

111 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-32950-2024 (O/M)

Date of decision : 19.12.2024

Kuldeep Singh

..... Petitioner

Versus

Superintending Canal Officer and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Surinder Pal Singh Tinna, Advocate
for the petitioner.

Mr. Navneet Singh, Senior DAG Punjab.

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HARSH BUNGER, J. (ORAL)

1. Petitioner (Kuldeep 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 28.06.2024 (Annexure P-4), passed by Divisional Canal Officer (in short 'DCO') and also order dated 09.10.2024 (Annexure P-6), passed by Superintending Canal Officer (in short 'SCO').

2. Briefly, private respondents filed an application before canal authorities praying for shifting of head of outlet from Burji No. 58815/L to old Burji No. 59060/L, Kirian Wali, inter alia, on the plea that on account of the position of the watercourse, the flow of water gets reduced and the watercourse gets filled with mud/silt and the same gets dislocated.

2.1 Upon receipt of the said application, the matter was got investigated from the field staff. The concerned Zileadar carried out the spot inspection and reported that the demand of private respondents was genuine as the watercourse, after taking turn from existing burji, falls in the main branch and in case, the head of outlet is shifted to proposed burji, then the water shall go directly from the outlet to the watercourse, which would result in better irrigation to the shareholders, accordingly, shifting of head of outlet was recommended and the matter was put up before the Sub Divisional Officer.

2.2 The Sub Divisional Officer also recommended the shifting of head of outlet and forwarded the matter to the DCO, Fazilka.

2.3 The DCO, upon receipt of the case, got prepared a scheme under Section 30-A of the Northern India Canal and Drainage Act, 1873 (in short '1873 Act'), which was got published under Section 30-B (1) of 1873 Act. Notices under Section 30-B (2) of 1873 Act for inviting objections were issued for 26.06.2024, service upon concerned shareholders was effected and the matter was fixed for hearing, wherein various persons including the petitioner appeared. The private respondents stated that their outlet has been installed about one acre prior to the main branch and on account of bend, mud is filled up in this one acre watercourse during rainy season, on account of which, they would suffer loss of irrigation, accordingly, it was prayed that the head of outlet may be shifted to proposed outlet, which shall make the watercourse straight.

2.4 On the other hand, the present petitioner alongwith others opposed the claim of private respondents by submitting that they were

getting proper irrigation at the spot and in case the head of outlet is shifted, then their area will not be properly irrigated.

2.5 Upon considering the matter in totality, the DCO, vide order dated 28.06.2024 (Annexure P-4), allowed the claim of private respondents and permitted the shifting of head of outlet with the condition that the expenses to be incurred on the dismantling and construction of canal/minor shall be deposited by private respondents in advance with the Sub Divisional Officer, Jalalabad.

2.6 Feeling aggrieved against the order dated 28.06.2024 (Annexure P-4), the present petitioner preferred an appeal before the SCO, however, the same was dismissed, vide order dated 09.10.2024 (Annexure P-6).

3. In the aforementioned circumstances, the petitioner has filed the present writ petition for the relief(s), as noticed hereinabove.

4. Learned counsel for petitioner submits that the canal authorities have erred in law and facts in passing the impugned orders. It is submitted that the canal authorities have not complied with the provisions of Section 30-A to Section 30-C of 1873 Act and neither objections submitted by the petitioner have been considered in its right perspective. It is further submitted that private respondent were getting sufficient irrigation from the existing outlet and, therefore, there was no occasion for the canal authorities permitting shifting of the outlet. It is next submitted that earlier private respondents had submitted an application dated 04.10.2006 before DCO, seeking shifting of head of outlet from Burji No. 59060/L to Burji No. 58815/L, which was permitted, vide order dated 09.05.2007 (Annexure P-12). It is submitted

that the said order has attained finality and the shareholders were getting the water till date from this outlet. It is also submitted that the authorities have not ascertained that the irrigation of the petitioner will be adversely affected as the level of the land of the petitioner will be higher from the outlet. With the aforementioned submissions, learned counsel for petitioner prayed that the impugned orders be set aside.

