

267

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

CWP-11803-2021

Date of decision : 18.01.2024

Ajmer Singh and others**.....Petitioners**

versus

State of Punjab and others**.... Respondents****CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ*********

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

Mr. Navneet Singh, Senior DAG, Punjab.

Mr. Vijay Sharma, Advocate
for respondents No.5 to 19.

*********RAJESH BHARDWAJ, J.**

Prayer in the present petition is for quashing the impugned orders dated 02.02.2021 (Annexure P-9) and order dated 03.06.2020 (Annexure P-7) passed by respondents No.2 and 3 respectively, vide which a new Outlet No.5200/Right Water Course 3-R has been sanctioned, under Section 30-B(2) of the Amended Northern India Canal & Drainage Act, 1873 by withdrawing 388/367 acres from existing Outlet (5550/Right Water Course 3-R) by shifting five acres from command area to un-command area, illegally, arbitrary and same being unwarranted, unconstitutional, unjust and violative of principles of natural justice as provided under Article 14 of the Constitution of India. Further prayer has been made for directing respondents No.2 and 3 not to disturb the present

discharge in existing water course (5550/Right Water Course 3-R), running for the last more than 45 years, as shown in red colour in site plan (Annexure P-1).

The present case has arisen from the dismissal of the appeal by the Superintending Canal Officer, respondent No.2 vide impugned order dated 02.02.2021 whereby the order passed by the Divisional Canal Officer dated 03.06.2020 was upheld. The respondents had filed the petition under Section 30-B(2) under the Amended Canal and Drainage Act regarding sanctioning the new Outlet No.5200/Right Water Course 3/R by withdrawing area of 388/367 acres from command area (Chak) of Outlet Burji 5550/Right Watercourse 3-R, Village Bakshiwala, District Patiala.

Learned counsel for the petitioners has vehemently contended that the petitioners are owners of the land situated in Village Lang & New Fatehpur, District Patiala, Punjab which is being irrigated from the Outlet No.5550/Right Watercourse 3-R as per chakbandi which was sanctioned way back in the year 1974-75. The petitioners as well as others whose land falls under the Command (Chak) of said outlet are irrigating their fields from the same for the last 45 years without any objection from anyone till 2018. It is submitted that the private respondents are also beneficiary including Paramjit Singh and had share in the land falling in the Chak of old Outlet. He has submitted an application dated 16.08.2018 was given to respondent No.3 for sanctioning a new outlet with a prayer as mentioned above. It is submitted that the application was forwarded by respondent No.3 to respondent No.4 to examine and report vide endorsement dated 16.08.2018.

Respondent No.4 endorsed the said application to Zileadar Seel for complying with orders of respondent No.3. He has submitted that again an another application dated 11.03.2019 was filed by Paramjit Singh with a request that a copy of chakbandi of old outlet, stating that his fields are being irrigated since 1975 from the said outlet. It is submitted that the said watercourse were damaged due to its long length and as such, their canal water supply stood discontinued. It is submitted that on this application it was intimated by the Irrigation Department vide endorsement dated 12.03.2019 that the desired requisite record of chakbandi is not available with the department and the same was destroyed due to the floods. He has submitted that by joint self declaration, Paramjit Singh stated on 25.09.2019 that chakbandi was very much necessary for preparing this case. He submits that after this, the concerned Canal Patwari informed the shareholders to get their statements recorded on 21.01.2019 but no one turned up and reminder was issued to come on 18.02.2019. It is submitted that the majority of the shareholders categorically gave their dissent for sanctioning the new outlet as they all did not agree with the proposal of private respondents for sanctioning of new outlet. He submits that ignoring the objections raised by the majority of shareholders, Zileadar Seel submitted his report dated 29.08.2019 to the Sub Divisional Canal Officer, respondent No.4 wherein it was mentioned that the passage of old watercourse has been changed on the oral orders of Divisional Canal Officer, respondent No.3. He has submitted that a notice was issued to hear the objections of the shareholders on 22.01.2020 in the Office of the Divisional Canal Officer. He submits that 14 shareholders came present on 05.02.2020 and got their

