

111 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-15394-2024 (O/M)
Date of decision : 18.10.2024

Ram Chander and others Petitioners

Versus

State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Ajit Sihag, Advocate
for the petitioners.

Ms. Upasana Dhawan, AAG Haryana.

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HARSH BUNGER, J. (ORAL)

1. Petitioners (Ram Chander and others) have filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside the order dated 04.08.2021 (Annexure P-2), passed by learned Divisional Canal Officer, Bhiwani (in short 'DCO'); order dated 16.06.2022 (Annexure P-3), passed by learned Superintending Canal Officer, Bhiwani (in short 'SCO') and order dated 24.03.2023 (Annexure P-4), passed by learned Chief Canal Officer, Haryana (in short 'CCO').

2. Briefly, respondents No. 5 to 10, who are shareholders of outlet RD-16670-TR Badesara Minor, moved an application for providing a new outlet at RD-85000-L Jui Feeder for 47.21/47.21 acre area after

splitting the chak on the plea that their area was not getting proper irrigation from the existing source.

2.1 It appears that demand of respondents No. 5 to 10 was accepted by learned DCO, vide order dated 04.08.2021 (Annexure P-2),

2.2 The present petitioners challenged the aforesaid order dated 04.08.2021 (Annexure P-2) before learned SCO by filing an appeal, however, same was dismissed, vide order dated 16.06.2022 (Annexure P-3).

2.3 A further appeal filed by petitioners before learned CCO was also dismissed, vide order dated 24.03.2023 (Annexure P-4). Hence, the instant civil writ petition.

3. Learned counsel for petitioners submits that the canal authorities have erred in law and facts in accepting the demand of respondents No. 5 to 10 by providing them a new outlet. It is submitted that respondents No. 5 to 10 are getting proper irrigation from outlet RD-16670-TR Badesara Minor. It is next submitted that by transferring the area of respondents No. 5 to 10 to outlet of petitioners i.e. RD-85000-L, the re-modelling of the watercourse would be required and the same would entail huge expenditure. It is further submitted that since the area transferred to new outlet is less than 10 per cent, therefore, the size of outlet will not be increased, which would result in less discharge from the outlet and may lead to dispute between the parties. It is accordingly submitted that the impugned orders be set aside.

4. Heard.

5. In the instant case, respondents No. 5 to 10 had submitted an application before canal authorities, stating therein that their 47.21 acre area was not receiving proper irrigation from the existing source, therefore, the same may be transferred to outlet RD-85000-L Jui Feeder. They further stated that cost of both the outlets will be borne by them. It appears that the stakeholders of RD-85000-L Jui Feeder were called and some of stakeholders stated that they have no objection to the demand of respondents No. 5 to 10, whereas some of stakeholders raised objection on the plea that with the proposed change, their wari (turn of water) would decrease.

5.1 Learned DCO, vide order dated 04.08.2021 (Annexure P-2), found that demand of respondents No. 5 to 10 was genuine and justified as three years irrigation statement of the area in question was quite nil and that they were suffering badly, whereas the irrigation at the proposed outlet is 147 per cent, which was high in comparison to the nil irrigation of respondents No. 5 to 10. Apparently, the recommendation of SDCO, Bhiwani and also the command statement of area has been kept in view while permitting transfer of 47.21 acre area from outlet RD-16670-TR Badesara Minor to outlet RD-85000-L Jui Feeder, in the interest of development of irrigation. It is also noticeable that the cost of adjustment of both outlets is to be borne by the beneficiaries.

5.2 The aforesaid order dated 04.08.2021 (Annexure P-2) of learned DCO was further upheld by learned SCO as well as learned CCO, vide their orders dated 16.06.2022 and 24.03.2023 (Annexure P-3 and Annexure P-4, respectively).

5.3 All the Canal Authorities have concurrently held the demand of respondents No. 5 to 10 to be genuine and justified for proper development of irrigation.

6. Learned counsel for petitioners has failed to dislodge the observations/findings returned by canal authorities. It has also not been shown as to how the impugned orders are patently illegal or arbitrary.

7. 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...”

8. 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...”

9. Considering the totality of circumstances, I find no compelling reason to interfere in the impugned orders. Accordingly, the instant writ petition fails and the same is dismissed.

10. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

18.10.2024
sjks

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