

LPA-1224-2016 (O&M)

2025:PHHC:111448-DB



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

LPA-1224-2016 (O&M)
Date of decision: 22.08.2025

KARANVEER SINGH AND ANOTHER

..... Appellant(s)

Versus

SUPERINTENDING CANAL OFFICER, FEROZEPUR AND OTHERS

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MR. JUSTICE DEEPINDER SINGH NALWA

Present: Mr. S.S. Brar, Advocate for appellants.

Mr. Raghav Garg, AAG, Punjab.

Mr. Sandeep Khunger, Advocate and
Mr. Saksham Khunger, Advocate
for respondents no.3 and 4.

LISA GILL, J.

1. Prayer in this appeal is for setting aside order dated 31.05.2016, passed by learned Single Bench, whereby CWP-5369-2014, filed by present appellants/writ petitioners has been dismissed.

2. Brief facts necessary for adjudication of the matter are that present appellants-writ petitioners filed CWP-5369-2014 for setting aside order dated 03.04.2008, passed by Divisional Canal Officer and order dated 21.02.2014, passed by Superintending Canal Officer, Ferozepur. It was pleaded in the writ petition that petitioners' land as described in writ petition was being irrigated through the Outlet no.26300-L Muradwala Minor, which had been in existence since 50 to 60 years from the inception of irrigation facilities to the area. It is stated that petitioners' land falls in Rectangle Nos.79

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and 80 and that of private respondents in Rectangle Nos.80, 90 etc. as depicted in site plan, Annexure P-1. A water course stands parallel to the canal minor and there is a main *pakka* water course starting from Outlet no.26300-L, marked as point 'A' in site plan. Respondents no.3 and 4 namely Gurbaz Singh and Darshan Singh filed an application for shifting Outlet no.26300-L to downstream on the corner of stone line (*Pathhar Lakeer*) of rectangle nos.80, 81, 89, marked as point 'B' in site plan on the premise that their land was not getting proper irrigation. Zileadar and Sub Divisional Canal Officer recommended shifting of Outlet no.26300-L Muradwala minor as sought by him. Upon receipt of proposal/report, command statement was got checked and upon being found correct, scheme was published. Order dated 03.04.2008 was passed by Divisional Canal Officer, directing shifting of Outlet no.26300-L Muradwala Minor to stone line of corner of rectangle nos. 80, 81 and 89. Aggrieved therefrom Gurmail Singh i.e. father of present appellants/writ petitioners filed an appeal which was dismissed by Superintending Canal Officer on 25.08.2008. CWP-16562-2008 was filed by Gurmail Singh, which was disposed of on 09.09.2010, upon statement of parties to the effect that they were *ad idem* that order dated 25.08.2008 may be set aside and matter remitted to Superintending Canal Officer for adjudication afresh in accordance with law. Order dated 09.09.2010 reads as under:-

“ The petitioner prays for issuance of a writ in the nature of certiorari for quashing the orders dated 03.04.2008 and 25.08.2008, passed by the Divisional Canal Officer and the Superintending Canal Officer, respectively.

After addressing arguments for some time, counsel for the parties are *ad idem* that the order dated 25.08.2008 may be set aside and the matter be remitted to the Superintending Canal Officer, for adjudication afresh and in accordance with law.

In view of the statement made by counsel for the parties, the order dated 25.08.2008 is set aside and the matter is remitted to the Superintending Canal Officer, for adjudication afresh and in accordance with law, within three months from the receipt of a certified copy of this order. The Superintending Canal Officer shall take into consideration the observations made by this court in its order dated 19.01.2010, the report filed by the Divisional

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Canal Officer in his additional affidavit dated 17.02.2010 and if necessary, call for a fresh report.

Parties are directed to appear before the Superintending Canal Officer, Ferozepur Canal Circle, Ferozepur, on 11.10.2010.”

3. Order dated 19.01.2010 referred to in abovesaid order is reproduced as hereunder:-

“ Counsel for the petitioner and counsel for the respondents no.3 and 4 are ad idem that the Divisional Canal Officer, while shifting the outlet from point A to B, failed to record any finding as to the lay of the land from point B to A. As a consequence, it would be appropriate that the Xen-cum-Divisional Canal Officer, Abohar, is directed to inspect the site and submit a report with respect to the lay of the land and level of the water course between point A and B as reflected in the site plan (Annexure P-1).