statements recorded. It is submitted that inspite of the objections raised by majority of the shareholders not to sanction the new outlet ahead of old sanctioned outlet, respondent No.3 vide order dated 03.06.2020 illegally sanctioned the new outlet by allowing its construction under the existing outlet as per site plan. He submits that critical level of the water were not marked, aggrieved by the same, petitioners Jaswant Singh etc. filed the appeal before respondent No.2. However, respondent No.2 illegally dismissed the same by passing a non-speaking order dated 02.02.2021. He has relied upon the judgments titled as *Jasvir Singh and others Vs. The Superintending Canal Officer and others passed in CWP-10692-2020 decided on 07.08.2020; Chairman, Disciplinary Authohrity, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and others passed in Civil Appeal No.1921 of 2009 decided on 26.03.2009* and *Sandhu Singh and others Vs. The State of Punjab and others passed in Civil Writ No.1541 of 1969 decided on 14.07.1981*. He has submitted that the impugned orders passed are totally against the principles of natural justice as the petitioners have not been granted the proper opportunity for hearing their objections. He has submitted that the respondents-authorities have violated the statutory provisions of Section 30 of the Amended Northern India Canal & Drainage Act, 1873 and thus, the impugned orders are totally unsustainable in the eyes of law. He submits that the impugned orders being cryptic, illegal and arbitrary, deserve to be *set aside*.

Per contra, learned counsel for respondents No.5 to 19 has vehemently opposed the submissions made by counsel for the petitioners.

He has submitted that the petitioners who are opposing the installation of

new outlet are co-sharer to the extent of only 20 kanal 15 marla which is approximately 2.5 acres of land. He submits that chak of the outlet was very lengthy and the land of the private respondents being at the tail end of Outlet No.5550/R, was not getting canal water for proper irrigation. He submits that only those co-sharers whose land is situated near the outlet were getting the sufficient water and thus, the private respondents were seriously prejudiced since long. He has submitted that the application for the installation of the new outlet No.5200/R was filed by 42 co-sharers of the Village and not only by Paramjit Singh alone as contended. He has further submitted that Paramjit Singh is not even impleaded as a party before the authorities below. He has submitted that the petitioners are only objecting to the installation of the new outlet whose share is hardly about 0.5% share in the existing outlet and none of the other co-sharers have raised any objection to the application filed by the respondents. He has submitted that after the filing of application, the same was thoroughly examined by the respondents-authorities by visiting the spot and hearing the objections of the petitioners and other co-sharers. He has submitted that the technical details about the water level etc. were mentioned in the comparative command statement which is part of the records and the Canal authorities have passed the orders after considering the comparative command statement and other records and site inspection. He has submitted that the impugned orders have been passed totally in accordance with the provisions of the Act and hence, the petition being devoid of any merits deserves to be dismissed.

Learned State counsel has also submitted that on the application filed by the respondents, necessary legal procedure in

accordance with the Act was carried out. The site was inspected. The comparative command statement was prepared and the objections filed by the co-sharers were duly heard. It is submitted that the objection regarding framing and publication of the scheme were never raised by the petitioners neither before the DCO nor before the SCO and thus, the same is deemed to be waived off. However, on the application filed, the notices were issued and objections of the petitioners and other co-sharers were duly heard and considered in accordance with law. It is submitted that finding no force in the objections, the same were rejected and thus, the new outlet as demanded was accepted. It is submitted that the impugned orders suffer from no illegality and thus, the petition being devoid of any merits deserves to be dismissed.

Heard. After hearing counsel for the parties and perusing the record, it is apparent that the application was filed by the respondents for sanctioning of the new outlet. On the application filed, procedure as per the mandate of the Act was followed. As per the instructions of the Divisional Canal Officer, the shareholders were called by the Zildar Seel on 26.07.2019. Their statements were recorded on the spot and proposal for the new outlet was presented before the Sub Divisional Officer. The Divisional Canal Officer, Devigarh, Division Patiala had inspected the site on 23.09.2019 and perused all the reports submitted by the Field Officials. It was found that the water has not been provided to the area of the respondents from last about 30-35 years as there was no watercourse at that time. The comparative command statements were perused and it was found that the respondents were not getting the sufficient water for the proper irrigation of their land and thus, finding the prayer made by the

respondents to be genuine, the same was accepted by the Divisional Canal Officer vide his order dated 03.06.2020. In the appeal filed, learned SCO again appreciated the arguments raised by the parties and re-appreciated the record and finding no infirmity, in the impugned orders, the appeal was dismissed. Thus, there are concurrent findings by both the authorities below in favour of the private respondents. Though, it has been contended that the scheme was not published however, it cannot be denied by the petitioners that they were party before both the authorities below. It was not denied that the objections were not invited from the shareholders and they were not even considered. On the other hand, it is apparent that the objections were duly invited and the same were heard as in accordance with the law. However, finding no merit in the objections filed, the same were not accepted.

Thus, in the overall facts and circumstances of the case, the judgments relied upon by the petitioners are distinguishable on the facts and circumstances of the present case. Thus, this Court finds no merit in the petition and the same is hereby dismissed.

18.01.2024
m. sharma

(**RAJESH BHARDWAJ**)
JUDGE

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