

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

CWP-23778-2024 (O&M)
Date of decision : 17.12.2024

RAMDIYA AND OTHERS

... Petitioners

Versus

STATE OF HARYANA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Jitender Kumar Sehrawat, Advocate
for the petitioners.

Mr. Randhir Singh, Addl. A.G., Haryana.

Mr. R.N. Lohan, Advocate
for respondent No.5.

HARSH BUNGER, J.

Petitioners have filed the present writ petition under Articles 226/227 of the Constitution of India, *inter alia*, seeking a writ in the nature of *certiorari* for quashing the order dated 30.06.2023 (Annexure P-1) passed by the learned Divisional Canal Officer, Hisar; order dated 12.10.2023 (Annexure P-2) passed by the learned Superintending Canal Officer, Hisar and order dated 12.08.2024 (Annexure P-4) passed by the learned Chief Canal Officer, Haryana, under the provisions of Haryana Canal and Drainage Act, 1974 (in short 'the 1974 Act') read with Haryana Canal and Drainage Rules, 1976 (in short 'the 1976 Rules').

2. Briefly, respondent No.5-Jagta Ram and other share-holders of outlet RD-700/R, Surbra Distributory applied before the learned Divisional Canal Officer, Hisar for transfer of their 22.96/22.96 acres area from outlet RD-700/R, Surbra Distributory to Outlet RD-19400/R, Barwala Branch.

2.1 Upon issuance of notice in the afore-said proceedings, the present petitioners along with 26 other share-holders opposed the claim of respondent No.5 by filing their objections.

2.2 The learned Divisional Canal Officer, vide his order dated 30.06.2023 (Annexure P-1) accepted the prayer of respondent No.5-Jagta Ram and others and ordered transfer of the afore-said 22.96/22.96 acres area to Outlet RD-19400/R, Barwala Branch.

2.3 An appeal filed by the petitioners against the afore-said order dated 30.06.2023 (Annexure P-1) was also dismissed by the learned Superintending Canal Officer, Hisar vide order dated 12.10.2023 (Annexure P-2).

2.4 A further appeal filed by the petitioners before the learned Chief Canal Officer was also dismissed vide order dated 12.08.2024 (Annexure P-4).

2.5 In the afore-mentioned facts and circumstances, the present writ petition has been filed before this Court.

3. Learned counsel for the petitioners submits that the officials respondents had no jurisdiction to transfer the area of respondent No.5-Jagta Ram and other share-holders from Outlet RD-700/R, Surbra Distributory to Outlet RD-19400/R, Barwala Branch as Outlet RD-700/R, is a sub minor, whereas, Outlet RD-19400/R is a main branch. In this regard, the petitioners have placed reliance upon an information dated 10.01.2023 (Annexure P-7) received under the Right to Information Act, 2005. It is

submitted that even the Draft Scheme was not published, as per the provisions of Section 18 of the 1974 Act. It is further submitted that the irrigation of the area from the existing chak is much more; therefore, there was no requirement of shifting of area. It is next submitted that the petitioners along with other co-sharers have laid the underground pipeline in the Chak of Outlet RD 19400/R Barwala Branch, by spending a huge amount for the irrigation of their respective lands, whereas, now the officials respondents have wrongly allowed the application of respondent No.5-Jagta Ram and others. Another argument raised is that earlier one Vinod Kumar son of Sh. Chhabil Dass, had applied for transfer of 9.18/9.18 acres area from Outlet RD 2225/TL Dohana Khera minor to Outlet RD 19400/R Barwala Branch; however, the same was rejected vide orders dated 16.12.2022 and 21.03.2023 (Annexures P-8 and P-9) on the ground that the maximum share-holders of the proposed Outlet are against the scheme.

3.1 With the afore-said submissions, prayer has been made for setting aside the impugned orders.

4. On the other hand, learned counsel appearing for respondent No.5-Jagta Ram has opposed the submissions made on behalf of petitioners, by submitting that the authorities below have considered all the aspects of the matter and have rightly allowed the transfer of area from Outlet RD 700-R Surbra Distributory to the proposed Outlet RD 19400-R Barwala Branch, in the interest of better irrigation. It is further submitted that the transfer was permitted for two crops on trial basis in the interest of enhancement in irrigation development of the area and the petitioners cannot object to the said course of action. It is further submitted that the petitioners have failed to show as to what prejudice has been caused to

them with the proposed transfer of 22.96 acres area from the Chak of Outlet RD 700/R Surbra Distributory to Outlet 19400/R Barwala Branch. Accordingly, prayer for dismissal of the writ petition has been made.

