

110 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-24860-2024 (O/M)
Date of decision : 22.10.2024

Azad Singh Petitioner(s)

Versus

The Chief Canal Officer and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. R.N. Lohan, Advocate
for the petitioner(s).

Ms. Upasana Dhawan, AAG Haryana.

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HARSH BUNGER, J. (ORAL)

1. Petitioner (Azad Singh) has 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 02.05.2023 (Annexure P-4), passed by learned Divisional Canal Officer, Fatehabad (in short 'DCO'); order dated 02.11.2023 (Annexure P-7), passed by learned Superintending Canal Officer, Fatehabad (in short 'DCO') and order dated 12.08.2024 (Annexure P-9), passed by learned Chief Canal Officer, Haryana (in short 'CCO').

2. Briefly, some of residents of village Hasanga, Tehsil Ratia, District Fatehabad submitted an application to canal authorities for sanctioning of an outlet on Bhirdana Minor at Rect. No. 35, Killa No. 22 of village Hasanga; on the plea that there was no canal water irrigation for their lands. It was prayed that their land (358.19/96.92 acre) be taken out from outlet No. 46600-L Bhirdana Minor and the same be

transferred to new outlet RD 52844-L Bhirdana Minor. A further prayer was made for converting 253.45 acre land from UCA to CCA and also that another land (8.27/8.27 acre) be taken out from outlet No. 56975-L Bhirdana Minor and be shifted to outlet No. 52844-L Bhirdana Minor.

2.1 The case was got investigated through concerned Zileदार, who after site inspection, recommended the case for sanction of new outlet at RD-52844-L Bhirdana distributary. The scheme under Section 17 of Haryana Drainage and Canal Act, 1974 (in short '1974 Act') was submitted. The scheme was published under Sections 17, 18 (1) of 1974 Act for inviting objections/suggestions. The matter was fixed for 30.01.2023 at Sinchai Bhawan, Bhodia Khera, Fatehabad, where the scheme was explained to shareholders (who attended the hearing in response to the notices).

2.2 It appears that more than 40 shareholders attended the hearing and jointly stated that the irrigation to their area is not proper as the same was away from the existing source. It was further stated that their area was sandy and was situated at higher level. It was stated that the existing outlet is situated on the corner of the chak, therefore, in order to get better site, they prayed that their area be shifted to new area. They also stated that they will manage the water course, bear the cost of adjustment of both the outlets and that they will bear the cost of remodelling of water course (if any), as well.

2.3 Similar request for transfer of area from new outlet was made by other shareholders. It appears that prior approval was sought

from learned Chief Canal Officer, which was accorded, vide Memo dated 28.04.2023. Learned DCO, after examining the case and upon inspection of the site, came to the conclusion that the area in question was much away from the existing outlet, whereas the proposed source was near the area in question and 250 acres area, which is uncommanded, cannot be made commanded from the existing source due to non-availability of capacity in the existing water course through the pipeline. Accordingly, new outlet at RD-52844-L Bhirdana distributary was allowed, vide order dated 02.05.2023 (Annexure P-4).

2.4 Feeling dis-satisfied with the aforesaid order dated 02.05.2023 (Annexure P-4), present petitioner alongwith others preferred an appeal before learned SCO, which was dismissed, vide order dated 02.11.2023 (Annexure P-7). A further appeal filed by the petitioner before learned CCO was also dismissed, vide order dated 12.08.2024 (Annexure P-9). Hence, present civil writ petition.

3. Heard.

4. The only submission raised on behalf of petitioner is that the proposed outlet has been sanctioned on the downstream of the distributary i.e. about 6 ½ acres from Rect./Killa No. 35//22.

5. I have considered the contention raised on behalf of petitioner, however, I do not find any merit in the same as the said contention has already been considered and rejected by learned CCO, vide order dated 12.08.2024, by observing as under :-

“ I have gone through the proceeding initiated by the courts below has been observed that the existing outlet at RD 46600/L Bhirdana Distributary has been fixed in the

starting corner of the chak of existing outlet and the area for which, the new outlet has been demanded at RD 52844/L. Bhirdana Distributary is situated at the farthest end in the chak of existing outlet. Further it has been observed that the underground pipes bare been laid only in a small area near the head reach of the existing outlet at RD 46600/L Bhirdana Disty. That 253.48 acres area in the chak of existing outlet at RD 46600/L Bhirdana Distributary was kept as UCA and the same has been converted from UCA to CCA which is included in the chak of new outlet at RD 52844/L Bhirdana Distributary. The new outlet at RD 52844/L Bhirdana Distributary has been rightly sanctioned by the court of Superintending Canal Officer, Bhakra Water Services Circle, Fatehabad in the interest of better irrigation. However if the head of new proposed outlet is allowed to be fixed at point 35//22/2 (eastern side), the head of new proposed outlet would be in the starting corner of the chak of new outlet. So, the demand of the appellants to fix the head of new proposed outlet at point 35//22/2 (eastern side) is not justified.

In view of the facts as explained above, I find no cogent reason to disturb the decision dated 02.11.2023 given by the Superintending Canal Officer, Bhakra Water Services Circle, Fatehabad. Hence the appeal of the appellants is hereby rejected and the decision dated 02.11.2023 given by the Superintending Canal Officer, Bhakra Water Services Circle, Fatehabad is upheld. The decision be conveyed to all concerned accordingly.”

6. Learned counsel for petitioner has failed to dislodge the aforesaid finding returned by learned CCO nor has been shown as to what prejudice has been caused to petitioner with the provisioning of new

outlet. Furthermore, it has not been pointed out as to how the impugned orders are patently illegal or arbitrary.

7. 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...”

8. 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. In view of above discussion, I find no compelling reason to interfere in the impugned orders, which have been apparently passed by taking into consideration the interests of farmers and for better irrigation and also considering that with the proposed transfer of area to new outlet; maximum land will be irrigated properly.

10. Resultantly, the instant writ petition fails and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

22.10.2024
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No