Adjourned to 26.02.2010.

A copy of this order be handed over to Sh. Yatinder Sharma, DAG, Punjab under signatures of the Special Secretary of this Court.

4. Superintending Canal Officer, in compliance of order dated 09.09.2010, called for the report of Sub Divisional Canal Officer, Sirhind Feeder, Sub Division, Gidderbaha. Appeal filed by Gurmail Singh was dismissed on 18.11.2011.

5. Aggrieved therefrom, CWP-24482-2011 was filed, which was disposed of on 12.11.2012, again remanding the matter to Superintending Canal Officer, to decide the matter afresh, giving an opportunity to Gurmail Singh, to submit his objections to the report dated 30.10.2011, submitted by the Advocate, appointed as Amicus Curiae. Relevant portion of order dated 30.10.2011 reads as under:-

The grievance of the petitioner, which is now made through the present writ petition, is two fold. It is first contended that

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the SCO was to keep in mind the report given by the Xen and his action in taking the help of the counsel by appointing him as Amicus Curie and then relying on this report would not be in consonance with the order as passed by this Court. Counsel appearing for the respondent, however, points out that this was agreed order and the counsel, who conducted spot inspection for which both the parties had agreed. Counsel for the petitioner, thereafter, submits that copy of this report was not supplied to the parties concerned and the case was decided by taking the said report into consideration. The order was not passed on the date of hearing but was subsequently passed relying on this report. The plea is that the parties did not get chance to see this inspection spot report and raised objection against the same. It would have been appropriate for the SCO to supply the copy of this report to the parties and allow them to raise objection, if any, against this report. The spot inspection may have been carried out in the presence of the parties concerned but still they had a right to object to the same and that objection generally could have been made only in case the copy of inspection spot report was supplied to the parties. This mode would be in violation of principle of natural justice as the report was relied upon while passing the order. It would, therefore, be appropriate to remand the case to the SCO to re-decide the same after supplying copy of the report to the parties concerned. The parties would be at liberty to file objection to this report and thereafter the SCO may decide the case in accordance with law. Since the parties have voluntarily agreed for appointment of this counsel to carry out spot inspection, the earlier order passed by this Court to keep in mind the report of DCO may not have left with much relevance as the spot inspection is now done in the presence of the parties.

6. Superintending Canal Officer, in compliance of order dated 12.11.2012 considered the matter again and dismissed the appeal filed by

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Gurmail Singh by way of order dated 21.02.2014. CWP-5369-2014 was accordingly filed by present appellants/successor in interest of Gurmail Singh.

7. Learned Single Bench on considering the facts and circumstances as well as arguments addressed, dismissed the writ petition finding no merit therein. It has been held that shifting of outlet is in the interest of irrigation and no prejudice has been caused to appellants. Aggrieved therefrom present appeal has been filed.

8. Learned counsel for appellants vehemently argued that learned Single Bench has grossly erred on facts and in law while dismissing CWP-5369-2014, filed by present appellants. It was contended that it is a matter of record that Outlet (Moga) No.26300-L has been shifted downstream to outlet No. 2740-L. Learned counsel for appellants submitted that it is a matter of common sense that irrigation of appellants' land shall be affected adversely once they have to receive water from an outlet/Moga which is downstream. Moreover, reliance upon report dated 31.10.2011, submitted by an advocate is highly illogical. A technical person should have been assigned the task. It is submitted that in the proceedings in CWP-16562-2008, it is observed in order dated 19.01.2010 that Divisional Canal Officer while shifting the Outlet from point 'A' to 'B' had failed to record any finding as to the lay of land from point 'B' to 'A'. Xen-cum-Divisional Canal Officer, Abohar, had been directed to inspect the land and submit a report in this respect. Learned Single Bench, it is submitted has ignored all these aspects and the fact that matter had been remanded twice by this Court earlier to be decided afresh in accordance with law. It was thus submitted that this appeal be allowed, impugned order dated 31.05.2016, passed by learned Single Bench be set aside and writ petition be allowed as prayed for.

