to convert this command area to uncommand area. However, as evident from the order passed, the command area has been made uncommandable area on temporary basis and the same would be restored once the solar plant installed is removed. The officer present in the Court has affirmed the same and has submitted that as and when the solar plant installed in pursuance to the scheme launched by the State is removed, the land would be converted to the command area on the application filed by the petitioners/objectors.

Thus, in the overall facts and circumstances of the case, this Court does not find any reason for interference in the impugned order. However, as submitted before this Court by the respondent-State, the petitioners would be at liberty to file an appropriate application for restoring their turn of water as and when the solar plant installed in this land is removed.

Petition is disposed in above-mentioned terms.

25.04.2024
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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