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IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP-23727-2024
Date of Decision: 09.12.2024

Sandhura Singh and others Petitioners

Versus

Superintending Canal Officer, Patiala and others Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. S.P.S. Tinna, Advocate
for the petitioners.

Mr. Navneet Singh, Senior DAG, Punjab.

HARSH BUNGER J. (ORAL)

The present writ petition has been filed under Articles 226/227 of the Constitution of India, *inter alia*, seeking a writ in the nature of Certiorari to set aside order dated 23.11.2023 (Annexure P-5) passed by the learned Divisional Canal Officer, Mansa Canal & Ground Water Division, Water Resources Department, Punjab (for short ‘the learned D.C.O.’) and order dated 26.02.2024 (Annexure P-7) passed by the learned Superintending Canal Officer, Patiala Canal Circle, Water Resources Department, Punjab, Patiala (in short ‘the learned S.C.O.’).

2. Briefly, respondent No.3 filed an application before the learned D.C.O., seeking transfer of his area from Outlet Burji No.118077/T.F. to Outlet Burji No.112135/T.L. Sandoha Branch, *inter alia*, on the plea that his area was not getting proper irrigation.

2.1 Upon receipt of the said application, it was forwarded to the

field staff; whereupon the concerned Zileadar, vide its report dated 13.09.2023 (Annexure P-3), recommended the transfer of the area in question and the matter was forwarded to the learned Sub Divisional Officer, Talwandi Sabo, who, vide its report dated 06.10.2023 (Annexure P-4), also recommended the transfer of the area in question.

2.2 Thereafter, the matter was put up before the learned D.C.O., who, after hearing the concerned parties and upon perusal of the records, sanctioned the scheme for transfer of respondent No.3's 14 Kanal-6 Marla of area, comprised in Killa Nos.84//1/1(6-19), 2(7-07) from the chak of Outlet Burji No.118077/T.F. Sandoha Extension to the chak of Outlet Burji No.112135/T.L. Sandoha Extension; vide order dated 23.11.2023 (Annexure P-5).

2.3 Feeling aggrieved against the aforesaid order dated 23.11.2023 (Annexure P-5), petitioners preferred an appeal before the learned S.C.O.; which was dismissed vide order dated 26.02.2024 (Annexure P-7).

3. In the aforementioned circumstances, the petitioners have filed the present writ petition before this Court seeking relief(s), as noticed hereinabove.

4. Learned counsel for the petitioners submits that the learned canal authorities below have erred in law and fact in passing the impugned order(s) as the statutory provisions of Sections 30(A) to 30(C) of the Northern India Canal and Drainage Act, 1873 (for short 'the 1873 Act') have not been complied with inasmuch as that neither twenty one days' notice was given to the petitioners nor the scheme was published; accordingly, the entire proceedings initiated by the canal authorities stand vitiated. It is submitted that simultaneously, respondent No.3 had also submitted an application seeking transfer of his area in dispute from Outlet Burji

No.118077/T.F. Sandoha Extension and inclusion of the same in chak of Outlet Burji No.112135/T.L. Sandoha Extension; which was although allowed by the learned D.C.O. vide order dated 13.02.2023 (Annexure P-9), however, on an appeal being filed by some of the share holders, the learned S.C.O., vide its order dated 18.05.2023 (Annexure P-10), set aside the aforesaid order dated 13.02.2023 (Annexure P-9).

4.1 Learned counsel for the petitioners further submits that the prayer of respondent No.3 for transfer of his area has wrongly been allowed by the canal authorities below, and accordingly, the impugned order(s) are liable to be set aside.

5. Heard.

6. As regards the contention raised by learned counsel for the petitioners that the statutory provisions of Sections 30(A) to 30(C) of the 1873 Act have not been complied with by the canal authorities while passing the impugned order(s); it is observed from Annexure P-8 that the learned D.C.O. had issued notice dated 11.10.2023 to all the share holders of the Outlet Burji No.118077/T.F. Sandoha Extension and Outlet Burji No.112135/T.L. Sandoha Extension of Village Kanakwal, Phulokhari, indicating therein that the investigation in respect of the demand of respondent No.3 would be conducted on 08.11.2023. It is thus apparent that a clear twenty one days' notice was issued by the learned D.C.O. to all the share holders. Further, a perusal of vernacular copy of Annexure P-2 would show that the petitioners had duly appeared before the learned canal authorities and got their statements recorded. Accordingly, I do not find any force in the contention raised by learned counsel for the petitioners that the proper procedure as envisaged under Sections 30(A) to 30(C) of the 1873 Act, has not been followed.

