

128 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-20507-2024 (O/M)
Date of decision : 23.08.2024

Amandeep Singh and another Petitioners

Versus

State of Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Ankit Midha, Advocate
for the petitioners.

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HARSH BUNGER, J.

1. Petitioners (Amandeep Singh and another) 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 09.02.2024 (Annexure P-4), passed by the learned Divisional Canal Officer, Mansa (in short 'DCO'), whereby he had set aside the order dated 20.10.2023 (Annexure P-3), passed by Deputy Collector, Mansa and approved the proposed turn of water of respondents No. 5 and 6 at Khata No. 63/A under Section 68 (5) of Northern India Canal and Drainage Act, 1873 (in short '1873 Act').

1.1 A further prayer has been made by the petitioners for setting aside the order dated 11.06.2024 (Annexure P-5), passed by the learned Superintending Canal Officer, Patiala Canal Circle, Department of Water Resources, Patiala, Punjab (in short 'SCO'), whereby the appeal filed by

the present petitioners against the order dated 09.02.2024 (Annexure P-4), passed by learned DCO was dismissed.

1.2 Another prayer has been made by the petitioners for affirming the order dated 20.10.2023 (Annexure P-3).

2. Briefly, respondents No. 5 and 6 herein filed an application seeking modification of warabandi of outlet RD-61800/TF, Talwandi Distributory, Village Rama, Tehsil Talwandi Sabo, District Bathinda; wherein it was stated that they are shareholders of the aforesaid outlet and their turn of water has been fixed at Khata No. 80. They sought shifting of their turn of water from the aforesaid branch to the other branch at Khata No. 63/A after Khata No. 63 for 2-0/0-4 (acre land) out of Khata No. 77 and 22-10/0-45 land out of Khata No. 79, totalling 24-10/0-49 (acre land).

2.1 Upon receipt of the aforesaid application from respondents No. 5 and 6, the concerned Deputy Collector issued notice to concerned shareholders, who appeared and raised following objections :-

- a) that in respect of the watercourse in question, a pipeline had been laid instead of the watercourse and respondents No. 5 and 6 have not given any share for laying of this pipeline. It was stated that whenever they will give their share, they may be allowed to get their turn of water fixed from this branch;
- b) that the land of respondents No. 5 and 6 is located on both sides of the existing watercourse and the Nakka for taking water from Khata No. 80 has been fixed at 160//21/22 and Nakka for giving water has been fixed at 159//24-25 from which their land is being irrigated. It was stated that in case

their Nakka is sanctioned on the other lined watercourse then a syphon shall have to be constructed under the lined watercourse for Khasra No. 173//4/2-5.

2.2 The Deputy Collector, vide its order dated 20.10.2023 (Annexure P-3), rejected the demand of respondents No. 5 and 6 for shifting of their Khata No. 80 to Khata No. 63/A by observing that the construction of syphon shall lead to the risk of breaking of the watercourse; however, he granted approval for combining the turn of water for the land purchased by them in Khata No. 80. Accordingly, the modified warabandi was approved under Section 68 of 1873 Act.

2.3 Feeling aggrieved against the aforesaid order dated 20.10.2023 (Annexure P-3), respondents No. 5 and 6 preferred an appeal before the DCO, who vide its order dated 09.02.2024 (Annexure P-4) allowed the appeal and set aside the order dated 20.10.2023 and further approved the turn of water of respondents No. 5 and 6 at Khata No. 63/A.

2.4 Being dis-satisfied, the present petitioners preferred an appeal against the aforesaid order dated 09.02.2024 (Annexure P-4) before the SCO, who vide its order dated 11.06.2024 (Annexure P-5) dismissed the appeal and upheld the order dated 09.02.2024 (Annexure P-4).

3. In the aforementioned circumstances, the petitioners have filed the instant civil writ petition for the relief(s), as noticed above.

