

220

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-16873-2015 (O/M)

Date of decision : 03.09.2024

Suman Bala and others

..... Petitioners

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. S.P.S. Tinna, Advocate
for the petitioners.
Mr. Nirmaljit Singh Diwana, Senior DAG Punjab.
Mr. P.P.S. Brar, Advocate
for respondents No. 7 and 8.

-. -

-. -

HARSH BUNGER, J. (ORAL)

1. Petitioners (Suman Bala 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 mandamus for directing official respondents to permit the petitioners to take their turn of water in the lift pump outlet No. 371262/L, Sirhind Feeder.

2. Briefly, the petitioners purchased agricultural land in village Lambi, Tehsil Malout, District Sri Muktsar Sahib from Shaminder Singh and Bhupinder Singh, vide sale deeds No. 71 and 72 dated 17.04.2006. According to the petitioners, the said purchased area was getting canal water from lift pump No. 90 on outlet No. 371262/L, which is managed by respondent No. 6-President, Jal Paryog Society (in short 'respondent No. 6-Society'); however, when the petitioners approached the said Society, they refused to give the turn of water to the petitioners.

The petitioners voiced their grievance by submitting a representation dated 26.10.2010 (Annexure P-2) to the Executive Engineer, Abohar

Canal Division, but no action was taken. Thereafter, in the year 2014, the petitioners approached the Deputy Collector, Abohar Canal Division, however, still no action was taken.

2.1 It appears that the petitioners earlier approached this Court by filing CWP-872-2015, however, since the matter was pending before the canal authorities, the said writ petition was disposed of, vide order dated 19.01.2015 (Annexure P-5) by observing that the petition preferred by the petitioner be decided expeditiously.

2.2 It transpires that thereafter the petitioners submitted another representation dated 22.04.2015 (Annexure P-6), however, again no steps were taken.

2.3 In the present writ petition, it is the stand of the petitioners that the land purchased by them was included in the lift pump scheme on outlet No. 371262/L and respondent No. 6-Society was specially formed for better irrigation, which was not permitting the petitioner to take their turn of water on account of party faction in the village. According to the petitioners, as per 'A' form issued by the Abohar Canal Division, their area is included in the scheme of irrigation through lift pump and the said land of the petitioners is also in the chak of the outlet No. 371262-L. Petitioners state that they are ready to deposit whatever the amounts or dues are there and they are further ready and willing to comply with all the rules and regulations of the Jal Paryog Society. Petitioners claim that similarly circumstanced persons had earlier approached this Court by filing CWP-17726-2004, which came to be disposed of, vide order dated 23.05.2006 (Annexure P-8) by observing as under :-

“ *The respondents of village Khudian Gulao Singh, Tehsil Malout, District Muktsar made a*

representation to the State Government to provide them lift irrigation for the entire area in their village as they were not getting proper irrigation. The State Government accepted the demand of the villagers and included 540 acres in the lift pump irrigation scheme on outlet RD383813 LSF in order to provide proper irrigation to the villagers. The petitioners also have their lands in the village and in order to get the scheme implemented they agreed to pay for the lift irrigation scheme. Accordingly, a society in the name and style of Jal Paryog Society was formed in order to keep a watch and to collect amounts from the members of the lift pump scheme on the aforementioned outlet. However, for one reason or the other the petitioners could not deposit the amount and hence they were deprived of the benefits of the lift pump scheme.

The petitioners have prayed that they be permitted to deposit the requisite amount for the scheme as per their share and the scheme be implemented qua them also.

Respondents No. 3 and 4 have, however, strongly objected to the inclusion of the petitioners in the scheme. According to them, the petitioners cannot be made members of the society and that they were requested many times by the society to pay their shares for getting the benefits of the scheme but they have failed to do so and, therefore, at this stage they cannot be made members of the Jal Paryog Society.

Mr. Munjal, learned counsel for the State has stated that they have no objection if the benefit of the lift irrigation scheme is also extended to the petitioners provided they make the payment. It is further submitted that the scheme was approved for an area of 540 acres but the estimate plan has been given for 470 acres only and therefore there would be no impediment in the

implementation of the scheme as the entire sanctioned area is not getting the irrigation.

We have heard the counsel for the parties and are of the considered opinion that as all the villagers except the petitioners are getting the benefit of the lift irrigation scheme, therefore, there is no reason why the petitioners have not been extended the same benefit. Moreover, the petitioners have categorically stated that they are ready and willing to make the payment to which the State has no objection. The stand taken on behalf of respondents No. 3 and 4 is wholly unreasonable as the petitioners are as such residents of the village as the respondent society and there is no reason to deprive the petitioners of the benefit of the lift irrigation scheme.

