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

CWP No.26375 of 2017

Date of Decision: 20.05.2024

Ram Parsad

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Karan Singh, Advocate
for the petitioner.

Ms. Upasna Dhawan, AAG, Haryana with
Mr. Ashok Kumar, SDO.

Mr. Chanderhas Yadav, Advocate
for respondent No.5.

RAJESH BHARDWAJ, J.

1. Present writ petition has been filed for quashing the order dated 07.04.2016 (Annexure P-1) passed by DCO, Narnaul and order dated 22.06.2017 (Annexure P-5) passed by Chief Canal Officer, Haryana allowing the application filed by respondent No.5 for shifting the outlet RD 11000/L Mittarpura Disty. (which was in existence from last more than 37 years) to outlet RD 10265/L Mittarpura Disty. illegally and wrongly, which will affect the proper irrigation of entire area on this outlet and there would be so many bends in the water course, which will adversely effect the flow of water.



2. It has been submitted by learned counsel for the petitioner that the petitioner is irrigating his land with outlet RD-11000/L Mittarpura Disty. and the same is situated after the land of respondent No.5. He has submitted that this water outlet was constructed by the respondent department in the year 1978-80 in accordance with the procedure laid down by the Haryana Canal and Drainage Act, 1974 (hereinafter referred to as 'the Act'). The water course is running at the site from last 37 years without any objection raised by any of the co-sharer. He has submitted that respondent No.5 filed an application before the learned Divisional Canal Officer, Mahendergarh for shifting the present outlet RD-11000/L Mittarpura Disty. to RD-10265/L Mittarpura Disty. on the ground that the present outlet has bifurcated her land in two parts. He has submitted that respondent No.4 i.e. Divisional Canal Officer, without appreciating the facts that the water course is running from last more than 37 years and except respondent No.5, no other co-sharer has raised any objection, illegally approved the same vide his order dated 07.04.2016. Being aggrieved, the petitioner assailed the same before the learned Superintending Canal Officer. He submits that the learned Superintending Canal Officer, on hearing both the sides and appreciating the evidence on record in the light of statutory provisions of the Act, accepted the appeal filed by the petitioner and thus, set aside the illegal order passed by the learned Divisional Canal Officer vide his order dated 09.09.2016. He submits that this order was assailed by respondent No.5 by way of filing an appeal under Section 20(2) of the Act before the



learned Chief Canal Officer i.e. respondent No.2. He submits that respondent No.2 by misreading the evidence on record and the statutory provisions, illegally set aside the well reasoned order and thus, restored the order passed by respondent No.4 in highly arbitrary manner vide his order dated 22.06.2017.

3. It has been further submitted by learned counsel for the petitioner that land of respondent No.5 is abutting the public passage on the side of main canal and thus there is no difficulty in cultivating the land by respondent No.5. He submits that respondent No.4 had not considered that by granting the approval to respondent No.5 numerous 90 degree curves would be made which would result in wastage of water. He submits that the water course existed from last more than 37 years and the same was constructed in due course of law. He has submitted that the learned Chief Canal Officer has totally misread the record and the site plan. He has submitted that the khasra numbers are jointly owned by the petitioner, namely, Ram Parsad etc. and family members of respondent No.5. However respondents No.2 and 4 did not deal with these issues. He submits that earlier also Ghisa Ram i.e. husband of respondent No.5 had dismantled the same water course and at that time, the Sub Divisional Officer, Narnaul vide his order dated 07.10.2014 had directed Ghisa Ram to restore the water course RD-11000/L. The appeal filed against this order was dismissed by the Deputy Collector vide his order dated 25.11.2014. He submits that the impugned orders passed by the Divisional Canal Officer and the Chief Canal Officer are totally cryptic



and the same have been passed without assigning any reason. He has submitted that the impugned orders being violative of the statutory provisions of the Act, deserve to be set aside.