5. Heard.

6. In the present case, private respondents applied to the canal authorities for shifting of head of outlet from Burji No. 58815/L to Burji No. 59060/L, Kirian Wali. The aforesaid demand was got investigated from the field staff, who recommended shifting of head of outlet. Apparently, scheme under Section 30-A of 1873 Act was prepared and published and objections thereto from the concerned shareholders were invited by issuing notices under Section 30-B (2) of 1873 Act for 26.06.2024. Concededly, the petitioner appeared before the canal authorities and put-forth his claim that the shifting of head of outlet be not permitted as the same would not properly irrigate his area. The DCO, upon consideration of the reports, site plan, objections of the shareholders and upon discussing the matter with the field staff, permitted the shifting of head of outlet from Burji No. 58815/L to Burji No. 59060/L, vide impugned order dated 28.06.2024 (Annexure P-4), by observing as under :-

“..... After discussing the case with the field staff who came present in the court, it has been found that the demand of the Applicant Party for shifting of the Head of the Outlet is genuine because according to the site plan added with case file, the watercourse is filled up with mud during

rainy season due to which the applicants are facing difficulty in irrigating their area and due to vend in the watercourse it affects the flow of water which fact has been confirmed by field staff who came present in the court. According to the Command Statement added from J.E. Section Saidoke with the case file, there shall not be much affect on the command of the area from the Outlet with the shifting of the Head but with the shifting of the Head, branch of the Main Watercourse shall become straight and with the coming of mud in the watercourse during rainy season, the irrigation of the shareholders shall not be affected. Therefore by agreeing with the reports of Sub Divisional Officer, Jalalabad and Zildar Ladhuka for shifting the Head of Outlet Burji No. 58815/L Tarobri Rajbah and sanctioning the same at Outlet Burji No. 59060/L Tarobri Rajbah, for better irrigation of the areas, the Scheme for shifting the Head of Outlet Burji No. 58815/L Tarobri Rajbah and sanctioning the same at Outlet Burji No. 59060/L Tarobri Rajbah according to the demand of the applicants is accepted under Section 30-B (2) and Section 20 of the Northern India Canal and Drainage Act 8 of 1873 Punjab Amendment Act 23-1965. At the time of shifting the Head, the expenses to be incurred on the dismantling and construction of the Canal/Minor shall be deposited by applicants in advance with the Sub Divisional Officer, Jalalabad. The Scheme shall be implemented on receipt of confirmation from the Head Office. As the decision was kept reserved, information to the concerned Party/Parties may be given under the Rules.

At the time of preparation of A-Form, guidance may be taken from the position of the Burjies at the spot.”

6.1 The aforesaid order dated 28.06.2024 (Annexure P-4) has been further upheld by the SCO, vide order dated 09.10.2024 (Annexure P-6).

6.2 A perusal of the impugned orders would manifest that the shifting of head of outlet has been permitted after noticing the following facts :-

- (i) due to bend in the watercourse, the flow of water is affected and the said fact has been confirmed by the filed staff ;
- (ii) the watercourse gets filled up with mud during rainy season on account of which, private respondents were facing difficulty in irrigating their area ;
- (iii) according to the command statement, there will not be much affect on the command of the area from the outlet with the shifting of the head ;
- (iv) with the shifting of the head, branch of the main watercourse shall become straight and the irrigation of the shareholders shall not be affected.

6.3 In view of the above, the shifting of head of outlet was permitted for better irrigation of the area on the condition that the expenses to be incurred for dismantling and construction of the canal/minor shall be deposited by private respondents in advance with the Sub Divisional Officer, Jalalabad.

7. Learned counsel for petitioner has failed to dislodge the observations/findings returned by the canal authorities below by referring to any material whatsoever. Apparently, procedural requirements were complied with and notices were issued to effected parties and petitioner had duly appeared before canal authorities.

7.1 It has neither been shown as to what prejudice has been caused to the petitioner by shifting the head of outlet from Burji

No. 58815/L to Burji No. 59060/L nor any illegality or perversity could be pointed out in the impugned orders.

8. I have also considered the submission of learned counsel for petitioner that earlier, outlet was shifted from Burji No. 59060/L to existing outlet No. 58815/L, vide order dated 09.05.2007 (Annexure P-12), therefore, the present application submitted by private respondents for shifting the head of outlet from Burji No. 58815/L to Burji No. 59060/L was not warranted; however, I do not find any merit in the same. No doubt, vide order dated 09.05.2007 (Annexure P-12), the outlet was shifted from Burji No. 59060/L to outlet No. 58815/L, however, since the said shifting of outlet has not served the purpose of better irrigation and the canal authorities upon consideration of the matter and for valid reasons has permitted the shifting of head of outlet from Burji No. 58815/L to the old Burji No. 59060/L, therefore, no fault can be found with the same.

9. Considering the totality of circumstances, I do not find any merit in the present writ petition and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

19.12.2024
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No