In view of the above, we direct that the benefit of the lift irrigation scheme be extended to the petitioners subject to the condition that they will deposit the amount falling to their shares before respondent No. 3 within a period of one month from today. We further direct that all the petitioners shall be made members of the Jal Paryog Society and the society shall take the dues from the petitioners. The petitioners on becoming the members of the society shall abide by the rules and regulations of the society and shall be bound by the terms of the scheme.

The petition is disposed of.”

2.5 It is further submitted that another similar writ petition i.e. CWP-14083-2010 was also disposed of by this Court, vide order dated 22.02.2013 (Annexure P-9), in the light of the order dated 23.05.2006 (Annexure P-8), by holding as under :-

“ Learned counsel for the petitioners submits that the case of the petitioners is squarely covered by a Division Bench judgment of this Court passed in CWP

No. 17726 of 2004 (Gurdip Singh and others Vs. The State of Punjab and others) (Annexure P-3). He further submits that the petitioners will be satisfied in case the present writ petition is disposed of in terms of the above said order dated 23.5.2006 (Annexure P-3), passed by the Division Bench of this Court.

Learned counsel for the respondents also fairly states that he is not averse to the proposal put by learned counsel for the petitioners.

In view of the above statements made by learned counsel for the parties, the present petition is disposed of with the following directions :-

i) The petitioners shall approach the Divisional Canal Officer, Abohar Canal Division, District Fazilka within two weeks from today, by moving an appropriate application.

ii) The Divisional Canal Officer, Abohar Canal Division, District Fazilka, shall intimate the petitioners within two weeks thereafter, as to how much amount the petitioners were supposed to deposit.

iii) After receiving the intimation from the Divisional Canal Officer, Abohar Canal Division, District Fazilka, the petitioners shall deposit the requisite amount within two weeks thereafter.

Since it is an admitted position that since the Division Bench judgment (Annexure P-3), passed by this Court, has already been implemented qua the petitioners therein, and the same is also applicable to the present petitioners as well, their rights shall also be decided accordingly.”

2.6 Accordingly, the petitioners also seek disposal of the instant writ petition in terms of the above referred order dated 23.05.2006 (Annexure P-8) and order dated 22.02.2013 (Annexure P-9), passed by this Court.

3. On the other hand, learned State counsel, while referring to para No. 2 of preliminary submissions of the reply filed on behalf of respondents No. 1 to 5, submits that the canal authorities have already written to respondent No. 6-Society to re-fix the turn of water and to allow the petitioners to take their turn of water. The exact stand of the State reads as under :-

“2. That the only grievance of the petitioners is that they are not being allowed by the respondent No. 6 Jal Paryog Society to take their turn of water for their land which fall under the Lift Pump No. 90 of Village Lambi under the Mogha Burji No. 371262/L Sirhind Feeder. It is submitted that the land of the petitioners is included in the lift pump scheme on outlet RD 371262/L and the respondent No. 6 Jal Paryog Society was formed for better irrigation.

The canal authorities have already written to the respondent No. 6 to re-fix the turn of water and to allow the petitioners to take their turn of water and in case the petitioners are not permitted to take their turn of water, the necessary action will be taken against the Society as per law. As such, no cause of action has accrued to the petitioners to file the present petition against the answering respondents.”

4. Learned State counsel submits that in view the aforesaid stand of respondents No. 1 to 5, the instant writ petition can be disposed of in terms of the above referred order dated 23.05.2006 (Annexure P-8) and order dated 22.02.2013 (Annexure P-9).

5. Heard.

6. Considering the stand taken by learned State counsel and also the judgments (Annexure P-8 and Annexure P-9), passed by this

Court, the present writ petition is disposed of with the following directions :-

- (i) Since the land of the petitioners is included in the lift pump scheme on outlet RD-371262/L and respondent No. 6 (Jal Paryog Society) was formed for better irrigation, accordingly, the petitioners are entitled to the benefit of the lift irrigation scheme;
- (ii) The petitioners be extended the benefit of the lift irrigation scheme subject to the condition that they will deposit the amount falling to their shares before respondent No. 6-Society within a period of one month from today;
- (iii) The petitioners shall be made members of respondent No. 6-Society, which shall take the dues from the petitioners;
- (iv) The petitioners, on becoming members of respondent No. 6-Society, shall abide by the rules and regulation of the Society and shall be bound by the terms of the scheme.

7. The present writ petition is accordingly allowed and disposed of in the aforesaid terms.

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

(HARSH BUNGER)
JUDGE

03.09.2024
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No