7. As far as the plea of petitioners that respondent No.3 had simultaneously submitted an application for transfer of his area from Outlet Burji No.118077/T.F. Sandoha Extension and inclusion of the same in chak of Outlet Burji No.112135/T.L. Sandoha Extension, is concerned; it is observed that initially respondent No.3 along with others had filed an application regarding extension of 14 Kanal-6 Marla from the chak of Outlet Burji No.112135/T.L. Sandoha Extension; which was allowed by the learned D.C.O. vide order dated 13.02.2023 (Annexure P-9). However, on an appeal being filed by some of the share holders, the learned S.C.O. passed order dated 18.05.2023 (Annexure P-10), primarily in the light of a joint statement made before him that order dated 13.02.2023 (Annexure P-9) be set aside. However, learned counsel for the petitioners has not shown any such consensus given by respondent No.3 (Mukhtiar Singh) as regards the setting aside of order dated 13.02.2023 (Annexure P-9) passed by the learned D.C.O. Apparently, the said order dated 13.02.2023 (Annexure P-9) was set aside without the consent of respondent No.3 and in those circumstances, it appears that respondent No.3 filed another application dated 27.07.2023 (Annexure P-1) seeking extension of his 14 Kanal-6 Marla area from the chak of Outlet Burji No.118077/T.F. Sandoha Extension to the chak of Outlet Burji No.112135/T.L. Sandoha Extension; which came to be allowed by the learned D.C.O. vide order dated 23.11.2023 (Annexure P-5). Relevant extract thereof reads as under:-

“ - x - x -

Due to the non-existence of the watercourse up to the area of the applicant from the chak of existing Outlet Burji No.118077/T.F. Sandoha Extension and due to the arrangement of the watercourse up to the area of the applicant from the Chak of proposed Outlet Burji No. 112135/T.L. Sandoha Extension, the Sub Divisional Officer has

made a report for the transfer of the area of the applicant. Even according to the comparative statement no watercourse from the existing Outlet Burji No.118077/T.F. Sandoha Extension is touching the area of the applicant whereas from the proposed Outlet Burji No.112135/T.L. Sandoha Extension, there is arrangement of the watercourse and the area of the applicant shall be irrigated with +1.50 ft. flow of water. The arrangement of the watercourse, expenses and management shall be made by the applicants themselves.

Therefore keeping in view the Comparative Statement and reports of the field staff and the demand of the applicant, in the interest of better irrigation the scheme for transfer of 14 Kanals 06 Marla of area of the applicant comprised in Bandobast Killa Nos.84//1/1(6-19), 2(7-07) from the chak of Outlet Burji No.118077/T.F. Sandoha Extension to the chak of Outlet Burji No.112135/T.L. Sandoha Extension is hereby sanctioned. (The area is in accordance with the report of the Sub Divisional Officer, Talwandi Sabo No.15A/23 dated 6.10.2023). The expenses on the reconstruction of the Outlets shall be made by the applicant himself. The expenses on the watercourse/pipe line, its management and arrangement shall be made by the applicant himself. The water cess shall be completely paid by the applicant according to the instructions of the Government. He shall be bound to adhere to all the conditions of the Canal Department. This decision has been rendered under Section 30B(2) of the Northern India Canal & Drainage Act 8 of 1873.

Notice under Section 30-C be issued. After the transfer of the area, the position of the area of the Outlet according to the report of the Sub Divisional Officer, Talwandi Sabo shall be as under:-

Sr. No.	Name of the Rajbah	Name of the Village	Existing area in acres		Proposed area in acres	
			GA	CCA	GA	CCA
1.	118077/TF Sandoha Extension	Kanakwal	826	808	824	806
2.	112135/TL	Phulekhari	212	208	212	208
	Sandoha Extension	Kanakwal	333	332	335	334
		Total	545	540	547	542
		Total Scheme	1371	1348	1371	1348

8. A perusal of the orders passed by the learned canal authorities below would show that the prayer of transfer of 14 Kanal-6 Marla of area of respondent No.3 from the chak of Outlet Burji No.118077/T.F. Sandoha Extension to the chak of Outlet Burji No.112135/T.L. Sandoha Extension, has been permitted after taking into consideration the following facts:-

- (i) Non-existence of the water course up to the area of respondent No.3 from the chak of existing Outlet Burji No.118077/T.F. Sandoha Extension.
- (ii) There is arrangement of water course from the proposed Outlet Burji No.112135/T.L. Sandoha Extension.
- (iii) The area of respondent No.3 shall be irrigated with +1.50 ft. flow of water.
- (iv) Keeping in view the comparative command statements and also the reports received from the field staff, the demand of respondent No.3 is in the interest of better irrigation.

8.1 An appeal filed by the petitioners against the said order dated 23.11.2023 (Annexure P-5) was dismissed by the learned S.C.O. vide order dated 26.02.2024 (Annexure P-7).

9. 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...”

10. In ***Mohinder Singh v. State of Punjab, 2012(67) RCR (Civil)***

760; a Division Bench of this Court observed as under:-

“...We are of the opinion that the matter of transfer of an area from one outlet to another by the canal authorities should be seldom interfered with in the writ jurisdiction, particularly when the canal authorities had taken the decision after hearing the interested parties and in the interest of better irrigation, and also considering that while making such transfer, the maximum land will be properly irrigated...”

11. Considering the aforementioned facts and circumstances, once the procedural requirements have been complied with and the canal authorities, upon consideration of the matter and having examined all technical aspects, have concluded that shifting of area would be in the interest of better irrigation; it would not be in the fitness of things for this Court to substitute the said conclusion. Furthermore, it has not been pointed out as to how the impugned orders are patently illegal or arbitrary.

12. In view of the above discussion, there is no error in the impugned order(s) passed by the canal authorities, which may call for any interference by this Court in this writ petition, and hence, the same is hereby dismissed.

13. All the pending application(s), if any, shall also stand closed.

09.12.2024
Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No