9. Learned counsel for respondents no.3 and 4 has refuted the arguments as raised by learned counsel for appellants. It was submitted that

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Outlet no.26300-L Muradwala minor had been shifted to Outlet no.27400-L and is functioning very well since 2016. There has been no loss of irrigation to the land of appellants. In fact, in all these years appellants have never asked for *Bharai*. None of the other shareholders had any objection to the shifting of this Outlet which is catering to 420 acres, out of which appellants are owners of only 10 acres. Dismissal of appeal was thus sought.

10. We heard learned counsel for parties at length and have carefully perused the entire file/record. Factual narration of the events as they unfolded has already been described in the foregoing paras and needs no repetition. It is to be noted that learned Single Bench has specifically dealt with the argument raised by learned counsel for appellants in respect to the area of appellants being upstream which would be adversely affected by shifting of Outlet. Reference has been made to the report of Mr. Rajpal Singh Brar, Advocate, wherein it is specifically mentioned that land/area of petitioners which is upstream is about two to two and a half (2-2½) feet lower from the brick-line to water course, therefore, there would be no adverse effect upon irrigation of appellants' land. Relevant portion of impugned order dated 31.05.2016 reads as under:-

“During the pendency of appeal before respondent No.1-Superintending Canal Officer, Mr. Rajpal Singh Brar, Advocate was appointed as amicus curiae who submitted his report dated 31.10.2011 (Annexure R-3/1) after inspecting the site with the help of canal Patwari. In his report (Annexure R-3/1), amicus curiae reported that outlet No.26300-L Muradwala Minor which is functioning at the site is on the one side of the Chakk whereas the remaining area is downstream. It was also reported that when the site was examined, the irrigation was being done from the existing outlet to the area of Gurmel Singh, father of the petitioners. It was also reported that by shifting of outlet No.26300-L to outlet No.27400-L, the area of the

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petitioners which is upstream would be 2-2½ ft. lower from the brick lined watercourse and no harm would be caused to the petitioners for irrigation. The matter has been examined by the canal authorities even after remand orders passed by this Court. Vide impugned order dated 21.02.2014 (Annexure P-7), respondent No.1-Superintending Canal Officer has rightly held that on shifting the existing outlet, area of the petitioners which is in the upstream would be 2-2½ ft. lower than the pucca watercourse and area of the petitioners is at lower level than the land of Darshan Singh, therefore, the proposed outlet will provide better irrigation and the petitioners will not suffer any loss of irrigation, rather it will lead to better irrigation. The majority of shareholders is in favour of shifting of the outlet. The impugned orders have been passed after framing the proper scheme. In case the petitioners suffer any loss of irrigation by shifting the outlet, they will be compensated by providing more water for bharai by deducting water from the wari of respondent Nos.3 and 4 which has been agreed to by respondent Nos.3 and 4, as noticed by respondent No.1-Superintending Canal Officer in the impugned order dated 21.02.2014 (Annexure P-7).”

11. It is thus apparent that arguments raised on behalf of appellants are devoid of any merit. In so far as report of Divisional Canal Officer as had been referred to by learned counsel for appellants is concerned, same is clearly irrelevant as has been clearly recorded in order dated 12.10.2012 by learned Single Bench in CWP-24482-2011. It is further to be noted that there is nothing on record to negate the assertion by respondents that shifting of Outlet in question offers better irrigation to 420 acres, out of which appellants own 10 acres and that proper irrigation is in place since the year 2016.

12. Learned counsel for appellants was indeed unable to point out any material on record to indicate that since the year 2016 till today appellants

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have suffered any adverse effects of shifting of Outlet from Outlet no.26300-L Muradwala Minor to Outlet no.27400-L or that they ever sought 'Bharai'. No prejudice to appellants has been pointed out. In the given facts and circumstances, we do not find any ground to cause interference in this matter.

13. Learned counsel for appellants was unable to point out any infirmity, irregularity or perversity in the impugned order dated 31.05.2016, passed by learned Single Bench, which is accordingly upheld.

14. No other argument was addressed.

15. Keeping in view the facts and circumstances as above, this appeal is accordingly dismissed with no order as to cost.

16. Pending miscellaneous application(s), if any, stand(s) disposed of accordingly.

(LISA GILL)
JUDGE

(DEEPINDER SINGH NALWA)
JUDGE

22.08.2025

Sunil

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