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

CWP-11484-2021

Date of decision : 12.03.2024

Balbir Singh and others

.....Petitioners

versus

State of Haryana & others

... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. S.S. Sahu, Advocate
for the petitioners.

Ms. Upasana Dhawan, AAG, Haryana with
Mr. Mahander Singh, SDO, Tohana Water Service,
Sub Division Tohana.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for setting aside the impugned order dated 30.12.2020 (Annexure P-4) passed by the Chief Canal Officer, Bhakra Water Services Unit, Fatehabad and order dated 12.09.2018 (Annexure P-3) passed by the Superintendent Canal Officer, Fatehabad being illegal, null and void, capricious, unjust and against the provisions of Haryana Canal and Drainage Act whereby the well reasoned order dated 22.02.2017 passed by Divisional Canal Officer, Fatehabad has been reversed only on the ground that due to defective water course, respondent No.5 is not properly getting irrigation of his field which is not relevant and against the law because on this very ground the transfer of the land from one outlet to other outlet is not permissible in view of the settle law by the Hon'ble Division Bench in case of CWP No.658 of 2007 titled Nachhatar Singh Vs. State of Haryana and others decided on 19.03.2008,

therefore, the impugned order dated 30.12.2020 (Annexure P-4) passed by Chief Canal Officer, Bhakra Water Services Unit, Fatehabad and order dated 12.09.2018 (Annexure P-3) passed by Superintendent Canal Officer, Fatehabad and also to restore the well reasoned order dated 22.02.2017 passed by the Divisional Canal Officer, Fatehabad. Further prayer has been made for staying the impugned order dated 30.12.2020 (Annexure P-4) passed by the Chief Canal Officer, Bhakra Water Services Unit, Fatehabad and order dated 12.09.2018 (Annexure P-3) passed by the Superintendent Canal Officer, Fatehabad.

It has been submitted by counsel for the petitioner that respondent No.5 is shareholder of Outlet RD 29896/L and he filed an application for transfer of his land measuring 14.27 acres area from the Outlet RD 29896/L to Outlet RD 36500/L on the ground that area of the applicant would be better irrigated from new outlet than the existing outlet. On filing of the application, the case was investigated by the Zildar Tohana. Thereafter, the draft scheme was prepared under Section 18(1) of the Haryana Canal and Drainage Act, 1974 the notices were issued to the co-sharers. On hearing the objections, the case was remanded by the Superintending Canal Officer, Bhakra Water Services Circle, Fatehabad on 09.11.2016. Thereafter, the draft scheme was published by the concerned Canal Patwari and notices were also served by them. He has submitted that in pursuance to the notices issued by the Divisional Canal Officer on the application submitted by respondent No.5-Rajesh Kumar, the petitioners appeared and raised objections that the area on the proposed outlet is already not getting proper irrigation water and in case of transfer of the proposed land, the petitioners would suffer as the amount of the irrigation water supplied to the petitioner would be considerably

reduced. He has submitted that learned Divisional Canal Officer on hearing both the sides and perusing the record, rejected the application filed by respondent No.5 vide his order dated 22.02.2017. However, being aggrieved respondent No.5 filed the appeal before the Superintending Canal Officer, Circle Fatehabad on the ground that the area of the appellant from Outlet No.RD 29896/L is far away from his area while the proposed Outlet RD 3600/L is nearer to his land. The Superintending Canal Officer, Bhakra Water Services Circle Fatehabad without taking into consideration the fact that the Divisional Canal Officer has rejected the claim of respondent No.5 after appreciating the grounds taken in the application and keeping in view the factual position of both the outlets as the irrigation source of proposed outlet is less than the existing outlet, he illegally accepted the appeal filed by respondent No.5 vide impugned order dated 12.09.2018. Aggrieved by the same, petitioners filed the appeal before the Chief Canal Officer under Section 20(2) of the Haryana Canal and Drainage Act, 1974. It is submitted by counsel for the petitioners that the petitioners are already facing shortage of irrigation water and due to transfer of the area in question, the irrigation water supplied to them would be further reduced. However, the Chief Canal Officer failed to appreciate the same and thus, dismissed the appeal filed by the petitioners vide impugned order dated 30.12.2020. He has submitted that from the perusal of the Khakha Plan as well as order passed by the Chief Canal Officer, it is crystal clear that the irrigation source of the existing outlet RD 29896-L is better than the proposed outlet RD 36500/L but both the Courts i.e. learned Superintending Canal Officer and the Chief Canal Officer failed to appreciate the same and thus, drawn a conclusion for setting aside the well reasoned order passed by the learned

Divisional Canal Officer dated 22.02.2017. It is submitted by counsel for the petitioners that respondent No.5 could not succeed on the ground as mentioned in his petition for the transfer of his land to the proposed outlet than he changed his stand to get a favourable order but the authorities below failed to appreciate the same. It is submitted by counsel for the petitioner that as per law settled, no area can be transferred from one outlet to another outlet if the transfer of the area would affect the interest of the shareholder of the proposed outlet. It is submitted that the impugned orders passed being against the evidence on record and the law settled, deserve to be *set aside*.

Mr. Mahander Singh, SDO, Tohana Water Service, Sub Division Tohana is present in the Court and has assisted the Court.

Learned State counsel has submitted that the impugned orders have been passed after hearing both the sides and perusing the report submitted in pursuance to the application filed by respondent No.5. It is submitted that finding the application to be genuine, the same has been accepted in due course of law and thus, there being no infirmity in the impugned order passed, the petition filed deserves to be dismissed.

Heard. After hearing counsel for the parties and perusing the record, it has been found that due to defective condition of the lined watercourse of the existing source, only 1/3 supply of the canal water reaches upto the fields of existing watercourse which is about a distance of 31 killas from the land of the respondent No.5 whereas, the proposed outlet is at a distance of 16 killas from his land. Thus, it is evident that the proposed outlet is much nearer to the land of respondent No.5. Respondent No.5 is using tubewell for augmenting the canal water supplied in the existing chak. The percentage of the irrigation has been

found to be 181% of the area in question which is due to the mixed irrigation done at the site with the help of tubewell and in case only the canal irrigation is allowed than the percentage of irrigation of the area in question would be low. It is apparent from the observations made by learned Superintending Canal Officer that the area of the respondent could receive only 33% irrigation at site with the canal water. Thus, on the investigation conducted on the application filed by respondent No.5, same was found to be genuine and hence, the same was accepted by the Irrigation Authorities. The Officer present in the Court has also submitted before this Court that the shifting of the area is in favour of the better irrigation of both the sides. He has submitted before this Court that no loss of irrigation would be caused to the land of the petitioners by shifting of this 14.27 acres of land to the proposed area. He has assured that the interest of both the sides would be well taken care of by the irrigation authorities. Thus, in the overall facts and circumstances of the case, this Court does not find any infirmity in the impugned orders passed and thus the petition is disposed of as such. However, the respondent-authorities are directed to ensure that no prejudice is caused to the petitioners by shifting of the area to the proposed outlet in accordance with the impugned order passed.

12.03.2024
m. sharma

(**RAJESH BHARDWAJ**)
JUDGE

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