

101

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

CWP No.28314 of 2017

Date of Decision: 20.02.2024

Charanjit Singh and others

..... Petitioners

Versus

**Superintending Canal Officer, Ferozepur Canal Circle,
Ferozepur and others**

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. J. S. Brar, Advocate
for the petitioners.

Mr. Navneet Singh, Sr. DAG, Punjab.

Mr. Baltej Singh Sidhu, Senior Advocate with
Mr. Divij Dutt, Advocate
for respondent No.5.

RAJESH BHARDWAJ, J.

Present writ petition has been filed for quashing of orders dated 17.04.2017 (Annexure P-7) and 13.09.2017 (Annexure P-9) passed by respondents No.3, 4 and 1, 2 respectively vide which 10.05 acre area of outlet Burji No.56980-L upper Rajbaha upper Rupana of respondent No.5 has been transferred to outlet lift pump burjee 232675-L Sirhind Feeder.

It has been submitted by learned counsel for the petitioners that the petitioners are the share holders of lift pump burjee 232675-L Sirhind Feeder sanctioned on 22.07.2014 for 157.54 GA/151.88 CCA

acre area. He has submitted that on joint hearing, respondents No.3 & 4 allowed the application filed by respondent No.5 vide order dated 17.04.2017 to transfer his 10.05 acre area from outlet No.56980-L upper Rupana to the chak of lift pump burjee 232675-L Sirhind Feeder. Being aggrieved by the same, the petitioners filed an appeal under Section 30-B(3) of the Northern India Canal and Drainage Act (for short 'the Act') but the same without considering the grounds of appeal and pleas raised by the petitioners was dismissed on 13.09.2017. He submits that the impugned orders are totally illegal, arbitrary and in violation of the principle of natural justice. He submits that the impugned orders have been passed in violation of the mandatory provisions of Section 30-A and 30-B of the Act. He has submitted that under Section 30-A of the Act, the draft scheme is to be prepared whereas under Section 30-B of the Act, the same is to be published. He submits that as per the mandatory provisions, the scheme was not published before passing the impugned orders. He has submitted that the alleged scheme was prepared on 24.03.2017 and notice for hearing the case was issued on 17.04.2017 and on the same day, the impugned order was passed. He submits that the petitioners/share holders were not provided any opportunity to file their objections/suggestions. He submits that as per the mandate of Section 30-B of the Act, the scheme thereafter was not even published. As the scheme was not published for inviting the objections, the impugned orders are in violation of the principle of natural justice. He submits that the petitioners were never afforded any opportunity of hearing on the report dated 06.06.2016. He submits that from the perusal of the

impugned order passed by the learned Divisional Canal Officer dated 17.04.2017, it is apparent that presence of the petitioners or their counsel is not even mentioned by the learned Divisional Canal Officer. He submits that the arguments raised by learned counsel for the petitioners were never taken into consideration as no findings thereon whatsoever have been given by the learned Divisional Canal Officer in the impugned order passed. He submits that in the appeal filed, the learned Superintending Canal Officer failed to appreciate the contentions raised by the petitioners and thus, dismissed the appeal illegally. He submits that as the impugned orders have been passed in gross violation of the mandatory provisions of the Act, the same deserve to be set aside.

Per contra, learned counsel for respondent No.5 has opposed the submissions made by learned counsel for the petitioners. He has submitted that the scheme was issued on 24.03.2017 and receipt of the same was also signed by the petitioners. He has submitted that the Patwari Halqa and lambardar of the village Bhuttiwala have also countersigned the same. Thus, contentions raised by learned counsel for the petitioners that the scheme was in violation of Sections 30-A and 30-B of the Act is factually incorrect. He submits that the petitioners have been duly heard through out and thus, there is no violation of the principle of natural justice. He submits that the impugned orders have been passed in due course of law and there being no infirmity in the impugned orders, the present petition being devoid of any merit deserves to be dismissed.

Heard.

On hearing learned counsel for the parties and perusing the record, it is apparent that respondents No.3 & 4 allowed the application filed by respondent No.5 vide order dated 17.04.2017 to transfer his 10.05 acre area from outlet No.56980-L upper Rupana to chak of lift pump burjee 232675-L Sirhind Feeder. The respondent authorities initiated the necessary process as per the mandate of the Act. The scheme was approved in accordance with the mandate of Sections 30-A and 30-B of the Act. The petitioners, Patwari and lambardar also signed the same. However, on perusal of the impugned order, it is apparent that the learned Divisional Canal Officer has given no findings on the objections filed by the petitioners. The impugned order has been passed by taking into consideration the averments made by respondent No.5. In the appeal filed against the order of Divisional Canal Officer, the learned Superintending Canal Officer also failed to appreciate the contentions raised by the petitioners.

Thus, both the impugned orders suffer from patent illegality when the arguments raised by the petitioners were neither considered nor any findings thereon was given by both the authorities.

In the considered opinion of this Court, the impugned orders are found to be unsustainable in the eyes of law and thus, both the orders dated 17.04.2017 (Annexure P-7) and 13.09.2017 (Annexure P-9) are hereby set aside. Resultantly, the case is remanded to respondents No.3 & 4 i.e. Divisional Canal Officer, Abohar Canal Division, Abohar, District Ferozepur and Divisional Canal Officer, Faridkot Canal Division, Faridkot (as the order dated 17.04.2017 (Annexure P-7) was passed by

them) to decide the matter afresh after providing due opportunity of hearing and producing their evidences. Respondent-competent authority would issue notice to both the parties and would decide the case afresh in accordance with law expeditiously preferably within a period of two months from the date of receipt of copy of this order.

The petition is allowed in the above mentioned terms.

(RAJESH BHARDWAJ)
JUDGE

20.02.2024
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Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No