4. Learned counsel for petitioners submits that the learned DCO as well as learned SCO have erred in law and fact in permitting transfer of turn of water to the land of respondents No. 5 and 6 at Khata

No. 63/A. It is submitted that the irrigation of the land of private respondents was taking place from the existing Nakka and the impugned orders shall only create a disturbance in proper irrigation of the land of the petitioners and other shareholders. It is further submitted that private respondents cannot be permitted to shift their turn of water without first sharing the cost of the watercourse for laying of pipeline instead of lined watercourse. It is next submitted that all other shareholders of the watercourse have already shared the cost and deposited the amount with the department and the watercourse has partly been converted into underground pipeline and the balance work is yet to be executed by the Government. It is also submitted that the canal authorities have not applied their mind to the fact that the existing syphon is only under the passage and not the watercourse and in case, the syphon is constructed under the lined watercourse, the same shall lead to the risk of breaking of watercourse. It is still further submitted that private respondents had earlier unauthorizedly made a Nakka by breaking a pipeline, which was ordered to be closed by the Deputy Collector being unauthorized. Another submission has been made on behalf of the petitioner that with the shifting of turn of water of respondents No. 5 and 6, the shareholders of Khata No. 81 would be requiring additional *bharai*. Accordingly, it is prayed that the impugned orders (Annexure P-4 and Annexure P-5) be set aside and the order dated 20.10.2023 (Annexure P-3), passed by the Deputy Collector be affirmed.

5. I have heard learned counsel for the petitioners and have also perused the paperbook with his able assistance.

6. In the present case, the demand of respondents No. 5 and 6 for shifting of their Khata No. 80 to Khata No. 63/A was rejected by the Deputy Collector primarily on the ground that in case their Nakka is sanctioned in the other lined watercourse then a syphon shall have to be constructed, which shall lead to the risk of breaking of watercourse. However, on an appeal filed by respondents No. 5 and 6, the learned DCO, vide its order dated 09.02.2024 (Annexure P-4), had approved the shifting of turn of water of private respondents at Khata No. 63/A by holding as under :-

“The Respondents made a statement that the appeal filed by the appellant may kindly be dismissed because on the branch where the appellant wants to shift his nakka, a pipeline has been got laid and the appellant did not give the share of cost in respect of this pipeline. Apart from this, in case the turn of water is shifted from the existing watercourse then the shareholders of Khata No. 81-82-83 will have to do more bharai (time required for filling of watercourse upto the nakka) due to which the irrigation to their land shall suffer.

The shareholders of the outlet raised an objection that the appellant has not given his share in the pipeline laid by them. Therefore they oppose the proposal to approve a new khata for the appellant on the proposed watercourse. In this regard it is informed that the watercourse/pipeline in the chak of the outlet are for the irrigation of land of all the shareholders of the outlet. Apart from this, the appellant side has not raised a demand for approval of nakka on the pipeline but have demanded the nakka on the lined watercourse. Therefore, the objection raised is not valid and is not worth acceptance.

The shareholders of Khata No. 81-82-83 have made a statement regarding additional filling required for the watercourse. In this regard, it is informed that for the filling of the watercourse, the shareholders are given minute per acre time in the warabandi with which they get compensated for the additional time required for filling the watercourse. Due to this, if the shareholder of Khata No. 81 has to do additional filling of two acres, he has been granted six minutes of additional time.

The appellant came present in the court and made a statement that their turn of water has been fixed at Khata No. 80. They are unable to irrigate their land properly from the existing watercourse due to which have raised a demand for shifting of their turn to the proposed new Khata No. 63/A which had been rejected by the Deputy Collector, Mansa.

The Deputy Collector, Mansa, vide his order dated 20.10.2023 has rejected the demand of the appellant to consolidate their turn of water by including the time allocated for land purchased by them in Khata No. 80, as per the civil record and shifting their turn to Khata No. 63/A by approving a new khata.

The Deputy Collector, Mansa has rejected the demand of the appellant for approving a new khata at 63/A on the ground that for irrigation of their land killa Nos. 173//4/2-5, they shall have to lay a pipeline under the lined watercourse of 173//4/2-5 which can cause damage to the lined watercourse. The appellant side shall have to make their own arrangement in this regard.

The undersigned, while inspecting the site, found that for irrigation of Killa No. 173//4/2-5, a syphon had already been constructed under the path which is adjoining Killa No. 159//25. The Zildar Rama has also submitted a report regarding the existence of the syphon at site.

From this, it is clear that the irrigation of land of the appellant can also be done satisfactorily from the other branch of watercourse. As per the situation at site, the appellant provide water to 1.5 acre from the existing branch and also provides irrigation to approximately 8 acres land through the syphon constructed under the path which is adjoining the branch of pipeline. In case, the interest of better irrigation is considered, then arrangement for better irrigation in larger interest is necessary which can be possible through the branch having the pipeline because more land of the appellant lies on the branch having pipeline and lesser land is on the branch of existing watercourse.

