

113 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-26123-2024 (O/M)

Date of decision : 22.10.2024

Gurmeet Singh and others

..... Petitioners

Versus

Superintending Canal Officer and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. S.P.S. Tinna, Advocate
for the petitioners.

Mr. Navneet Singh, Senior DAG Punjab.

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HARSH BUNGER, J. (ORAL)

1. Petitioners (Gurmeet Singh and others) 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 29.05.2024 (Annexure P-4), passed by learned Divisional Canal Officer, Fazilka (in short 'DCO') and order dated 12.08.2024 (Annexure P-6), passed by learned Superintending Canal Officer, Ferozepur (in short 'SCO').

2. Briefly, respondents No. 3 and 4 (Satnam and Soma Bai) filed an application before learned DCO for excluding their area from outlet No. 70896/R and to include the same into outlet No. 76400/R as they were not getting proper irrigation from the existing outlet.

2.1 Upon receipt of aforesaid application from respondents No. 3 and 4, the matter was inquired into by canal authorities.

2.2 It transpires that learned DCO allowed the demand of respondents No. 3 and 4, vide order dated 29.05.2024 (Annexure P-4).

2.3 The aforesaid order dated 29.05.2024 (Annexure P-4) was challenged by present petitioners by filing an appeal before learned SCO primarily on the plea that no service was effected upon them and neither statutory period of 21 days was given to shareholders to submit their objections.

2.4 Learned SCO, vide order dated 12.08.2024 (Annexure P-6), dismissed the appeal of petitioners. Hence, the instant civil writ petition.

3. Learned counsel for petitioners submits that the canal authorities have erred in law and facts in passing the impugned orders. It is submitted that learned DCO has passed the impugned order at their back as statutory period of 21 days was not provided for filing of objections, therefore, petitioners could not object to the demand of private respondents. It is next submitted that the impugned orders are also contrary to the report submitted by the field staff, therefore, the impugned orders be set aside.

4. I have considered the submissions made by learned counsel for petitioners.

5. In the instant case, respondents No. 3 and 4 had applied to canal authorities for transfer of their area from chak of outlet No. 70896-R to chak of outlet No. 76400-R Karni Khara Minor, inter alia, on the plea that their land was not receiving canal water and even the

underground pipelines laid at the spot have been closed. Learned DCO got the scheme prepared under Section 30 (A) of 1873 Act. The scheme was issued/proposed on 01.03.2024 and objections were called by fixing the date as 22.03.2024. Apparently, clear 21 days' notice was provided for filing objections. Concededly, petitioners did not submit any objections to the aforesaid scheme. Learned DCO allowed the demand of respondents No. 3 and 4, vide order dated 29.05.2024 (Annexure P-4) on the following grounds :-

- (i) The Sub Divisional Officer reported that the demand of the respondents No. 3 and 4 is genuine because their area is connected with the watercourse from the proposed outlet ;
- (ii) The distance of the watercourse for the area of respondents No. 3 and 4 from the existing outlet is 5650 ft., whereas, from the proposed outlet the distance is around 3200 ft. ;
- (iii) The watercourse in the existing outlet is in the dilapidated condition and the same also runs from the abadi area, so the respondents No. 3 and 4 are not getting sufficient irrigation ;
- (iv) From the proposed outlet, there is no abadi in the area of the watercourse and the condition of the watercourse is also better and the said fact is also acknowledged by the field staff. Therefore, for the better irrigation of respondents No. 3 and 4, the scheme regarding transfer of area measuring 27 Kanal 19 Marla from outlet No. 70896/R Rajbaha Fazilka to outlet No. 76400/R Rajbaha Fazilka was accepted under Section 30-B (1) of the Northern India Canal and Drainage Act, 8 of 1873.

5.1 The aforesaid order dated 29.05.2024 (Annexure P-4), passed by learned DCO, has been further upheld by learned SCO, vide his order dated 12.08.2024 (Annexure P-6).

6. Learned counsel for petitioners has failed to put-forth any plausible argument to dislodge findings returned by canal authorities. It has also not been shown as to what prejudice has been caused to petitioners by impugned orders.

7. In my considered view, once the procedural requirements have been complied with and the canal authorities upon consideration of the matter and having examined all technical aspects have considered that shifting of outlet 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, moreso when it has not been pointed out as to how the impugned orders are patently illegal or arbitrary.

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 the above discussion, no interference in the impugned orders is warranted by this Court. Resultantly, the instant writ petition fails and the same is hereby dismissed.

10. 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