

2025:PHHC:045132



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

**CWP-7872-1993 (O&M)
Date of Decision:02.04.2025**

Wasawa Ram (Deceased) through his Lrs and others

..... Petitioners

Versus

The Divisional Canal Officer, Sirsa Division, Sirsa and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. Ashok Verma, Advocate
for the petitioners.

Mr. Sandeep Singh Mann, Addl. A.G., Haryana.

Mr. J.S. Thind, Advocate
for respondent No.8.

HARSH BUNGER J. (ORAL)

CM-7002-CWP-2016:

Prayer in the present application is for impleading the legal representatives of deceased-petitioners No.2, 5, 6, 11 and 12 in the array of parties (in CWP-7872-1993).

Notice in the application.

At this stage, Mr. Sandeep Singh Mann, Addl. A.G., Haryana and Mr. J.S. Thind, Advocate for respondent No.8, who are present in Court,

accept notice on behalf of the non-applicants/respondents-State and on behalf of respondent No.8, respectively and submit that they have no objection in case prayer made in the instant application is accepted.

Keeping in view the reasons mentioned in the present application as well as the aforesaid submissions made by learned counsel for the non-applicants/respondents-State and learned counsel for respondent No.8, the instant application (CM-7002-CWP-2016) is allowed and the persons, as named in paragraph Nos.2, 4, 6, 8 and 10 of the present application, are impleaded as legal representatives of deceased-petitioners No.2, 5, 6, 11 and 12 in the array of parties (in CWP-7872-1993), only for the purpose of pursuing the instant matter. Amended Memorandum of Parties is taken on record, subject to all just exceptions.

Registry to do the needful.

Application is accordingly disposed of.

CM-16918-CWP-2024:

Prayer in the present application is for placing on record an affidavit of Gaja Nand son of Parkash (Original petitioner No.5, since deceased) along with the Jamabandi for the year 2017-18 as Annexure P-11.

For the reasons mentioned in the application, affidavit of Gaja Nand along with the Jamabandi for the year 2017-18 as Annexure P-11, are taken on record, subject to all just exceptions.

Application is accordingly disposed of.

CWP-7872-1993:

Prayer in the present writ petition, filed under Articles 226/227 of the Constitution of India, is for issuance of a writ in the nature of Certiorari for setting aside the order dated 25.01.1993 (Annexure P-10)

passed by learned Chief Canal Officer, Haryana (respondent No.3 herein).

2. Briefly, the present petitioners along with other shareholders of outlet RD-15800-L, Bani Disty. approached the learned Divisional Canal Officer, Sirsa Division, Sirsa, under Section 17 of the Haryana Canal and Drainage Act, 1974 (for short the 1974 Act) praying for splitting of the said outlet into two outlets i.e., RD 15800-L and RD 17000-L and for adjusting their area on outlet RD 17000-L, on the plea that they were not receiving satisfactory irrigation from the existing outlet RD 15800-L.

3. It transpires that the matter was considered by the Canal Authority and since with the splitting of the outlet, the discharge from the existing outlet RD 15800-L Bani Disty. would have fallen below than 0.75 cusecs accordingly, approval of the learned Chief Canal Officer, Haryana was sought in terms of proviso to Section 18(2) of the 1974 Act.

4. The Chief Canal Officer, Haryana vide an order dated 28.08.1990 (Annexure P-7) accorded his approval for permitting the splitting of outlet RD 15800-L Bani Disty. with discharge less than 0.75 cusecs, subject to the condition that the expenditure involved in the adjustment of both the outlets shall be borne by the beneficiaries.

5. Thereafter, the matter was taken by the learned Divisional Canal Officer, Sirsa Division, Sirsa, who upon consideration of the matter, approved the splitting of the outlet vide order dated 21.11.1990 (Annexure P-8), the relevant extract of which reads as under:

“DECISION:-

No other objection/suggestion was received. Case examined carefully from all corners. From the perusal of the documents attached with the case, it is revealed that the scheme for the splitting of outlet R.D. 15800/L Bani Disty. into two outlets was heard and considered by Sh. R.C. Kapoor

the then Divisional Canal Officer, and he referred the case to Chief Canal Officer, Irrigation Department, Haryana, Chandigarh for his prior approval under Section 18(2)(b) of the Haryana Canal and Drainage Act 29 of 1974, which has been accorded by the Chief Canal Officer, Haryana. I agree with the proposal of Sh. R.C. Kapoor, the then Divisional Canal Officer, Sirsa so as the dispute of the parties could be settled. The demand for splitting of outlet R.D. 15800/L into two outlets, one at R.D. 15800/L and 2nd at R.D.17000/L is accepted.

Keeping in view the foregoing discussion, the outlet at R.D. 15800/L for the area G.A.-173 acres, CCA-168 acres and outlet at RD.17000/L for the area G.A.-413 acres and CCA-344 acres of Bani Disty. is hereby approved under Section 18(2) of the Haryana Canal and Drainage Act 29 of 1974 subject to confirmation/modification of orders by the Superintending Canal Officer, Sirsa Bhakra Canal Circle, Sirsa under the Rules. The cost of adjustment of both the outlets shall be borne by the beneficiaries of new O/L R.D.17000/L Bani Disty.”

6. Feeling aggrieved against the aforesaid order dated 21.11.1990 (Annexure P-8), the private respondents herein preferred an appeal before learned Superintending Canal Officer, Sirsa, which came to be dismissed vide order dated 17.07.1991 (Annexure P-9), by observing as under:-

“DECISION:

The arguments put forward by both the parties have been considered. The case has also been examined carefully & thoroughly. From the perusal of the case it is revealed that outlet RD.15800-L Bani Disty. will continue at its existing site for the irrigation of the appellants. The discharge of outlet RD.15800/L Bani Disty. will be less than 0.75 Cs. due to this change for which prior approval by the Chief Canal Officer Haryana, Chandigarh has already been accorded vide his letter No.3723/3BC/645/82 Dt. 16.08.1990.

