
(2011) 01 P&H CK 0058
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 13758 of 2009

Chajju and Others

APPELLANT

Vs

Divisional Canal Officer and Others

RESPONDENT

Date of Decision : 20-01-2011

Acts Referred:

Haryana Canal and Drainage Act, 1974 — Section 17

Citation : (2011) 3 RCR(Civil) 440

Hon'ble Judges : Ajai Lamba, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ajai Lamba, J.—The petitioners filed an application u/s 17 of the Haryana Canal and Drainage Act, 1974 (for short "The Act") with a prayer that their land is at the tail end, as also because of elevation of land, their land is not irrigated from outlet 8500-L Dehman Sub Minor. It was further contended that irrigation from the canal source has to be supplemented with tubewells so as to provide sufficient irrigations. In such circumstances, a prayer for an additional outlet No. 9300-L was made which is further downstream from 8500-L.

2. Scheme was prepared. Divisional Canal Officer, Tohana made recommendations vide Annexure P-2, the most relevant of which are given as under :-

1. As stated by the applicants, the irrigation is not proper in this area from outlet RD 8500-/L (Syphon) Dehman Sub Minor and outlet RD 16500-R Simani Minor. Where-so-ever, irrigation is being done at site with (mixed) help of Tube-well.

2. The area which the new outlet has been demanded, is higher from the existing sources. Therefore, the irrigation is not proper.

3. The perusal of the command statement would reveal that the command from the proposed source is much better.

4. The result will be fruitful of better irrigation of the proposed source.
5. The cost of adjustment of outlet RD 8500-L Dehman Sub Minor and proposed outlet RD 9300-L Dehman Sub Minor will be borne by the applicant.
3. Vide Annexure P-3, even the Superintending Canal Officer approved the recommendations. Approval has been granted by Chief Canal Officer also vide order Annexure P-4 dated 20.02.2007 on the condition that expenditure involved for adjustment of outlets and remolding of lined watercourse etc. shall be borne by the beneficiaries i.e. the petitioners.
4. The Divisional Canal Officer took a decision vide order Annexure P-5 dated 22.03.2007 allowing the application filed by the petitioners while giving the following reasons :-
 1. The irrigation in the 115/115 acres area is 125% whereas the outlet RD 8500-L Dehman Sub Minor is 134%. The applicants who are interested for a new outlet RD 9300-L Dehman Sub Minor have stated that the present irrigation is due to mixed as well as tube-wells.
 2. The present source is not proper being far off.
 3. The area for which the new outlet has been demanded higher from the existing sources, therefore the irrigation is not proper.
 4. The perusal of the command statement would reveal that the command from the proposed source is much better.
 5. The result will be fruitful of better irrigation of the proposed source.
 6. The cost of adjustment of outlet -RD 8500/L Dehman Sub Minor, 13000-L Dehman Sub Minor and proposed outlet RD 9300-L Dehman Sub Minor will be borne by the applicants.
5. The respondents carried an appeal to the Superintending Canal Officer who, however, set aside the order of Divisional Canal Officer. Essentially, the Superintending Canal Officer appears to have been impressed by the factor that a large number of shareholders had objected to the proposed outlet RD 9300-L. The reasons assigned by the recommending authorities, as extracted above, however, have not been considered.
6. The petitioners carried an appeal to the Chief Canal Officer, which has been dismissed vide order Annexure P-7. The circumstances taken into account in impugned order Annexure P-7 passed by Chief Canal Officer are that existing outlet 8500-L Dehman Sub Minor is having only 268 acres and discharge is 0.64 cs; If the appeal is accepted, the CCA of the existing outlet at RD 8500-L will reduce to 133 acres from 268 acres and its discharge shall be reduced to 0.32 es; Discharge of proposed outlet RD- 9300 would be 0.28 cs.
7. It has also been taken into account that large number of shareholders are against splitting of chak of outlet RD 8500-L.

8. Learned counsel for the petitioners contends that the application of the petitioners was processed and the proposed outlet RD 9300-L Dehman Sub Minor was recommended to be allowed, for the reasons given in the recommendations. The recommendations were accepted up to the Chief Canal Officer. The impugned orders passed by the Superintending Canal Officer and the Chief Canal Officer, however, are -non-speaking insomuch as no relevant reasons have been assigned to allow the appeal of the private respondents.

9. Learned counsel for the private respondents contends that majority of the share holders of water outlet RD 8500-L Dehman Sub Minor are opposed to the idea of splitting the chak being irrigated by RD 8500-L. It has also been contended that the size of the water outlet would be reduced.

10. I have considered the contention of learned counsel for the parties.

11. In case, the outlet RD 9300-L is allowed to be added, obviously, some land from the chak of RD 8500-L would be transferred to the proposed outlet. Proportionately, the size of outlet RD 8500-L would be reduced. This, however, shall not result in reduced irrigation to the land of the private respondents because the reduction in the size of the outlet is only in proportion to the land taken out of the chak. By making provision for RD 9300-L, the land of the petitioners would be better irrigated, which at this point in time, has to be supplemented by tubewell water. In such circumstances, prima facie, I am of the opinion that the apprehension of the private respondents is not based on credible reasons.

12. I also find that the issue of elevation of land had also been considered at the time of making recommendation by the Superintending Canal Officer and upheld up to the Chief Canal Officer. The said factor, however, has been ignored while passing impugned orders.

13. Overall interest of irrigation is required to be seen. If some land is receiving less irrigation, as said in the recommendations extracted above, the irrigation is required to be supplemented from canal source. For creation of a new outlet, this aspect of the matter is required to be addressed. The orders of the Superintending Canal Officer and the Chief Canal Officer, however, do not deal with the issues considered at the time of making recommendations for making provision for RD 9300-L Dehman Sub Minor.

14. I also find that the recommendations were put up to the level of Chief Canal Officer, who accepted them and only thereafter the Divisional Canal Officer allowed the application filed by the petitioners, allowing the proposed outlet. At this point in time, however, while hearing the matter in appellate jurisdiction, the same authorities i.e. the Superintending Canal Officer and the Chief Canal Officer, have rejected the proposal. No relevant reasons, however, have been assigned in the orders, which might be opposed to the reasons given while approving the recommendations extracted in earlier part of the order.

15. This Court is particularly concerned about the depletion in ground water level. The recommendations made by the Divisional Canal Officer and subsequently allowing the proposed water outlet indicate that irrigation to the land of the petitioners from the canal is required to be supplemented with the help of tubewells. This matter is also required to be addressed by the authorities under the Canal Act which, however, has not been done by the Superintending Canal Officer and the Chief Canal Officer, while passing the impugned orders.

16. In view of the above, the petition is allowed. Orders (Annexures P-6 and P-7) are hereby quashed.

17. The matter is referred to the Superintending Canal Officer, Bhakra Water Services Circle No. II, Hisar, to re-adjudicate the issue after visiting the spot. While passing the order, the recommendations by the Divisional Canal Officer and the reasons assigned by the Divisional Canal Officer in his order allowing the proposed water course are required to be addressed, in particular. The canal authorities would also consider the existing extent of irrigation to the land of the petitioners; and the extent of irrigation of the land of the petitioners after providing proposed water outlet.

18. The petitioners would appear before the Superintending Canal Officer on 07.02.2011. Final decision vide a speaking order be passed by 31.03.2011.

19. Copy of the order be given dasti under the signatures of the Court Reader.