

119 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-20474-2024 (O/M)

Date of decision : 28.01.2025

Sukhna Ablu Jal Paryog Society and another Petitioners

Versus

Superintending Canal Officer, Ferozepur Canal Circle and others
..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Judgepreet Singh Warring, Advocate
for applicant-petitioners.

Mr. Navneet Singh, Senior DAG Punjab.

Mr. Sandeep Khunger, Advocate
for respondents No. 5 to 8.

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HARSH BUNGER, J. (ORAL)

CM-15104-CWP-2024

This is an application filed under Section 151 CPC for
placing on record copy of complete map as Annexure P-12.

For the reasons mentioned in application, same is allowed
and copy of complete map (Annexure P-12) is taken on record subject to
all just exceptions.

Application is accordingly disposed of.

CM-575-CWP-2025

This is an application filed under Section 151 CPC for
placing on record Annexure P-13 to Annexure P-17.

For the reasons mentioned in application, same is allowed
and Annexure P-13 to Annexure P-17 are taken on record subject to all
just exceptions.

Application is accordingly disposed of.

CWP-20474-2024 (O/M)

1. Petitioners (Sukhna Ablu Jal Paryog Society and another) 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 10.08.2023 (Annexure P-5), passed by Deputy Collector, Abohar Canal Division, Abohar, District Fazilka, order dated 06.03.2024 (Annexure P-6), passed by Divisional Canal Officer, Abohar and order dated 20.06.2024 (Annexure P-9), passed by Superintending Canal Officer, Ferozepur.

2. Briefly, certain members/shareholders of Sukhna Ablu Jal Paryog Society filed an application before the canal authorities, seeking transfer of 115.23 acre area (i.e. 28.00 acre of Mogha No. 6339-T.L. Sukhna Minor; 70.23 acre of T/R Mogha 130825-R Jaito Rajbaha and 17.00 acres of T/R Mogha 134565-R Jaito Rajbaha) from Faridkot Division and including the same in the Abohar Division on Mogha (lift pump) Burji 279862-L Sirhind Feeder.

2.1 Upon receipt of the said application, the matter was enquired into from the concerned Ziledar/Sub Divisional Officer, who recommended that the area be transferred to the proposed Mogha (lift pump) Sirhind Feeder No. 279862-L. Ultimately, the matter came up for consideration before a Bench of Two Divisional Canal Officers, who vide order dated 18.05.2006 (Annexure P-2), approved the transfer of area by observing as under :-

“ Enquiry of the case got conducted and record was enquired. Area Ziledar and Sub-Divisional Officer, Sirhind Feeder, Giddarbaha's report was considered. Area Ziledar and Sub-Divisional Officer, Sirhind Feeder, Giddarbaha's as

per demand of the applicants, recommended to approve taking out of Mogha No. 6339-T.L. Sukhna Minor 28.00 acres, Mogha No. 130825-R Jaito Rajbaha by taking out 70.23 acres and from Mogha No. 134565-R, Jaito Rajbaha by taking 17.00 acres, total 115.23 acres land by taking out from Faridkot Division, including in Abohar Division, Abohar, in Mogha (Lift-Pump), Sirhind Feeder's Burji 279862-L. Statements of the applicants were considered. Enquired from the Field Staff. Map relating to the case was seen. Lands of the applicants are very far and the irrigation of the fields of the applicants are not getting proper irrigation. Hence, the demand of the applicants seem to be correct. Keeping in view the policy of the Government to grow more food and irrigation of the applications and increase in the outcome of the crops, u/s 30-B (2) of Northern India Canal and Drainage Act 8 of 1873, amendment 23 of 1965 enclosed with the fard, as per village Sukhna Ablu, taking out of Mogha No. 6339-T.L. Sukhna Minor 28.00 acres, Mogha No. 130825-R Jaito Rajbaha by taking out 70.23 acres and from Mogha No. 134565-R, Jaito Rajbaha by taking 17.00 acres, total 115.23 acres land by taking out from Faridkot Division, including in Abohar Division, Abohar, is approved in Mogha (Lift-Pump), Sirhind Feeder's Burji 279862-L. Water to the Lift Pump (Mogha) will be given in multiple of 1 and charges will be completely levied. For crossing the Rajasthan Canal, installing Lift-Pump and underground pipes (khals) will be done by the applicants on their own expenses. The applicants will abide by the conditions of the Government. Chak of the Mogha is not in consistency and the land areas are being scattered, the turn of lift pump will be divided mutually by the shareholders on brotherly (Bhaichara) basis. Affidavits of the applicants regarding dividing their turn is enclosed with the case for which they will remain bound. In case of any

difference in the size of the present Moghas then the Government expenses of the reconstruction of the Moghas will be paid by the applicants. This decision will be applicable after its final approval from the Competent Authority. Preparation of A-form at the time of arguments of Moghas, finally approved A-forms of the land may be taken. The published scheme is being approved with the mutual consent of Divisional Canal Officer, Abohar and Divisional Officer Canals, Faridkot. This decision has been taken with the consent of Divisional Canal Officer, Abohar and Divisional Canal Officer, Faridkot Division, Faridkot.”