It is a fact that irrigation of the area for which outlet at RD.17000-L Bani Disty. has been approved by Divisional Canal Officer, Sirsa Division is more than authorised but it is said to be due to mixed irrigation of tubewells installed in this area. The w/cs of outlet RD.15800/L Bani Disty. have been lined and the respondents who want a separate outlet at RD.17000-L Bani Disty. have produced an affidavit to bear the cost of remodelling of w/cs and HSMITC has also given consent in this regard. Hence there will be no loss to the appellants.

In view of above, the decision of the Divisional Canal Officer, Sirsa Division, Sirsa is upheld and the appeal is rejected.

Since the area of outlet RD.15800-L Bani Disty. will be reduced to 168 acres CCA, the w/cs should be got remodelled first before the changes are effected as otherwise the area shall not be able to get irrigation from the existing w/c as command will be greatly reduced due to less discharge in a bigger w/c. The adjustments of outlets shall be done at the cost of the beneficiaries.”

7. Still aggrieved, the private respondents herein preferred a further appeal before the learned Chief Canal Officer, Haryana, which came to be allowed vide order dated 25.01.1993 (Annexure P-10), whereby the order dated 21.11.1990 (Annexure P-8) passed by the learned Divisional Canal Officer as well as order 17.07.1991 (Annexure P-9) passed by learned Superintending Canal Officer were set aside.

8. In the aforementioned circumstances, the present writ petition has been filed before this Court.

9. Heard.

10. During the course of hearing of this petition, learned counsel appearing on behalf of private respondents has submitted that their interest for proper irrigation has to be protected and that they would have no

objection with the splitting of the outlet subject to the condition that entire expenditure on the adjustment of the outlets be borne by the petitioners.

11. In order to ascertain the expenditure to be incurred for lining of water course/remodeling of the existing water course outlet RD 15860-L, the Divisional Canal Officer was called upon to submit an estimate in that regard, whereupon an affidavit dated 09.12.2024 of Sh. Sandeep Kumar, Divisional Canal Officer, Sirsa Water Services Division, Sirsa, was submitted, wherein in paragraph Nos.4 to 6, the following stand has been taken:-

*“4. That the respondent department has prepared the estimate for remodeling existing lining of watercourse outlet **RD 15860-L Bani Disty.** (As per the new outlet). As per this estimate, the abstract of cost for the said work comes to approximately Rs.1579637/- which cost is to be paid by the Petitioners/beneficiary. Copy of the Estimate is attached herewith as **Annexure R-1.***

*5. That the respondent department has prepared the estimate for lining of watercourse of outlet RD 17000-L Bani Disty. (New outlet). As per this estimate, the abstract of cost for the said work comes to Rs.321555/- which cost is to be paid by the petitioners/beneficiaries. Copy of the Estimate is attached herewith as **Annexure R-2.***

*6. That the area/land required for watercourse at outlet RD 17000/L Bani Disty. (New outlet) is 650 X 11=7150 sft or 0.164 acres and as per the Collector rate the amount required for acquiring the land is Rs.196800 if the land owners are willing to give his land at collector rates and the amount to be spent for lining of the watercourse in length of 650 ft. comes to Rs.321555. In this way, the total amount comes to **Rs.518355/-.** Copy of the detail of the required amount is attached herewith as **Annexure R-3.***

Accordingly, the requisite Affidavit is submitted by the deponent in compliance with the above said order of the

Hon'ble Court dated 16.10.2024."

12. At this stage, learned counsel for the petitioners has submitted that in terms of affidavit submitted by Sh. Sandeep Kumar, Divisional Canal Officer, Sirsa Water Services Division, Sirsa, since certain land would have to be acquired, the petitioners would be willing to bear the entire cost thereof (if required) otherwise, one Sh. Gaja Nand, who is the son of one of the petitioners namely Sh. Parkash (Petitioner No.5), who has since expired; has submitted an affidavit dated 14.10.2024 indicating that he would provide land for the construction of connecting water course free of cost in the extent of length of 03 acres from outlet RD 17000-L, Bani Disty.

12.1. Learned counsel for the petitioners has further submitted that in case more land is required to be acquired for provisioning of water course on the newly created outlet RD 17000-L or more expenditure is required for the lining of the same, the petitioners would bear the entire cost, in case the estimate thereof is provided to the petitioner. Learned counsel for the petitioners states that the petitioner would remit the requisite expenses to the concerned authority within a period of three weeks from the date of such intimation.

13. Learned State counsel as well as learned counsel for respondent No.8 do not raise objection to the aforesaid course of action being adopted.

14. In view of the above, since the aforesaid arrangement between the parties would safeguard the interests of all the stakeholders, the present writ petition is partly allowed by setting aside the order dated 25.01.1993 (Annexure P-10) passed by learned Chief Canal Officer, Haryana.

14.1. It is directed that the remodeling/realignment of the water course/outlet be carried out within a period of six months from today, subject to fulfillment of the undertaking given on behalf of the petitioners, as

noted hereinabove.

14.2. It is made clear that in case the petitioners fail to comply with the undertaking as noted hereinabove, this order shall be of no avail and the writ petition would stand dismissed.

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

02.04.2025

Pd

**(HARSH BUNGER)
JUDGE**

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No