



109

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

CWP No.25004 of 2023

Date of decision: 13.05.2024

Balraj Singh and others**..... Petitioners**

versus

**The Superintending Canal Officer, Ferozepur Canal Circle,
Ferozepur and others**

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Sandeep Khunger, Advocate
for the petitioners.

Mr. Navneet Singh, Sr. DAG, Punjab with
Mr. Sukhjit Singh, Divisional Canal Officer,
Xen Abohar Divisional Canal Office.

Mr. Judgepreet Singh Warring, Advocate
for respondents No.3 to 15.

Mr. Piyush Setia, Advocate
for the caveator.

RAJESH BHARDWAJ J.

1. Present writ petition has been filed for quashing the order dated 18.07.2022 (Annexure P-8) passed by the learned Divisional Canal Officer i.e. respondent No.2 and order dated 23.08.2023 (Annexure P-10) passed by the learned Superintending Canal Officer i.e. respondent No.1 whereby respondent No.2 has ordered for split of Outlet No.136511-L, Lambi Rajbah and ordered for setting up of a new Outlet at 140207-L Lambi Rajbah for an area measuring 386.88 Acres without publishing the



scheme as per the mandatory provisions of Section 30-B read with Rule 5(2) of the Northern India Canal & Drainage Rules, (hereinafter referred to as 'the Rules') and the appeal filed by the petitioners has been dismissed by the Superintending Canal Officer without dealing with the specific grounds taken in the appeal and pressed during the hearing of the appeal by passing totally cryptic and non speaking orders.

2. It has been submitted by learned counsel for the petitioners that respondent No.3 filed an application before the Divisional Canal Officer for split of Outlet No.136511/L Lambi Rajbah and for setting up a new Outlet at 140207/L Lambi Rajbah for an area measuring 350 acres. He has submitted that respondent No.3 in collusion with the Canal Authorities without having effected the service on all the share holders got the said scheme prepared and published for split of Outlet No.136511/L Lambi Rajbah on 24.10.2017. In pursuance to this order, the scheme dated 20.11.2017 was prepared and it was published on 19.12.2017 in accordance with the provisions of Rule 5(2) of the Northern India Canal & Drainage Rules, (hereinafter referred to as 'the Rules'). He submits that the Divisional Canal Officer vide his order dated 19.12.2017 allowed the application filed by respondent No.3. Being aggrieved, the petitioners assailed the same by way of filing an appeal before the learned Superintending Canal Officer, who remanded the case to the Divisional Canal Officer vide his order dated 29.08.2018 by directing the Divisional Canal officer to conduct the inquiry after adding site plan and fresh scheme be prepared. He submits that in pursuance to this order, the Divisional Canal Officer ordered for publication of the scheme vide his



order dated 30.03.2021. He submits that as per the order dated 30.03.2021, a fresh scheme for an area measuring 386.88 acres was required to be prepared and published in accordance with the provisions of Section 30-B read with Rule 5(2) of the Rules. He submits that though the scheme was prepared, however no publication as per the mandate of Section 30-B read with Rule 5(2) of the Rules was made. He submits that in violation of the provisions of Section 30-B read with Rule 5(2) of the Rules, the learned Divisional Canal Officer passed the impugned order dated 18.07.2022 wherein the application filed by respondent No.3 was allowed by passing a cryptic order. Being aggrieved, the petitioners filed an appeal before the learned Superintending Canal Officer on the ground that as per the remand order dated 25.07.2019 passed by the learned Superintending Canal Officer, the Divisional Canal Officer was directed to prepare a fresh scheme and site plan, however neither any notice to the share holders was issued nor the scheme was published as per the mandate of the Rules. Thus the impugned order passed by the Divisional Canal Officer was in violation of the directions given by the Superintending Canal Officer but the learned Superintending Canal Officer failed to appreciate the same and thus, illegally dismissed the appeal filed by the petitioner vide impugned order dated 23.08.2023. He submits that the learned Divisional Canal Officer vide his order dated 30.03.2021 ordered for publication of the scheme, however neither the scheme was issued nor the notice was issued to any of the share holders and thus, there was a violation of mandatory provisions of the Act. He submits that as per Rule 5(2) of the Rules, every scheme is required to be published by the



Numbardar of the village by affixing a copy of the scheme and the sketch plan at a conspicuous place. He submits that the scheme in the present case was drawn on 05.09.2019 but neither the notice was issued to the share holders nor the same was published as in accordance with the Rules and thus, the impugned order passed being violative of the mandatory provisions of the Act, deserves to be set aside.

3. *Per contra*, learned counsel for respondents No.3 to 15 has opposed the submissions made by learned counsel for the petitioners. He has submitted that this is the second round of litigation among the parties and the mandatory provisions of the Act were duly complied with before passing the impugned orders. He submits that after granting the *status quo* by this Court, respondents No.3 to 15 are not able to cultivate their land as they are not getting sufficient water. He has submitted that earlier the orders were passed by the Divisional Canal Officer dated 19.12.2017 and the order dated 25.04.2018 by the learned Superintending Canal Officer. One of the co-sharer, namely, Kuldeep Singh had assailed those orders before this Court by way of filing CWP No.15418 of 2018. This Court after hearing, finding no merit in the petition, dismissed the same vide order dated 05.07.2018. He submits that in that writ petition, the total area to be withdrawn from outlet No.136511-L was 388.96 GA/388.88 CCA and this area was to be included in the proposed new outlet No.140207-L. He submits that the area included in the present case is 386.88 GA i.e. about 02 acres less than the area in that petition. However the land in question in that writ petition and in the present petition is the same and thus, merely because the petitioners in both the writ petitions are different



