

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

CWP-12957-2020

Decided on 16.01.2024

Niranjan Singh and others

... Petitioners

Versus

The State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Pankaj Maini, Advocate, for the petitioners.

Ms. Akshita Chauhan, Deputy Advocate General, Punjab.

Mr. G.S. Bal, Sr. Advocate with

Mr. J.S. Randhawa, Advocate for respondents No.7 & 8.

RAJESH BHARDWAJ, J. (Oral)

Prayer in the present petition is for setting aside the orders dated 03.02.2020 (Annexure P-9) passed by respondents No.2 & 3, vide which the respondents have set aside the orders passed by respondents No.4 & 5 on 14.09.2016 (Annexure P-8) rejecting the application dated 05.09.2013 (Annexure P-4) of the private respondents for allowing them to get the right of irrigation of their land from the lift pump granted to the petitioners on 11.12.2012 (Annexure P-1) by ignoring the period of limitation granted in Section 30 of the Northern India Canal and Drainage Act, 1873 (hereinafter to be referred as, 'the Act'); to issue direction to respondents No.2 & 3 to treat their orders as nonest in the eyes of law as the private respondents No.7 and 8 are already getting their land irrigated from the watercourse/mogha run by the respondent-Department; to direct respondent-authorities not to implement the orders passed by respondents No.2 & 3 on 03.02.2020 (Annexure No.9).

It has been submitted by learned counsel for the petitioners that the petitioners are aggrieved by the action of respondents No.2 & 3 as vide

order dated 03.02.2020, they allowed the appeal filed by respondents No.7 & 8 against the scheme approved by respondents No.3 & 4 on 11.12.2012. He has submitted that respondents No.2 & 3 while setting aside the order dated 14.09.2016 passed by respondents No.3 & 4 relied upon Section 30 of the Act in which period of limitation to challenge the scheme has been mentioned. He has submitted that the request of the respondents to get their land included in the lift pump which was approved in respect of the petitioners from Sirhind Canal Feeder vide order dated 11.12.2012, could not have been allowed and the same is against the statutory provisions of settled law. He has submitted that by the addition of land of the private respondents in the lift pump, the petitioners would not be able to get their fields irrigated properly as their time would be curtailed which is already less. He submits that respondents No.2 and 3 have not considered the material aspect while passing the impugned order dated 03.02.2020. It is submitted that respondents No.3 and 4 on the report of respondent No.5 has recommended/approved the scheme for installing the lift pump in respect of total land measuring 192.04 acres of land in which most of the land belongs to the petitioners. He submits that on 07.03.2013, the official respondents sent recommendation regarding approval of the scheme to the concerned officials. He submits that respondents No.3 & 4 sent an approval letter dated 22.05.2013 in respect of 192.04 acres of land. It is submitted that the private respondents have filed an application for adding their names in the lift pump on 05.09.2013 on the ground of not getting water from the watercourse. It is submitted that the statements of the petitioners and the private respondents were recorded by respondents No.3 & 4. It is submitted that respondents No.3 & 4 rejected the application of the private respondents on the basis of Section 30 of the Act vide order dated 14.09.2016. It is

submitted that however, the appeal filed by the private respondents was accepted by respondents No.2 & 3 vide order dated 03.02.2020, which is totally unsustainable in the eyes of law. He submits that the impugned order dated 03.02.2020 being against the statutory provisions and the law settled, deserves to be set aside.

On issuing notice, the State filed its reply.

Learned State counsel has submitted that the impugned order has been passed in accordance with the provisions of the Act and the settled principles of law. She submits that the reports were called and on perusal of the record, the impugned order was passed, which suffers from no illegality.

Learned Senior Counsel for respondents No.7 & 8 has opposed the submissions made by counsel for the petitioners and has submitted that the grievances raised by respondents No.7 & 8 were genuine. He has submitted that statements of both the parties were recorded and record was perused and thereafter, the impugned order was passed, thus, it is totally in consonance with the settled provisions of law. He has submitted that the impugned order has been passed specifically observing that the order shall be implemented only after obtaining the approval of the original competent authority or by making any modification as the authority deemed fit. He submits that appellate authority also directed to arrange water channel/underground pipe on their own level. He submits that respondents No.7 & 8 are bound by the observations made in the impugned order. He has further submitted that the arguments raised by counsel for the petitioners are totally misconceived and thus, the present petition being devoid of any merit deserves to be dismissed.

After hearing learned counsel for the parties and perusing the record, it is apparent that the scheme was published by following due

procedure. The precise contention raised by learned counsel for the petitioners was that if the area of respondents No.7 & 8 is included in the scheme, time for their irrigation would be drastically reduced and thus, their irrigation would be adversely effected.

This Court had summoned the Deputy Collector.

Mr. Gurpal Singh, Deputy Collector, Harike is present in Court and the Court has interacted with him. The officer has apprised the Court that if the irrigation time is reduced after inclusion of the land of respondents No.7 & 8, then the time would be enhanced so as to avoid any prejudice to the petitioners. The State was directed to file an affidavit after examining the contentions raised by counsel for the petitioners. In pursuance to the same, status report by way of affidavit of Upkaranpal Singh, Superintending Engineer, Water Resources Department, Ferozepur, on behalf of respondents No.1, 2, 4 and 6 has been filed in Court, which is taken on record. Paras No.3 & 4 of the status report are as follows:-

“3. That as per record, original scheme was for 192.04 acres of land, which is being implemented at the spot. After inclusion of 8.76 acres of the land of respondents No.7 and 8 in the proposed Mogha burji No.140066/L, the total area would come out to 200.80 acres (i.e. 192.04+ 8.76), which as per norms is very much permissible in view of the total capacity of proposed Mogha burji No.140066/L Sirhind Feedar and same would not cause any loss of irrigation to the land of petitioners in any manner whatsoever.

4. That so far as the fact that due to inclusion of 8.76 acres of land in proposed Mogha Burji No.140066/L, timing of irrigation would be reduced by few minutes is concerned, it is respectfully submitted that as per technical measurement of timings, 192.04 acres of land take 52 minutes 48 seconds and if 8.76 acres of land is included in 192.04 acres, then total 200.76 acres shall take the

timing of 50 Minutes 19 Second and the net difference comes out of 2 Minutes 18 Second, which is quite less and the same shall have no effect on irrigation of the land of petitioners.”

A perusal of the status report shows that the original scheme was for the land 192.04 acres and after adding 8.76 acres of land, difference in time is too minimal. It has been stated in the affidavit that short difference of timing in irrigation of the land could easily be managed. It is apparent that no material prejudice would be caused to the petitioners and the same would result in better irrigation of both sides. In view of the above, this Court does not find any merit in the present petition, thus, the same being devoid of any merits is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

16.01.2024
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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No