
(2008) 01 P&H CK 0148
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5138 of 2006

Gharsi Ram

APPELLANT

Vs

Chief Canal Officer and others

RESPONDENT

Date of Decision : 08-01-2008

Acts Referred:

Citation : (2009) 4 RCR(Civil) 463

Hon'ble Judges : K.S.Garewal, J and Mrs.Daya Chaudhary, J

Advocate : Mr. PS Jammu, Advocate.For Respondent No. 4, Mr. S.S. Godara, Advocate., Advocates for appearing Parties

Judgement

K.S. Garewal, J.

1. Gharsi Ram receives irrigation for his land from water course RD14525L Odhan Minor, but his land is at some distance from the outlet. Therefore, when new outlet RD16535L was constructed on the minor, the petitioner asked for transfer of his area from the existing outlet to the new outlet to improve the irrigation.

2. The petitioner's application was investigated by the Zildar who sent his report to SubDivisional Canal Officer and both officers recommended his case. Thereafter a draft scheme was prepared under Section 17 and published under Section 18 (1) of the Haryana Canal and Drainage Act 1974, objections were invited and the matter was heard on November 12, 2003 by Divisional Canal Officer, Sirsa.

3. At the hearing, Gharsi Ram naturally pleaded that his area was only at distance of 1 killa from the new outlet, and also undertook to pay the cost of the adjustment of outlets. Rohtash, Vinod Kumar, Surinder Kumar, Ajay, Kulwant Singh and Radhe RamI also supported the petitioner and said that they have no objection to the change. The matter was again heard on December 10, 2003 when Radhe RamII, Rai Singh, Om Parkash, Net Ram and Jagdish Chander (respondent 4) appeared before the Divisional Canal Officer and stated that the

water course of the new outlet was their personal water course. They would not allow the water course to be constructed or the area of the petitioner to be included in the new outlet. They further stated that all the shareholders had been requested to get their area included when the new outlet was sanctioned but the other share holders had flatly refused to bear the expenses.

4. However, the Divisional Canal Officer accepted the recommendations of the Zildar and Sub Divisional Officer and concluded that the petitioner's area was near the head of the proposed outlet, at a distance of 1 acre, whereas it was 13 acres from the existing outlet. Therefore, 11.90 acres area of the petitioner were separated from the existing outlet and included to the new outlet. In this way, the petitioner's application was accepted. Jagdish Chander took the matter in appeal before the Superintending Canal Officer, who dismissed the appeal vide order March 9, 2005.

5. However, Jagdish Chander's further appeal before the Chief Canal Officer met with approval. After hearing arguments and examining the plan carefully, it was held that a link water course was available from the existing watercourse and outlet was not far from the land of the respondent (Gharsi Rampetitioner herein), therefore, there was no justification to transfer the area.

6. Gharsi Ram has filed this petition to challenge the order of the Chief Canal Officer. It has been argued that the area falls at the beginning of the new outlet whereas the existing outlet was far away from his land. The water course was dilapidated, had not been repaired for 10 years and due to leakage in the lined wafer course, the petitioner was not getting proper irrigation, new outlet was near his land, the water course also flowed through his land and he would get better irrigation. The existing outlet commanded an area of 765 acres whereas the new outlet's command area was only 237 acres. Thus there was spare capacity in the new outlet to irrigate more land.

7. Jagdish Chander put in appearance and filed written statement pleading that the petitioner's application for transfer of his land from the existing outlet to the new outlet had been validly set aside by the Chief Canal Officer. Earlier the existing outlet irrigated about 1000 acres of a number of shareholders, including the petitioner and respondent 4, but since the area was not being effectively irrigated, the outlet was bifurcated. This also led to the bifurcation of the catchment area as well. The bifurcation had been done on the basis of notice issued by the Divisional Canal Officer on September 18, 2000. Objections were invited from all the shareholders but the petitioner did not turn up to file any objections when the matter was heard on October 5, 2000. Since the bifurcation was meant for irrigation of the tail area, the petitioner had not raised any objection as his land was not in the tail area. The bifurcation plan was approved unanimously on October 9, 2000 by the Divisional Canal Officer who passed the following order :

".....The share holders whose area falls on the tail reach do not receive proper

irrigation and face a great difficulty and hardship. Moreover no one has opposed this change. As such the demand is unanimous and hence recommended. Therefore, splitting of outlet RD 14825L Odhan Minor into two outlets one at RD 14825L Odhan Minor and second at RD 16535L Odhan minor for 237/236 acres CCA is hereby recommended in the absence of any objection and in the interest of development of irrigation and grow more food campaign."

[Annexure R4/3]

The above plan was approved by the Chief Canal Officer on October 24, 2000 but was made subject to the condition that the expenditure involved for adjustment of outlets and remodeling of the lined water courses shall be borne by the beneficiaries.

8. On October 25, 2000, the concerned authority again sought objections from all shareholders regarding the proposed scheme of splitting the outlet and the catchment area. Neither the petitioner nor any one else opposed the proposal. It was thus that the existing outlet was split into two outlets and a new outlet was constructed for better irrigation. The expenditure involved for the adjustment of the outlets and remodeling of the new water course was borne by the beneficiaries. The arrangement of the water course was also to be made by the shareholders themselves.

9. The petitioner appears to be a clever individual. He did not participate in creation of the new outlet. He made no contribution towards expenses incurred by the beneficiaries. He never raised any objection to the creation of the new outlet and splitting of the catchment area. The petitioner knew very well that his area was not going to be attached to new outlet. The petitioner was content with the water received from the existing outlet. Therefore, it is very surprising that (the petitioner, after allowing the new outlet to be created and waiting for over three years, filed an application for transfer of his area to the new outlet.

10. In the farming community there is always a lot of cooperation and sharing of resources by everyone. Adjustments are always taking place, give and take is always present. However the Haryana Canal and Drainage Act 1974 provides a well defined and set procedure through legislation to enable the parties to get a fair and equitable distribution of water which is valuable input for all types of farming activity. All reasonable demands are always met but an unreasonable demand is difficult to be accepted. When a person is willing to accept something reasonable, he would be naturally obstinate in accepting something which is unreasonable.

11. At first flush the petitioner's case appears to be reasonable. After all the existing outlet was 13 acres away from his land whereas the new outlet was only 1 acre away. It was reasonable to get his land transferred to the new outlet but when considered in the backdrop of the detailed procedure adopted by the canal authorities when the new outlet was created, it would be seen that the petitioner had waited to let the irrigation flow through the new outlet for three long years

before making his first move to get his area transferred. Surprisingly, neither the Zildar nor the Sub Divisional Canal Officer saw through this game and the petitioner's case was recommended and also accepted by Divisional Canal Officer and Superintending Canal Officer but somehow at the level of the Chief Canal Officer, the petitioner's application was stalled.

12. After going through the orders placed on record by the respondent 4, it would become amply clear that when the new outlet was created all parties were given an opportunity to participate in the new outlet but this also meant sharing the expenditure. Therefore, every individual must have weighed the cost benefit ratio in deciding whether he should or should not join in the new outlet. The petitioner opted to stay out but later when the things were going smoothly for the respondent, he filed the application to get his land transferred. The petitioner's demand was unfair and unacceptable.

For the aforestated reasons, we find no merit in this petition.