2.2 It transpires that one application dated 17.06.2021 (Annexure P-3) was submitted by Sukhna Ablu Jal Paryog Society, Burji No. 279862-L, Sirhind Feeder; complaining that the turns (wari) of their lift pump were not made correctly due to party faction in the village, as some of the shareholders are taking more water than their due; which has led to many disputes. The said application was dealt with by the Deputy Collector, Abohar Canal Division, Abohar under Section 68 of Northern India Canal and Drainage Act, 1873 (in short '1873 Act'), whereby an amended warabandi was approved, vide order dated 10.08.2023 (Annexure P-5), by observing as under :-

“Today, dated 10.08.2023, remand file was again read. Decision of Divisional Officer, Canals, Abohar was also read. The documents, record of chakbandi, statements of shareholders and proposal prepared and sent by Area Zildar in the file were also read. The applicant party, as per Chakbandi demanded turn of their land u/s 68 of lift pump because on the spot, Bhaichara warabandi is applicable and as per their land they are not getting their turn/water. The stated that Illaqa Zildar has prepared after proposal of Warabandi. That we heard and understood and

found correct and may be approved. The second party told during hearing has apprised that on our lift pump Bhaichara warabandi is running same may be maintained which has been framed by our committee. They also told that all shareholders of lift pump have not given expenses at the time of installation of the pipeline. Apart from this, they also demanded that at the time of preparation of the case of lift pump, some persons by making tampering with jamabandi record, changed 147M to 146M regarding which we submitted one application to the Divisional Officer, Canal, Abohar and demanded correction of the chakbandi which is still pending. So, this warabandi may not be approved.

On hearing both the parties and peruse the record, it is clear that the demand of the applicants is genuine because their land is included in the lift pump as per chakbandi. Therefore, in compliance of the directions given in letter No. 191-93/CE/Canals dated 10.02.2023 of Government of Punjab, approval u/s 68 (3).

The second party has demanded the correction in chakbandi record, in that connection whatever decision/action will be taken by the Divisional Officer, Canal, Abohar, that shall liable to be implemented in Warabandi. The demand of second party regarding expenses of pipeline, in that connection, the applicant party is directed that in this connection, they should abide by the directions dated 02.04.2018 of the Hon'ble Punjab and Haryana High Court in CWP 8018/2018. Decision has been pronounced. Illaqa Zildar is directed that the concerned may be given information of the decision under rules.”

2.3 It appears that the aforesaid order dated 10.08.2023 (Annexure P-5) was challenged in appeal by certain shareholders including Kaimandeep Singh (who is representing petitioner No. 1 herein). The above referred appeal filed by Kaimandeep Singh alongwith

others, came to be dismissed by the Divisional Canal Officer, Abohar Canal Division, vide order dated 06.03.2024 (Annexure P-6). A further appeal (Appeal Case No. 3345/72-R) filed by Kaimandeep Singh and others was also dismissed by the Superintending Canal Officer, Ferozepur, vide order dated 20.06.2024 (Annexure P-9).

3. In the aforementioned circumstances, the petitioners have filed the instant writ petition for the relief (s), as noticed hereinabove.

4. Learned counsel for petitioners submits that the canal authorities below have erred in law and facts in passing the impugned orders. It is submitted that the Divisional Canal Officer as well as Superintending Canal Officer has no role to play with the fixing of turn of water or distribution of water, as per Section 68 of 1873 Act. It is further submitted that the impugned orders are contrary to the order dated 18.05.2006 (Annexure P-2), whereby the area was transferred to new Mogha Bujri 279862-L, Sirhind Feeder, wherein it was clearly undertaken that the distribution of turn of water would be done on Bhaichara (brotherly) basis. It is next submitted that the shareholders like Kaimandeep Singh and others had installed the underground pipeline after taking the loan from the bank in the year 1998, whereas the private respondents have not contributed anything in the installation of the said pipeline, therefore, in the absence of any contribution from private respondents, they are not entitled to any turn of water. It is also submitted that all the shareholders of petitioner No. 1-Society are willing to continue with the arrangement of canal irrigation on Bhaichara (brotherly) basis, except the private respondents. Even otherwise, the principle of first come first serve has not been followed by the canal

authorities in this case. With the aforesaid submissions, learned counsel for petitioners prayed that the impugned orders be set aside.

