

2024:PHHC:147908-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
(120)

LPA-1329-2024 (O&M)

Decided on : 13.11.2024

Balraj Singh & others

.....Appellant(s)

Versus

The Superintending Canal Officer, Ferozepur Canal Circle & others

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MRS.JUSTICE MEENAKSHI I. MEHTA**

Present: Mr.KDS Sidhu, Advocate, for the petitioner(s).

Mr.Shekhar Verma, Addl.A.G., Punjab.

Mr.Judgepreet Singh Warring, Advocate, for respondents No.3 to 15.

G.S. Sandhawalia, J. (Oral)

CM-6798-LPA-2024

Application for placing on record site-plan as Annexure P-11, is allowed, in view of the averments made in the application duly supported by affidavit of appellant No.3. Same is taken on record. Office to append the same at appropriate place.

CM stands disposed of.

LPA-1329-2024 (O&M)

1. Consideration in the present appeal is to the judgment dated 13.05.2024 passed in CWP-25004-2023 by the Learned Single Judge by the unsuccessful writ petitioners.

2. The contention raised by counsel for the appellant, Mr.Sidhu is that the second scheme for the area dated 30.03.2021 was not published and notified and therefore, the appellants did not get proper opportunity of hearing.

3. The Learned Single Judge had not interfered with the order dated 23.08.2023 (Annexure P-10) passed by the Superintending Canal Officer for splitting up of outlet No.136511-L, Lambi Rajbah and for setting up of new outlet No.140207-L, Lambi Rajbah for an area measuring 386.88 acres. The Learned Single Judge noticed that on an earlier occasion, when the first scheme dated 20.11.2017 (Annexure P-4) had been published, one Kuldeep Singh had filed CWP-15418-2018 titled *Kuldeep Singh Vs. Superintending Canal Officer,*

Ferozepur Canal Circle, Ferozepur & others, which in principle, upheld the splitting up to the extent of 388.96 GA/388.88 CCA. The reasoning given by the Learned Single Judge in the said order read as under:

“4. On going through the impugned orders, especially the order dated 25.04.2018 passed by the Superintending Canal Officer, Ferozepur Canal Circle, Ferozepur, the Appellate Authority, the grounds which are sought to be projected before this Court, were not taken by the petitioner before any of the authority and, therefore, cannot be allowed to be raised at this stage when this Court is not exercising its powers as an Appellate Authority. In any case, perusal of the order passed by the Superintending Canal Officer, Ferozepur Canal Circle, Ferozepur, as also the site plan which has been attached with the writ petition, would show that no prejudice has been caused to the petitioner. As a matter of fact, the land of the petitioner falls on the new outlet and, therefore, there will be no loss of irrigation. That apart, the present proposed outlet reduces the distance by 2250 feet as compared to the earlier outlet of the land in question, which obviously would increase the irrigation. The interest of the irrigation of the land in question has been taken into consideration by the authorities below, which do not call for any interference by this Court.

5. In view of the above, finding no merit in the present petition, the same stands dismissed.”

4. The present appellants had chosen to avail their statutory remedy and were successful in getting remand order from the Superintending Canal Officer on 29.08.2018 (Annexure P-5) whereby the matter was sent back for fresh decision and for getting the case investigated again. The proposal, thereafter, as per the second scheme, was apparently passed while reducing 2 acres which would be clear from Annexure P-7 since the second scheme was pertaining to 386.88 acres to be transferred to the new outlet as mentioned above. It was apparently done on account of the objections which have been filed by appellants No.1 to 3. The said aspect was duly noticed on 18.07.2022 (Annexure P-8) in the appeal filed before the Divisional Canal Officer and the area comprising in Killa No.3, 8 Rectangle No.50 had been proposed and excluded and a new scheme and site-plan had been duly got prepared.

5. The argument which has now been raised is that on account of the splitting up of the outlet, irrigation would be affected and land would be

bifurcated into two parts, was duly considered by the Superintending Canal Officer on 23.08.2023 (Annexure P-10), while dismissing the challenge raised, as such. Relevant portion of the order reads as under:

“On 23.08.2023 the case was again examined at Ferozepur. The arguments advanced by the appellants and the respondents were considered. The record was investigated and examined. After considering the case, this Court has found that appeal Case 3640/218-W titled Balraj Singh son of Bachittar Singh Versus Gurcharan Singh son of Shri Gurdip Singh was remanded to the Divisional Canal Officer by this court. In this appeal case, it was demanded by the appellant that his Killa No.23 of Rectangle No.27 and Killa No.3 and 8 of Rectangle No.50 may not be included in proposed Outlet Burji No.140207/L because by doing so, his Taks shall be bifurcated into two parts, due to which his irrigation shall be affected adversely. From the perusal of the decision of the Divisional Canal Officer, Abohar under challenge, it is found that Killa No.23 of Rectangle No.27 of the appellant is already in the Chak of Outlet No.136511/L and Killa No.3, 8 of Rectangle No.50 has been excluded from the Chak of proposed Outlet Burji No. 140207/L meaning thereby the demand of the appellant had been accepted by the Divisional Canal Officer, Abohar. The other appellant Nishan Singh has not given any detail in his appeal about 24 acres of area which has been left in the existing Outlet nor copy of Jamabandi has been attached with the appeal from where the area could be confirmed. In the second appeal (3969/218-W) the appellant Lakhvir Singh has given in writing that he does not want to take any action on the appeal and has demanded to dismiss the appeal. On the basis of the facts available before this court, the decision of the Divisional Canal Officer, Abohar under challenge is correct and this court is in agreement with this decision. Therefore in view of the examination of the facts came to light, the appeal of the appellant is dismissed/rejected under Section 30-B(3) of the Northern India Canal & Drainage Act 8 of 1873 Punjab Amendment Act 23, 1965 and the decision of the Divisional Canal Officer, Abohar Canal Division, Water Resources Department, Punjab Abohar under challenge dated 18.07.2022 is hereby maintained. This decision was kept reserved which has been rendered today on 23.08.2023. The information of this decision may be given to the concerned parties under the Rules.”

6. We have also examined the site-plan now duly appended by filing CM-6798-LPA-2024 and are of the firm opinion that the said order would rather benefit the appellants as their further chunk of land would be irrigated by the new outlet No.140207/L. The private-respondents were, thus, being put to loss initially when the irrigation was being done from outlet No.136511/L since their land is further away. It was also noticed that on an earlier occasion, the Learned Single Judge in Kuldeep Singh (supra), while dismissing the writ petition, had noticed this aspect and the fact that the private-respondents are at the tail end and therefore, there was a demand for new outlet.

7. In such circumstances, once appellants No.1 to 3 having been given the benefit and it has also been recorded by the Superintending Canal Officer that appellant No.4, Nishan Singh had never given any details regarding the area which has been left in the existing outlet and no copy of Jamabandi had been attached, he cannot be now permitted to join the proceedings and scuttle the well planned scheme whose sole purpose is better irrigation.

8. Accordingly, we do not find any infirmity or illegality in the judgment passed by the Learned Single Judge. Consequently, the present appeal is hereby dismissed. All pending application(s) also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

13.11.2024
Sailesh

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned :	Yes
Whether Reportable :	No