

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

CWP-9386-2024

Date of Decision: 26.04.2024

Mahavir Singh and others

..... Petitioners

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Abhishek Singla, Advocate for
Mr. Harsh Jain, Advocate, for the petitioners.
Mr. J.K. Shehrawat, Advocate, for the caveator.

Rajesh Bhardwaj, J.

1. Prayer in the present petition is for setting aside the impugned order dated 15.12.2023 (Annexure P-3) passed by respondent No.2 and impugned order dated 06.12.2021 (Annexure P-1) passed by respondent No.4 since both the orders have been passed without following the proper procedure as laid down in Haryana Canal and Drainage Act, 1974 Act (for short, 'the Act') without appreciating the legal and factual position. Further prayer has been made to stay the operation of the impugned orders Annexures P-3 and P-1).

2. It has been contended by learned counsel for the petitioners that respondent No.5 filed an application for transfer of area 6.74/6.74 acres from existing outlet RD 67000-R to RD 69377-R on the ground that he is not getting proper irrigation from the existing outlet. He submits that respondent No.4 i.e. Divisional Canal Officer by passing a non-speaking and cryptic order dated 06.12.2021, approved the transfer as prayed for from chak of outlet RD-67000-R to chak of outlet Rd-69377-R, subject to the confirmation by respondent No.3 i.e. Superintending Canal Officer. He submits that aggrieved by the same, the petitioners assailed the same by

way of filing an appeal under Section 20(1) of the Act before respondent No.3 wherein they raised all their pleas. He submits that after hearing both the sides, learned Superintending Canal Officer-respondent No.3 accepted the same vide his order dated 29.08.2022. It is submitted that aggrieved by the same, respondent No.5 filed an appeal before respondent No.2- Chief Canal Officer assailing the order dated 29.08.2022. He has submitted that learned Chief Canal Officer without appreciating the evidence on record, has illegally set aside the order dated 29.08.2022 vide his order dated 15.12.2023. It is submitted that the Chief Canal Officer has failed to take into consideration the fact that respondent No.5 was getting proper irrigation from the existing outlet No. RD 67000-R and thus, there was no need to transfer the same to the proposed outlet i.e. RD-69377-R. It is submitted that the impugned orders dated 06.12.2021 and 15.12.2023 are without jurisdiction and have been passed in violation of mandatory provisions of Sections 17 to 19 and Rule 7 of the Act. He has submitted that neither the scheme was prepared nor the same was published as per mandate of the Act. He submits that findings arrived at by learned Divisional Canal Officer regarding the flow of water i.e. 158% and 127%, are factually incorrect and thus, the impugned orders being unsustainable in the eyes of law, deserve to be set aside. He has relied upon the judgment of this Court in Ram Singh vs. State of Haryana, 2001(3) RCR (Civil) 538.

3. Learned counsel for the caveator has vehemently opposed the submissions made by counsel for the petitioners. He has submitted that learned Superintending Canal Officer had rightly appreciated the evidence on record and the law settled, however, learned Chief Canal Officer has failed to appreciate the same. Thus, the present petition being devoid of any

merit deserves to be dismissed.

4. Heard.

5. After hearing learned counsel for the parties and perusing the record, it is apparent that respondent No.5 filed an application for transfer of his area from the existing source of irrigation to the proposed source praying that his area is not getting proper irrigation before learned Divisional Canal Officer. Learned Divisional Canal Officer heard both the sides and examined the *Khaka* plan and the relevant revenue record. The scheme prepared was explained to the shareholders and they duly appeared before the Divisional Canal Officer. Inter-se command of both the outlets was examined and it was found that the irrigation of the existing chak was 146% and that of the proposed chak was 194%. It was further found that lined watercourse abuts the holding of respondent No.5 from the proposed source. Thus, finding the demand of respondent No.5 to be genuine the same was accepted by the Divisional Canal Officer vide his order dated 06.12.2021. This order was assailed by the petitioners before learned Superintending Canal Officer. From the perusal of the order passed by the Superintending Canal Officer, it is apparent that the well reasoned order passed by the Divisional Canal Officer was set aside primarily on the ground that there was a stiff opposition from the petitioners side and thus, the order passed by the Divisional Canal Officer was not in the interest of maintaining amicable atmosphere among the co-sharers. Thus, the appeal filed by the petitioners was accepted on the ground which is not acceptable under any law of the law. Hence, respondent No.5 assailed the same before learned Chief Canal Officer, who re-appreciated the evidence on record and heard both the sides. It was found that the area of respondent No.5 was being irrigated occasionally with the help of tube-well, whereas,

the watercourse was running at the site by touching the area in question. It was further found that the area measuring 6.50 acres in the chak of proposed outlet at RD 69377-R had already been converted from CCA to UCA due to construction of factory and thus, area of 6.74 acres as prayed by respondent No.5 could be easily accommodated in the proposed outlet. Thus, learned Chief Canal Officer set aside the order passed by the Superintending Canal Officer vide his order dated 15.12.2023 and thus, restored the order dated 06.12.2021 passed by learned Divisional Canal Officer.

6. There is no dispute regarding the judgment relied upon by learned counsel for the petitioners, however, in the facts and circumstances of the case, the same is distinguishable.

7. In the considered opinion of this Court, the application filed by respondent No.5 was dealt with by learned Divisional Canal Officer and Chief Canal Officer as per procedure prescribed and on the basis of the requisite report sought, hence, this Court does not find any infirmity in the same for its interference. Resultantly, the present petition being devoid of any merit is hereby dismissed.

26.04.2024			(RAJESH BHARDWAJ)
sharmila			JUDGE
	Whether Speaking/Reasoned	:	Yes/No
	Whether Reportable	:	Yes/No