4. *Per contra*, learned counsel for respondent No.5 has opposed the submissions made by learned counsel for the petitioner. He has submitted that on filing the application by respondent No.5, the scheme was prepared under Section 17 of the Act and the same was decided under Section 18(2) of the Act on considering all the objections and it is only after meeting the mandatory provisions of the Act, the impugned orders were passed. He submits that the learned Superintending Canal Officer had fallen in error in illegally setting aside the order passed by the Divisional Canal Officer and thus, the learned Chief Canal Officer had rightly accepted the appeal filed by respondent No.5 by setting aside the illegal order passed by the Superintending Canal Officer. He submits that land of the petitioner as evident from the site plan had bifurcated the land of respondent No.5 and thus the application filed by respondent No.5 was rightly approved by the learned Divisional Canal Officer, which was restored by the learned Chief Canal Officer.

5. Learned counsel for the State has also opposed the submissions made by learned counsel for the petitioner. She submits that the application filed by respondent No.5 was duly investigated and the scheme was prepared under Section 17 of the Act. This scheme prepared was published under Section 18(1) of the Act and the same was decided



under Section 18(2) of the Act after hearing the objections and suggestions of all the concerned parties. She has submitted that the case regarding shifting of outlet RD-11000/L to RD-10265/L was decided strictly in accordance with the provisions of the Act and thus, no cause of action whatsoever has accrued to the petitioner for filing the present petition. It has been submitted that the present petition being devoid of any merit deserves to be dismissed.

6. Mr. Ashok Kumar, SDO is present in person in Court, who has apprised the Court regarding the order passed keeping in view the situation existing on the site. He has drawn the attention of this Court to the site plan attached and has submitted that the water course has been shifted by duly following the procedure as laid down under the Act. He submits that apprehension of the petitioner regarding 90 degree turn occurring in the water course are totally misconceived and baseless. It has been submitted that on receiving the application filed by respondent No.5, the same was investigated and all the requisite technical aspects were considered. He submits that there would be no loss of water by shifting the water course from outlet RD-11000/L to RD-10265/L rather the same would result in better irrigation.

7. Heard.

8. The Court has heard learned counsel for the parties along with the Officer and perused the record with their able assistance.

9. As deciphered from the facts and circumstances of the case, respondent No.5 had filed an application for shifting of the water course



from outlet RD-11000/L to outlet RD-10265/L. On receiving the application, the draft scheme was prepared by the Zileadar concerned under the supervision of Sub Divisional Canal Officer. The learned Divisional Canal Officer approved the shifting of outlet RD-11000/L to Rd-10265/L of Mittarpura Disty. It was specifically observed that all the expenditure involved in the change would be borne by respondent No.5. This order was assailed before the learned Superintending Canal Officer by the petitioner, who accepted the same vide his order dated 09.09.2016. However the learned Chief Canal Officer found the view taken by the learned Superintending Canal Officer to be perverse and thus, restore the order passed by the Divisional Canal Officer vide his order dated 22.06.2017. It was found that *prima facie* the demand of respondent No.5 for shifting the head of existing outlet RD-11000/L to RD-10265/L was genuine. The Officer present in person in the Court has explained the site plan attached and has submitted that apprehension of the petitioner that there being 90 degree angle would result in the wastage of water is totally baseless as necessary procedure has been followed for sanctioning the scheme. Thus, it is evident that the learned Divisional Canal Officer had accepted the application filed by respondent No.5 on the basis of investigation report carried out by the officials. The scheme as required under the Act was duly published and objections of all the sides were duly heard. He explained to the Court that by existing outlet, the land of the respondent No.5 was bifurcated and thus, in order to provide the better irrigation for both the sides, the scheme was approved.



10. Thus, this Court finds that the authorities had taken into consideration all the relevant aspects in accordance with the law and followed the prescribed procedure, as per law settled. However it was directed by the learned Chief Canal Officer that the cost for digging/construction of the water course shall be borne by respondent No.5. This Court agrees with the direction given.

11. Hence, finding no scope of interference in the present petition, the same is hereby dismissed. However the direction given by the authorities below to respondent No.5 for bearing the cost of digging/construction of the water course is found to be genuine, hence, the same would be complied with by respondent No.5 before the implementation of the scheme by the respondent authorities.

20.05.2024
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(RAJESH BHARDWAJ)
JUDGE

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