co-sharers, does not effect the merits of the case. He has submitted that admittedly this is the second round of litigation and the scheme was duly published as per mandate of the Act. He submits that the learned Superintending Canal Officer vide his order dated 29.08.2018, had accepted the appeal filed by the petitioner, namely, Balraj Singh and remanded the case under Section 30-FF(3) of the Northern India Canal and Drainage Act (hereinafter referred to as 'the Act') for getting the case investigated again and after hearing both the parties, a fresh decision was directed to be given. He has submitted that the case was examined and investigated. The grievances of the petitioners were duly appreciated wherein it was contended that this area had been kept in both the outlets. He submits that the scheme was earlier duly published and the objections were duly heard, however the case was remanded by the learned Superintending Canal Officer on 29.08.2018 that the scheme was wrong to some extent and thus, a fresh decision was directed to be taken after hearing both the sides. He submits that both the sides have been duly heard. The objections of the petitioners were duly appreciated especially *qua* the same land. Writ petition i.e. CWP No.15418 of 2018 had already been dismissed by this Court vide order dated 05.07.2018 and hence the submissions made by learned counsel for the petitioners regarding publication of the scheme again as per the mandate of Section 30-B read with Rule 5(2) of the Rules is totally misconceived and is nothing but an attempt to prolong the litigation so as to divest the answering respondents from receiving the sufficient water for irrigation of their land. He submits that the impugned orders have been passed in accordance with the



procedure established under the law and thus, there being no merit in the present petition, the same deserves to be dismissed.

4. On summoning, Mr. Sukhjit Singh, Divisional Canal Officer, Xen Abohar Divisional Canal Officer is present in person in Court. He has apprised the Court that the orders were passed on hearing the concerned shareholders. He submits that land of the respondents is situated at the tale end and on investigation, it was found that sufficient water did not reach to the land of respondents and thus on investigation, it was found that splitting of the existing outlet No.136511/L as prayed for by the respondents was genuine. Hence the area of 386.88 acre was withdrawn from this existing outlet and shifted to new outlet No.140207/L in the interest of better irrigation.

5. Heard.

6. The Court has heard learned counsel for the parties & Officer concerned and perused the record with their able assistance. It is apparent that this is the second round of litigation among the parties. The co-sharers and petitioners are pursuing the litigation since 2017. On passing the earlier orders by the Divisional Canal Officer and the Superintending Canal Officer, some of the co-sharers had approached this Court by way of filing CWP No.15418-2018, which was dismissed by this Court vide order dated 05.07.2018. In the present case, the Divisional Canal Officer passed the impugned order dated 18.07.2022 after the remand was ordered by the Superintending Canal Officer. The learned Divisional Canal Officer issued notice to share holders and their objections were heard. As emanated from the facts of the case that the grievances raised by the



petitioners contending therein that the same is violative of Section 30-B read with Rule 5(2) of the Rules so that they would suffer loss of irrigation as their area was to be kept in existing Outlet No.136511-L but after splitting of the same, their area would be kept in both the outlets. The learned Divisional Canal Officer had observed in the impugned order passed that area of the petitioners comprised in 27 M/23 was proposed in the Chak of old outlet Burji No.136511/L and the area comprised in Killa No.3-8 of 50M was proposed in the Chak of new outlet No.140207/L. These numbers were excluded from Chak of proposed outlet No.140207 Lambi Rajbah. Thus the grievances raised no more survives. The published scheme is found to have been sanctioned under Section 30-B(2) of the Northern India Canal and Drainage Act and the spot inspection was made on 18.07.2022. Thus finding no merit in the objections, the scheme was accepted by the Divisional Canal Officer vide his order dated 18.07.2022. This order passed by the Divisional Canal Officer was further assailed by the petitioners before the learned Superintending Canal Officer. The parties were heard again and the relevant record was re-appreciated. The precise submissions made by the petitioners regarding shifting of area measuring 386.96 GA/386.88 CCA in the new outlet was that their land is bifurcated in both the outlets. On the other hand, the respondents had submitted that their area lies at a huge distance from the existing outlet and thus, their irrigation is seriously prejudiced.

7. From the perusal of the impugned order, it is found that the Appellate Court had duly appreciated the grievances of both the sides and the order of the Divisional Canal Officer impugned before it. It has been



found that grievances of the petitioners was found to have been redressed by the Divisional Canal Officer while passing the order dated 18.07.2022. Thus it is evident that the main thrust of the argument raised by the petitioners is regarding the publication of scheme again on remand. However grievances of the petitioners raised are duly found to have been redressed after hearing them by the Divisional Canal Officer and the learned Superintending Canal Officer.

8. In the over all facts and circumstances of the case, the Court is convinced that land of the respondents is at the tale end, on account of which they are not getting sufficient water for their irrigation and hence, shifting of the area as demanded to the new outlet is in the interest of better irrigation and the impugned orders have been passed in accordance with law.

9. The Court does not find any material illegality or perversity in the impugned orders passed and hence, the present petition being devoid of any merit is hereby dismissed.

13.05.2024

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(RAJESH BHARDWAJ)
JUDGE

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