

2025:PHHC:014492



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

CWP-20624-2024

Date of Decision: 22.01.2025

Sukhdev Singh and others

..... Petitioners

Versus

Superintending Canal Officer, Ferozepur 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.

Mr. C.M. Munjal, Advocate
for caveator/respondent No.2.

HARSH BUNGER J. (ORAL)

The present writ petition has been filed under Articles 226/227 of the Constitution of India, *inter alia*, seeking a writ in the nature of Certiorari to set aside order dated 23.08.2023 (Annexure P-8) passed by the learned Divisional Canal Officer, Rajasthan Canal Division, Ferozepur (for short 'the learned D.C.O.') and order dated 29.04.2024 (Annexure P-10) passed by the learned Superintending Canal Officer, Ferozepur Canal Circle, Ferozepur (in short 'the learned S.C.O.').

2. Briefly, the private respondents filed an application before the canal authorities, praying that their area measuring 63 Kanal-6 Marla be excluded from Outlet No.133252/R and the same be included in Outlet No.140429/R Malukpur Rajbaha.

2.1 Upon receipt of the said application, the matter was got inquired into by the Canal Authorities. The concerned Zildar as well as the Sub Divisional Officer recommended the transfer of area in question and the matter was placed before the learned D.C.O.

2.2 The learned D.C.O. dealt with the aforesaid application and vide its order dated 04.08.2022 (Annexure P-4), ordered transfer of area measuring 63 Kanal-6 Marla, i.e. 7.91 acres, from *chak* of Outlet Burji No.133252/R Malukpur Rajbah to the *chak* of Outlet Burji No.140429/R Malukpur Rajbah.

2.3 As per aforesaid order dated 04.08.2022 (Annexure P-4), notices to the share holders were issued for 30.03.2021 and the Scheme was published. For sanctioning of the said Scheme, notice was issued for 09.11.2021, and thereafter, the matter was taken up for hearing on 18.11.2021. Thereafter, another notice was issued for 04.08.2022, on which date, the matter came to be finally decided by the learned D.C.O.

2.4 Feeling aggrieved against the aforesaid order dated 04.08.2022 (Annexure P-4), petitioners herein preferred an appeal before the learned S.C.O., who, vide order dated 16.11.2022 (Annexure P-6) remanded the matter to the learned D.C.O., Abohar with a direction to decide the case after watching the situation at the spot.

2.5 Upon remand, on 26.07.2023, the spot was got inspected by the Sub Divisional Officer, Abohar, in the presence of *Halqa Patwari* and other concerned share holders; and report dated 28.07.2023 was submitted. Relevant extract thereof reads as under:-

“ - x - x -

The undersigned carried out the spot inspection of this case on 26.7.23 alongwith the Halqa Patwari and in the presence of the concerned shareholders. From the spot inspection it was

found that the area which the applicants want to get transferred from Outlet Burji No.133252/R New Malukpur and want to get included in Outlet No.140429/R Malukpur Minor, falls at a distance from the existing Outlet and quite near to the proposed Outlet. The watercourses on both outlets are running properly at the spot. In 7.91 acres of area, there is a garden of the applicants at the spot, which is being properly irrigated from the existing outlet. The case is sent to you for further suitable action.”

2.6 Thereafter, the matter was considered by the learned D.C.O., who vide order dated 23.08.2023 (Annexure P-8), allowed the prayer of private respondents and permitted the transfer of 7.91 acres of area from Outlet Burji No.133252/R Malukpur Rajbah to Outlet Burji No.140429/R Malukpur Rajbah, by observing as under:-

“ - x - x -

Decision dated 23.08.2023” *The case was examined. The parties who came present in the court were heard. The decision of the Divisional Canal Officer, Abohar Canal Division, dated 04.08.2022 was seen. The undersigned carried out the spot inspection on 18.08.2023 in the presence of the concerned parties. From the spot inspection it has been found that the area of the applicants falls quite in the beginning of the proposed Outlet and due to this, there shall be better irrigation of the area. Therefore keeping the better irrigation in view, the demand of the applicants is accepted under Section 30-B(2) of the Northern India Canal & Drainage Act 8-1873 Amended 23 of 1965 meaning thereby 7.91 acres area is excluded from Outlet Burji No.133252/R Malukpur Rajbah and the same is included in Outlet No.140429/R Malukpur Rajbah. The arrangement of the watercourse shall be made by the applicants themselves. They shall be made bound to adhere to the conditions of the Canal Department. The Implementation of this decision shall be made on receipt of approval of A-Form from the competent authority or after on*

any change (which he may consider appropriate).”