5. On the other hand, learned State counsel as well as learned counsel appearing for respondents No. 5 to 8 have opposed the submissions made on behalf of the petitioners by submitting that at the time of passing of order dated 18.05.2006 (Annexure P-2), it was specifically provided therein that the turn of lift pump will be divided mutually by the shareholders on brotherly (Bhaichara) basis, however, since some of the shareholders were taking more water than their due, which resulted in disputes, accordingly, application was made to the canal authorities for fixing the turn (wari) of lift pump as per land holding, which was considered by the canal authorities and an amended warabandi was approved, vide order dated 10.08.2023 (Annexure P-5). It is stated that the aforesaid order dated 10.08.2023 (Annexure P-5) was never challenged either by the petitioner No. 1-Society or by petitioner No. 2 and, therefore, they have no right to seek setting aside of the impugned orders once they had never availed their remedy of appeal/revision before the canal authorities under 1873 Act. It is further submitted that the wari (turn) has been fixed by the authorities on a clear indication that private respondents would pay the dues/requisite expenses to the committee and also observing that since the warabandi is temporary arrangement, the same can be changed in case there is any change of position/circumstances. It is submitted that the impugned orders are in the interest of better irrigation and they do not call for any interference by this Court. Accordingly, prayer for dismissal of the instant civil writ petition has been made.

6. Heard.

7. In the instant case, apparently, certain areas falling in different outlets of Faridkot Division were included in the Abohar Division in Mogha (lift pump) Burji 279862-L, Sirhind Feeder on the following terms :-

- (a) water to the Lift Pump (Mogha) will be given in multiple of 1 and charges will be completely levied ;
- (b) for crossing the Rajasthan Canal, installing Lift-Pump and underground pipes (khals) will be done by the applicants on their own expenses ;
- (c) the applicants will abide by the conditions of the Government ;
- (d) chak of the Mogha is not in consistency and the land areas are being scattered, the turn of lift pump will be divided mutually by the shareholders on brotherly (Bhaichara) basis. Affidavits of the applicants regarding dividing their turn is enclosed with the case for which they will remain bound ;
- (e) in case of any difference in the size of the present Moghas then the Government expenses of the reconstruction of the Moghas will be paid by the applicants.

7.1 A perusal of the aforesaid terms would clearly indicate that the turn (wari) of lift pump would be fixed mutually by the shareholders on brotherly (Bhaichara) basis. It is further borne out from the paperbook that some shareholders had approached the canal authorities with a complaint that the turn (wari) of lift pump was not made correctly due to party faction in the village and some of the shareholders were taking more water than their due and, therefore, a prayer was made for fixing of turn (wari) to the canal authorities. The said prayer of some of the shareholders was considered by the canal authority (Deputy Collector) under Section 68 of 1873 Act and after hearing all the concerned parties,

an amended wari was approved, vide order dated 10.08.2023 (Annexure P-5) by observing that the demand of private respondents was genuine because their land was included in the lift pump as per chakbandi. It was further observed that the said order was passed in compliance of Government instructions dated 10.02.2023. While approving the amended warabandi, a direction has been issued that the parties shall abide by the directions issued by this Court, vide order dated 02.04.2018, passed in CWP-8018-2018. The said order has been further affirmed by the Divisional Canal Officer as well as Superintending Canal Officer. It has also been clarified by Superintending Canal Officer that private respondents would pay the dues/requisite expenses to the committee.

8. Considering the findings returned by the canal authorities, I find no force in the arguments/submissions raised on behalf of the petitioners.

8.1 As regards the contention raised on behalf of the petitioners that the Divisional Canal Officer and Superintending Canal Officer have no jurisdiction under Section 68 of 1873 Act, it is observed that a bare perusal of Section 68 of 1873 Act would indicate that against an order passed by Deputy Collector, an appeal lies to the Divisional Canal Officer under Section 68 (5) of 1873 Act and a further revisional jurisdiction is conferred upon Superintending Canal Officer under Section 68 (6) of 1873 Act. accordingly, the said contention raised on behalf of petitioners is rejected.

8.2 As regards the contention raised on behalf of the petitioners that private respondents have not contributed anything for the installation

of underground pipeline, it is observed that the Superintending Canal Officer has clearly recorded the stand of private respondents that they are ready to pay dues/requisite expenses to the committee. Once private respondents have duly undertaken to pay the dues/requisite expenses to the committee, in my considered view, the petitioners cannot have any grievance as regards non payment of contribution towards laying down of underground pipeline.

8.3 As regards the contention raised on behalf of the petitioners that as per order dated 18.05.2006 (Annexure P-2), the warabandi was to be fixed on Bhaichara (brotherly) basis, it is observed that once some of the shareholders had approached the canal authorities with a grievance that they were not getting their due water, in my considered view, the said shareholders were not precluded from approaching the canal authorities for fixing the warabandi. Once the shareholders had failed to resolve their dispute by mutual consensus, such a course would be in the larger interest of all the shareholders as well as to maintain peace, harmony and law and order in the village.

9. In view of the above discussion, I see no reason to interfere in the impugned order(s) passed by the canal authorities. Resultantly, the instant civil writ petition fails and the same is dismissed.

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

(HARSH BUNGER)
JUDGE

28.01.2025
sjks

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