5. Heard.

6. In the instant case, respondent No.5-Jagta Ram along with other share-holders applied to the Canal Authorities for transfer of their 22.96 acres area from Outlet RD 700/R Surbra Distributory to Outlet 19400/R of Barwala Branch of Village Surbra, Tehsil Uchana, District Jind, on the plea that their area was not getting proper irrigation from the existing accessible source. Upon receipt of the afore-said request from respondent No.5 and others, the matter was got investigated into from the concerned Zileदार and the learned Sub-Divisional Canal Officer, who after inspecting the spot and carrying out the local investigations, recommended the transfer of 22.96 acres area and also submitted a Scheme under Section 17 of the 1974 Act. The scheme was published under Section 18(1) read with Rule 7 of the 1976 Rules for inviting objections/suggestions to the proposed transfer. Apparently, the notices were issued to the concerned share-holders through the Canal Patwari, in terms of Rule 96 of the 1976 Rules. It appears that the matter was fixed for 20.12.2022, when the scheme was explained to the share-holders, who attended the proceedings in response to the notices served upon them. At the time of the said hearing, the respondent No.5 and other share-holders stated that the irrigation to their area is very less, accordingly, the same be transferred to the new outlet. They further stated that they will arrange the water-course themselves and they were also ready to bear the cost of adjustment of both the outlets.

6.1 The afore-said claim of respondent No.5 and other-share holders was objected to by the petitioners, primarily, on the plea that the

area was already getting proper irrigation. They further stated that they have already laid the pipeline for the irrigation at their own cost and the area, which is sought to be transferred, is better commandable from the existing source; therefore, the area should not be transferred.

6.2 The learned Divisional Canal Officer, vide order dated 30.06.2023 (Annexure P-1) allowed the request of respondent No.5 for transfer of area by observing that the overall irrigation of the existing outlet is 126%, whereas, that of the proposed outlet was 192%, which is comparatively better source of irrigation. The learned Divisional Canal Officer, upon perusal of the command statements, came to the conclusion that the three year average irrigation of the area in question, was 62.50% from the existing source. The learned Divisional Canal Officer further inspected the site and while referring to letter dated 11.04.2023 issued by the learned Chief Canal Officer, Haryana; permitted transfer of 22.96 acres area from the existing outlet RD 700/R Surbra Distributory to the proposed Outlet 19400/R of Barwala Branch, for two crops on trial basis in the interest of enhancement in irrigation development of the area, vide order dated 30.06.2023 (Annexure P-1).

6.3 The afore-said order (Annexure P-1) passed by the learned Divisional Canal Officer, has been further upheld by the learned Superintending Canal Officer, vide order dated 12.10.2023 (Annexure P-2). Even the learned Chief Canal Officer, has upheld the order passed by the learned Divisional Canal Officer, vide his order dated 12.08.2024 (Annexure P-4) by holding as under :-

“I have gone through the proceeding of this appeal case initiated by the courts below. It has been observed that the area in question is not getting any irrigation at site in the chak of existing outlet at RD

700/R Surbra Distributory for the last some years and therefore, the area in question was proposed to be transferred from the chak of outlet at RD 700/R Surbra Distributory to the chak of outlet at RD 19400/R Barwala Branch which runs perennially. In such cases, the proper approval of Government is required to be obtained. However, in the present case, the area in question has been proposed to be transferred from Minor to Branch Canal on purely trial basis for two crops only and the approval in this regard was accorded by this office vide No.1569/5BWS/569/23 dated 11.04.2023. Every irrigator has right to get his area transferred from the chak of one outlet to the chak of another outlet where the better chance of irrigation are available. The discharge of each outlet is determined on its Culturable Commanded Area so the objection of the appellants against inclusion of 22.96/22.96 acres area of the respondents in the chak of their outlet at RD 19400/R Barwala Branch is baseless.

So, in view of the facts, as explained above, the appeal of the appellants under the circumstances as stated above is hereby rejected and the decision dated 12.10.2023 given by the Superintending Canal Officer, BWS Circle-1, Hisar is hereby upheld. The decision be conveyed to all concerned accordingly.”

7. A perusal of above extracted findings of learned Chief Canal Officer would show that the area proposed to be transferred was not getting proper irrigation and area was ordered to be transferred from Minor to Branch Canal on purely trial basis for two crops only for which prior approval was accorded vide Office Memo dated 11.04.2023 (as envisaged under *proviso* to Section 18(2) of the 1974 Act). Evidently, the transfer of area has been permitted for better irrigation.

8. Learned counsel for the petitioners has failed to show as to what prejudice has been caused to the petitioners with the proposed transfer of 22.96 acres area from the Chak of Outlet RD 700/R Surbra Distributory to Outlet 19400/R Barwala Branch on trial basis for two crops.

9. 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...”

10. 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...”

11. Considering the afore-mentioned facts and circumstances, once the Canal Authorities had taken a decision after hearing the interested parties and keeping in view the interest of better irrigation, it would not be in the fitness of things for this Court to substitute the said conclusion.

12. Accordingly, this Court finds no error in the impugned order(s) passed by the Canal Authorities under the Act, which may call for any

interference by this Court in this petition and hence, the same is hereby dismissed.

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

December 17th, 2024
gurpreet

(HARSH BUNGER)
JUDGE

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