
(2014) 12 P&H CK 0081
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 19427 of 2013 (O and M)

Balbir Singh and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:

Constitution of India, 1950 — Article 226 227
Haryana Canal and Drainage Act, 1974 — Section 17

Citation : (2015) 4 RCR(Civil) 58

Hon'ble Judges : Paramjeet Singh, J

Bench : Single Bench

Advocate : R.S. Sharma, Advocate for the Appellant; Sandeep S. Mann, Sr. DAG, Advocate for the Respondent;

Final Decision : Dismissed

Judgement

Paramjeet Singh, J.

1. Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the order dated 10.06.2013 (Annexure P-5) passed by respondent No. 2-Chief Canal Officer, BWS, Haryana whereby appeal preferred by respondent No. 5-Balwan Singh has been accepted and his area 22.04/22.04 has been excluded from the chak of outlet RD 18350-R New Chuli Minor and included in the chak of outlet RD-22250-Tail Old Chuli Minor. The brief facts of the case are to the effect that respondent No. 5-Balwan Singh son of Ram Lal moved application for transfer of 22.04/22.04 acres area from the chak of outlet RD-18350-R New Chuli Minor to the Chak of outlet RD-22250 Tail Old Chuli Minor on the ground that they will get better irrigation through the proposed source. The case was got investigated through Zileadar and Sub Divisional Canal Officer, Bhattu. After investigation and inspection, Zileadar and Sub Divisional Canal Officer recommended the case for the transfer of 22.04/22.04 acres area and thereafter scheme under Section 17 of the Haryana Canal and Drainage Act, 1974 (in short, "the Canal Act") was

submitted. The scheme was published by the Divisional Canal Officer under Rule 7 and Section 18(1) of the Canal Act for inviting objections to the proposed transfer of the area. In response to the publication, shareholders appeared before the Divisional Canal Officer. They were explained about the scheme. It was the case set up by Balwan Singh that their area is not getting proper irrigation through the existing source as there is a depression. Balwan Singh agreed to bear the expenses for the adjustment of both the outlets and also agreed that he would arrange the watercourse himself from the proposed source. No one opposed the scheme. The Divisional Canal Officer referred the case for approval to the higher authorities as discharge from outlet RD-183 50-R New Chuli Minor was less than 0.75 Cs. Vide letter dated 30.03.2010, Chief Canal Officer, BWS, Haryana accorded approval. Thereafter, the Superintending Canal Officer, BWS, Circle-II, Hisar vide letter dated 21.04.2010, accorded permission to decide the case after 30 days. Thereafter, the Divisional Canal Officer approved the transfer, subject to confirmation by the Superintending Engineer. The Superintending Engineer, vide order dated 18.03.2011, confirmed the transfer. Against that, the petitioner preferred an appeal before the Chief Canal Officer, who vide order dated 28.12.2011 (Annexure P-3) remanded the matter to the Superintending Canal Officer for re-consideration. The Superintending Canal officer set aside the order dated 30.04.2010 passed by the Divisional Canal Officer vide order dated 22.01.2013 (Annexure P-4). Against that, respondent No. 5 preferred an appeal before the Chief Canal Officer who set aside the order dated 22.01.2013 (Annexure P-4), vide impugned order dated 10.06.2013 (Annexure P-5). Hence, this revision petition.

2. In pursuance of notice, the respondents put in appearance. Respondents No. 2 to 4 filed their separate written statement and respondents No. 5 and 6 filed their separate written statement. Sh. Ranjit Singh, Sub Divisional Canal Officer, Bhattu also filed his additional affidavit.

3. I have heard learned counsel for the parties and perused the record.

4. Learned counsel for the petitioner vehemently contended that the issue involved in the present writ petition has already been decided by this Court in CWP-16085-2006, as such the principle of res judicata applies. Learned counsel further contended that the petitioner will suffer a loss with the transfer of area as their turns will be curtailed and there is no increase in the size of outlet.

5. Per contra, learned State counsel and learned counsel for respondents No. 5 and 6 contended that the impugned order is legal and valid. Earlier wrong reports were given by the authorities which resulted into loss to the parties and since the command levels were wrongly given, the case was not correctly decided. Learned counsel further contended that recent command level reports and earlier reports have been produced on record as Annexure R-1 by the Sub Divisional Officer, Bhattu. The difference between the levels is considerable which ranges as (+) 2.4 ft., (+) 2.78 and (+) 2.82 ft., it means that levels were not correctly done at that point of time, otherwise also with the change of situation,

one can apply for the transfer of area. In the present case, even size of outlet has been increased which is very much clear from the Form-A produced in the Court.

6. I have considered the rival contentions of learned counsel for the parties.

7. Perusal of record clearly indicates that Mewa Singh respondent No. 6 and others had earlier also filed writ petition which was dismissed by this Court vide order dated 07.11.2006 (Annexure P-1). Since the proceedings are summary in nature, therefore, principle of res judicata is not at all applicable.

8. There is a categorical evidence that earlier level reports were not correctly given by the officials. The difference of levels has been indicated in Annexure R-1 which is quite substantial that there is a level difference which ranges as (+) 2.4 ft., (+) 2.78 and (+) 2.82 ft., therefore, correct decision could not be given. Otherwise also, perusal of Form-A, photocopy of which has been taken on record as Annexure R-2, clearly indicates that size of discharge of outlet RD-22250-Tail has been increased from 2.38 Cs to to 2.43 Cs. As a result of it, discharge of water has been increased and no loss will be caused to the petitioner with the transfer of area from chak outlet RD-18350-R New Chuli Minor to the Chak of outlet R.D.-22250 Tail Old Chuli Minor with the increase of size of outlet water discharge and flow will increase and there will be no reduction in turn of water.

9. In view of above discussion, the impugned order passed by the Chief Canal Officer is legal and valid and does not call for any interference.

10. Dismissed. No order as to costs.