At last, after examining the sketch plan, record, the order of Deputy Collector, Mansa, the court has come to the conclusion that the order dated 20.10.2023 passed by the Deputy Collector Mansa, has not been passed after considering the interest of better irrigation of larger land of the appellant. Resultantly, the appeal is accepted and the order dated 20.10.2023, of the Deputy Collector, Mansa is set aside and the proposed turn of water of the appellant is approved at Khata No. 63/A. This order has been passed under Section 68 (5) of Canal and Drainage Act 8, 1873.”

6.1 Still further, the learned SCO while rejecting the appeal of the petitioners, vide its order dated 11.06.2024 (Annexure P-5), held as under :-

“It is clear from the record pertaining to this case that the respondent side wants to shift their turn of water from Khata No. 80 to a new branch and get a new khata No. 63/A approved for the irrigation of their land. In addition, they also want to get the turn of water approved for 22 Kanals 10 Marla land in Khata No. 79

and 02 Kanal land approved in Khata No. // to Khata No. 63/A. At the time of arguments advanced by both the parties, the appellant side pleaded that they had laid a pipeline and at that time, the respondents had not shared the cost of pipeline with them and also pleaded that the land of respondents was getting proper irrigation water through the existing nakka but it is made clear that all the shareholders of the outlet have an equal right on the canal water passing through the pipeline or the watercourse and the shareholders cannot be deprived of taking canal water from such pipeline/watercourse. It is also worth considering that at site as shown in the sketch, a lined watercourse is existing upto the land of the respondents beyond the pipeline. This lined watercourse also exists beyond the land of the respondents. Besides this, the nakka for the respondents had been approved on the watercourse beyond the pipeline due to which there shall be no adverse impact on the pipeline and rather the respondents shall get proper irrigation supplies because of this. In this regard, the Divisional Canal Officer personally inspected the site on 09.02.2024 and has given the details regarding the fact of better irrigation for the land of the respondents from the branch of the watercourse of pipeline instead of the existing branch because larger area lies besides the watercourse with pipeline which is absolutely correct as per the situation at site. During the arguments, the appellant side could not raise any plea regarding the loss that may be caused to their irrigation due to the order dated 09.02.2024 of the Divisional Canal Officer. Resultantly, the order dated 09.02.2024 of the Divisional Canal Officer is upheld being in the interest of better irrigation and the appeal filed by the appellants is set aside.”

7. From a perusal of the above extracted findings returned by the learned DCO, it is evident that the DCO had inspected the site and recorded a finding of fact that for irrigation of killa No. 173//4/2-5, a syphon had already been constructed under the path, which is adjoining killa No. 159//25 and the said fact was also recorded in the report of Zildar, Rama. Accordingly, it was concluded that the land of private respondents can also be irrigated satisfactorily from the other branch of the watercourse. It has further been observed that more land of private respondents falls on the branch having pipeline and lesser land is on the branch of existing watercourse. Therefore, the turn of water of private respondents was approved at Khata No. 63/A for better irrigation.

7.1 Still further, it is borne out from the order passed by the learned SCO that a lined watercourse is existing upto the land of private respondents beyond the pipeline and the lined watercourse also exists beyond the land of private respondents. It has been held that the Nakka for private respondents had been approved on the watercourse beyond the pipeline due to which there shall be no adverse impact on the pipeline and rather private respondents will get proper irrigation supply. That apart, the learned SCO has also observed that the present petitioners could not point out as to what loss would be caused to their irrigation with the order dated 09.02.2024 (Annexure P-4), passed by learned DCO.

7.2 Learned counsel for petitioners has failed to dislodge the aforesaid findings/observations by the learned DCO as well as the learned SCO.

8. In ***Sham Sunder Versus 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...”

8.1 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 aforementioned facts and circumstances, once the canal authorities upon consideration of the matter and having examined all technical aspects have come to a conclusion that shifting of turn of water from Khata No. 80 to Khata No. 63/A, would be in the interest of better irrigation, it would not be in the fitness of things for this court to substitute the said conclusion. Furthermore, it has not been

pointed out as to how the impugned orders are patently illegal or arbitrary. Therefore, the impugned orders cannot be faulted with.

10. In view of the above discussion, there is no scope for any interference in the impugned orders (Annexure P-4 and Annexure P-5), passed by learned DCO and learned SCO, respectively. Resultantly, the instant civil writ petition fails and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

23.08.2024
sjks

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