



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

CWP-19381-2024 (O&M)
Date of decision :12.08.2024

SUKHJIT SINGH AND OTHERS

...Petitioners

Versus

SUPERINTENDENT, CANAL OFFICER, LUDHIANA CANAL
CIRCLE, LUDHIANA, DISTRICT LUDHIANA AND OTHERS

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Gurbachan Singh Bhatia, Advocate
for the petitioners.

HARSH BUNGER, J. [ORAL]

Petitioners have filed the instant writ petition under Articles 226/227 of the Constitution of India, *inter-alia*, seeking setting aside of order dated 09.10.2023 (Annexure P-7) passed by the Divisional Canal Officer, Ludhiana; whereby, the prayer of the petitioners for closure of outlet No.7040/R Kingwaha Rajbaha and for transferring their area to the old outlet No.3912/L Dharamkot Minor, has been rejected.

A further prayer has been made for setting aside the order dated 28.03.2024 (Annexure P-9) passed by the Superintendent Canal Officer, Ludhiana, whereby the appeal filed by the petitioners against order dated 09.10.2023 (Annexure P-7), has been dismissed.

2. Briefly, the petitioners along with other shareholders filed an application before the Divisional Canal Officer, Ludhiana, seeking

exclusion of their area measuring 91(G.A.)/84 C.C.A. of Village Lohgarh and 16(G.A.)/15 C.C.A of Village Jalalabad i.e. in total 107 (G.A.)/99 C.C.A acres from outlet No.3192/L Dharamkot Rajbaha, with a further prayer to sanction a new outlet at Burji No.7040/R Kingwaha Rajbaha.

2.1 It transpires that the afore-said request made by the petitioners came to be allowed by the then Divisional Canal Officer, Ludhiana, vide an order dated 03.03.2021 (Annexure P-1) by observing as under :-

*“**ORDER:-** In the presence of Zileadar Sidhwan Bet and Halqa Patwari Rahulpreet Singh came present in the Court on behalf of the applicants was heard in detail. Rahulpreet Singh produce the authority letter of the applicant Mr. Sukhjot Singh and made statement about the demand of the applicant that their statements which were recorded at the spot by the Zileadar Sidhwan Bet should be accepted as correct. The reports of the regional staff were perused very carefully. The applicants made joint statement at the spot and demanded that they are shareholders of Mogha Burji 3912/L Rajbaha Dharamkot village Lohgarh Tehsil Dharamkot District Moga. The khals coming to their area/land are in bad shape and in condition damaged. Due to which their area/land is not being irrigated due to which there is less to their crops. As such their demand is that their area be taken out from Mogha Burji 3912, new Mogha 7040/R Kingwaha Rajbaha be installed. The arrangements khals of canal will be of their own and they will be bound to accept all the conditions of the canal department. In this regard, none of the shareholders came present in the Court to raise any objection. So keeping in view that none of the shareholders came to the court to raise objections, the undersigned has come to the conclusion that the demand of the applicants is legitimate and is in the interest of*

better irrigation. As such the demand of the applicants is in the interest of better irrigation and considering the recommendation Ziledar Sidhwa Bet and Sub Divisional Officer Zira scheme published in the interest of better irrigation and keeping in view the better produce is being sanctioned, meaning thereby the area of the applicants i.e. 91/84 acres of village Lohgarh and 16/15 acres of village Jalalabad after taking out the total 107/99 acres area and for this area the Kingwaha Rajbaha Burji 7040/R and at Killa No.150//4 of village Lohgarh new Mogha under section 30(B)(2) of Northern India Canal Drainage Act 8 of 1873 Punjab Amendment Act 23/1965 is sanctioned. The applicants shall be bound by the terms and conditions of the department of grant water resources and the expenses of all the demolished Moghas and reconstruction of the Moghas will be borne by themselves and the management of khal will be by applicants themselves. With the sanctioned of the scheme, the situation of the Moghas will be as follows:-

Sr. No.	Mogha Burji	Rajbaha/ 20minor	Name of the village	Present situation		Proposed situation		Special remarks
				GA	CCA	GA	CCA	
1	3912/L	Dharamkot Rajbaha	Lohgarh	161	147	70	63	91/84 Acre area to be taken out
			Jalalabad	258	251	242	236	16/15 acre area to be taken out
			Bhinderwala	20	19	20	19	
			Total	439	417	332	318	
2	New Mogha Burji 7040/R	Kingwah Rajbaha	Lohgarh	--	--	91	84	91/84 acre area to be added.
			Jalalabad	--	--	16	15	16/15 acre area to be added.
			Total	--	--	107	99	
			Big Total	439	417	439	417	

2.2 It appears that the afore-said order dated 03.03.2021

(Annexure P-1) was not challenged by anyone and accordingly, the same had attained finality.

3. Thereafter, the petitioners and other shareholders submitted another application before the Divisional Canal Officer, Ludhiana, with a prayer that the new outlet at Burji No.7040/R Kingwaha Rajbaha, be closed and their whole area be shifted to the old outlet i.e. 3912/L, Dharamkot minor. On the said application, the proceedings were commenced and the reports were called from the Field Staff, who recommended the closure of the outlet No.7040/R and transfer of whole area to the outlet No.3912/L. It appears that the afore-said move was objected by another shareholder namely, Gurmeet Singh (respondent No.3).