2.7 Being dissatisfied with the aforesaid order dated 23.08.2023 (Annexure P-8), petitioner preferred an appeal before the learned S.C.O, who vide its order dated 29.04.2024 (Annexure P-10), dismissed the same, by observing as under:-

“.... The record was investigated. After considering the case, this court has found that the decision of the Divisional Canal Officer, Abohar under challenge is in accordance with the situation at the spot and is based on the facts. In Appeal Case No.3895/218-W titled Shri Sukhdev Singh son of Natha Singh etc. Versus Shri Rahul Setia son of Anil Setia etc. a decision was rendered by this Court on 16.11.2022 and it was remanded to the Divisional Canal Officer with the direction for rendering decision again after watching the situation at the spot. In compliance thereof, the Divisional Canal Officer, Abohar again obtained reports from the field staff and after hearing both the parties, the decision has been made. The Sub Divisional Officer and Zildar/Jandwala have made reports that the area of the applicants (in this case respondents) falls at a distance from the existing Outlet whereas from the existing Outlet, the watercourse is running quite adjacent to the area of the applicants (in this case respondents). The Divisional Canal Officer after himself inspecting the spot has sanctioned the Scheme in the interest of better irrigation. The appellants could not produce any solid evidence in their favour and it has only been shown in the written appeal that with the transfer of the area their turns shall be decreased but it is not a solid reason because only 7.91 acres area of the respondents is to be transferred with which the appellant shall not suffer any loss. Therefore after considering the case from all aspects and keeping in view the investigation of the facts came before the court, the appeal of the appellants is dismissed/rejected under Section 30-B(3) of the Northern India Canal & Drainage Act 8-1873 Punjab Amendment Act 23-1965 and the decision of

the Divisional Canal Officer, Abohar dated 23.08.2023 is maintained.”

3. In the aforementioned circumstances, the petitioners have filed the present writ petition before this Court seeking relief(s), as noticed hereinabove.

4. Learned counsel for the petitioners submits that the canal authorities below have erred in law and fact in passing the impugned order(s). It is submitted that the private respondents are getting proper irrigation from the existing outlet, therefore, there was no requirement for transfer of the area in question. It is further submitted that the canal authorities below have not complied with the statutory provisions contained in Sections 30-A to 30-C of the Northern India Canal & Drainage Act, 1873 (for short ‘the 1873 Act’) and thereafter, entire proceedings stood vitiated. It is also submitted that the canal authorities below have not taken into consideration the fact that the private respondents already have around 100 acres of area in the existing outlet and the same is a compact block. It is also contended that with the transfer of area in question, the turn of water of the petitioners would be affected, accordingly, prayer for setting the impugned order(s) has been made.

5. Heard.

6. As regards the contention made by learned counsel for the petitioners that the statutory provisions as contained in 30-A to 30-C of the 1873 Act has not been complied with, suffice it to say that at the first instance, the notices were issued to the concerned share holders and the Scheme was published and objections were also sought by issuing notice for 09.11.2021, wherein petitioners No.1 to 3 and petitioner No.7 appeared and raised their objections. Although, initially, the learned D.C.O. premitted the

transfer of area vide order dated 04.08.2022 (Annexure P-4), however, on an appeal being filed by the petitioners, the matter was remanded to the learned D.C.O. for deciding the matter after watching the situation at the spot.

7. In the aforementioned circumstances, once some of the petitioners had already appeared before the learned S.C.O. and at their instance, the matter was also remanded; I do not find any merit in the plea raised on behalf of the petitioners that statutory provisions as contained in Sections 30-A to 30-C of the 1873 Act, were not complied with.

8. Further, a perusal of the order passed by the learned D.C.O. as well as the learned S.C.O. would show that transfer of area of the private respondents have been permitted by taking into consideration the fact that the area of the private respondents fall in the beginning of the proposed Outlet, therefore, there shall be better irrigation of the area. It has been noticed that only small area (7.19 acres) has been transferred and that too on the condition that arrangement of the watercourse shall be made by the private respondents themselves and they have been further made bound to adhere to the conditions of the Canal Department.

9. Learned counsel for the petitioner has failed to dislodge the aforesaid factual aspect of the matter.

10. As far as contention made by learned counsel for the petitioners that with the transfer of area in question, their water turns would be affected, is concerned, the learned S.C.O. has dealt with the said objection raised by the petitioners by holding that there was no substance in the said plea as only 7.91 acres of area of the private respondents has been transferred, with which petitioners herein shall not suffer any loss.

11. 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...”

12. Considering the aforementioned facts and circumstances, once the procedural requirements have been complied with and the canal authorities, upon consideration of the matter and having examined all technical aspects, have concluded that shifting of area 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. Furthermore, it has not been pointed out as to how the impugned orders are patently illegal or arbitrary.

13. In view of the above discussion, there is no error in the impugned order(s) passed by the canal authorities, which may call for any interference by this Court in this writ petition, and hence, the same is hereby dismissed.

14. All the pending application(s), if any, shall also stand closed.

22.01.2025
Apurva

(HARSH BUNGER)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No