4. The Divisional Canal Officer, Ludhiana, upon considering the matter in its entirety, passed an order dated 09.10.2023 (Annexure P-7), rejecting the prayer of the petitioners for closure of outlet No.7040/R and also the prayer for transferring their area to the old outlet No.3912/L.

5. Being aggrieved against the afore-said order dated 09.10.2023 (Annexure P-7), the petitioners preferred an appeal before the Superintending Canal Officer, Ludhiana; however, the same was also dismissed vide order dated 28.03.2024 (Annexure P-9).

6. In the afore-mentioned circumstances, the present petition has been filed before this Court.

7. Learned counsel for the petitioners submits that the impugned orders are liable to be set aside as the same are not in consonance with the provisions of the Northern India Canal and Drainage Act, 1873 (in short '1873 Act') and the Rules prescribed thereunder. It is further submitted that the area of the petitioners is not being properly irrigated from the new outlet i.e. 7040/R, whereas, they were getting sufficient canal irrigation from the

old outlet No.3912/L Dharamkot Rajbaha. It is further submitted that the petitioners' land falls far away from Burji No.7040/R and is on a higher level, thus, their land is not getting proper irrigation.

7.1 With the afore-said submissions, learned counsel for the petitioners prayed that the impugned orders be set aside and appropriate directions be issued for closure of the outlet No.7040/R and for shifting of the area of the petitioners to the old outlet No.3912/L Dharamkot Rajbaha.

7. I have heard learned counsel for the petitioners and have perused the paper book with his able assistance.

8. It is not disputed that earlier the petitioners were taking canal irrigation from outlet No.3912/L Dharamkot minor and on their own application, the area of the petitioners was shifted from outlet No.3912/L to new outlet No.7040/R Kingwaha Rajbaha, primarily for the reason that *khals* (water course) coming to their land were in bad shape and in a damaged condition, on account of which, their area/land was not being irrigated properly. Furthermore, while permitting shifting of area of the petitioners to the new outlet No.7040/R, the then Divisional Canal Officer, Ludhiana, had referred to the situation of the Moghas, which clearly indicated that from the proposed new outlet at Burji No.7040/R, the petitioners' area was being better irrigated.

8.1 Thereafter, the petitioners had filed another application before the Divisional Canal Officer, Ludhiana, seeking closure of the new outlet No.7040/R with a further prayer to shift their entire area to the old outlet No.3912/L, however, the said prayer was rejected by the Divisional Canal Officer, vide order dated 09.10.2023 (Annexure P-7) and the said order was further affirmed by the Superintending Canal Officer, vide its order dated

28.03.2024 (Annexure P-9), by observing as under :-

“ORDER: *The case file is re-examined on 28.03.2024. The documents annexed in the case file, the appeal of the appellants and decision of the Divisional Canal Officer, Ludhiana, Canal Division, Ludhiana were pursued. After perusal of whole file it is clear from the reading that the decision of Divisional Canal Officer, Ludhiana, Canal Division, Ludhiana seems to have been correct as per the situation on the spot and in the greater interest of the better irrigation. This new Mogha was got sanctioned by the appellants themselves because at that time, due to very poor condition of Mogha Burji 3912/L Dharamkot the khal being in very bad shape and broken and by giving reference of water not properly coming got new Mogha Burji 7040/R Kingwaha Rajbaha was got sanctioned. According to the comparative command statements of both the Moghas the command of Mogha Burji 7040/R is much better and the area of the appellants is better commandable. The area of this Mogha being less than 1 Cusick at that time the approval of the case was obtained from the head office to Mogha was sanctioned. Besides this as per record of Mogha Burji 7040/R the fact that it is situated in the appellants own land as such there is no sense that irrigation to his land is less. So, according to the facts mentioned above the decision of the Divisional Canal Officer, Ludhiana, Canal Division, Ludhiana is correct and in the interest of better irrigation. The appeal of the appellants is dismissed and the decision of Divisional Canal Officer, Ludhiana, Canal Division, Ludhiana dated 09.10.2023 is upheld in the interest of better irrigation. This decision is made under Section 30-B(3) of the Northern India Canal and Drainage Act 8 of 1873 and the Punjab Amendment Act 23 of 1965.”*

8.2 A perusal of the above extracted order dated 28.03.2024

(Annexure P-9) would manifest that as per the comparative command

statements of both the moghas i.e. 7040/R and 3912/L, it was found by the

Canal Authorities that the command of Mogha Burji No.7040/R is much better and the area of the petitioners is better commandable. It has further been observed by the Superintending Canal Officer that the Mogha Burji No.7040/R is situated in the petitioners' own land, as such, there is no occasion that the irrigation to their land is less.

9. As regards the contention of the learned counsel for the petitioners that the impugned orders are not in consonance with the provisions of the 1873 Act, it is observed that the learned counsel for the petitioners have failed to point out as to which provision of the 1873 Act, has been violated nor it is shown that impugned orders are patently illegal or arbitrary.

10. 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...”

11. Further, 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...”

12. In view of the above discussion, there is no scope for any interference by this Court in the impugned order(s) passed by the Canal authorities under the 1873 Act. Accordingly, the instant petition fails and the same is dismissed.

13. All pending applications (if any) shall also stand closed.

August 12, 2024
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No