

(2014) 10 P&H CK 0058

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. No. 22539 of 2010 (O&M)

Balvir Singh and Others

APPELLANT

Vs

Superintending Canal Officer, Sirhind Canal Circle and Others

RESPONDENT

Date of Decision : 27-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Northern India Canal and Drainage Act, 1873 — Section 20

Citation : (2015) 2 RCR(Civil) 283

Hon'ble Judges : Paramjeet Singh, J

Bench : Single Bench

Advocate : C.M. Munjal, Advocates for the Appellant; Deepa Singh, Addl. A.G, Advocates for the Respondent

Judgement

Paramjeet Singh, J.—Instant writ petition has been filed under Articles 226/227 of the Constitution of India for setting aside the orders dated 08.12.2009 (Annexure P-1) passed by respondent No. 2-Divisional Canal Officer, Faridkot Canal Division, Faridkot, 26.06.2010 (Annexure P-2) and 15.11.2010 (Annexure P-3) passed by respondent No. 1-Superintending Canal Officer, Sirhind Canal Circle, Ludhiana. I have heard learned counsel for the parties and perused the record.

2. It is the case of petitioners that private respondents No. 3 to 5 along with others filed application before the canal authorities for restoration of watercourse left at the time of consolidation which is alleged to have been demolished by the petitioners and is not running. In pursuance of the application, the canal authorities ordered for restoration and digging of the watercourse left at the time of consolidation. However, before respondent No. 1-Superintending Canal Officer, the petitioners as well as private respondents gave assurance that they would bear the financial burden in case watercourse is made pucca as many times the watercourse had broken and caused damage to the crops. This fact has also been mentioned by the Zildar in his report and has not been disputed by learned

counsel for respondent No. 3. The parties admitted that watercourse left at the time of consolidation was carved out after imposing pro rata cut on all the shareholders of the village. In the case of Sajjan Singh v. Mukand Singh, 19850 R.R.R. 101 : 1984 PLJ 506, a Division Bench of this Court held as under:

"2. The appellant appears to be suffering from an apprehension so far as the factual and legal aspect of the matter is concerned. His stand firstly is that watercourse "ABC is being dug through his land and secondly, the Divisional Canal Officer could not issue any such direction under sections 20, 30-FF or 30-A of the Northern India Canal and Drainage Act, 1873 without the framing of a scheme for the digging of this watercourse. As already pointed out above, the area for the digging of this watercourse was demarcated or provided for during the consolidation proceedings and the canal authorities have obviously nothing to do with the providing of this area for that purpose. They are only utilizing that area by digging a watercourse therein. Thus the stand of the appellant that the watercourse is being dug through his land is totally baseless. Similarly, the above noted action of the Divisional Canal Officer in asking the subordinate authorities to dig the watercourse at the spot, is apparently not taken under the above noted sections. This also is the firm stand of the respondent authorities. According to them, they have ordered neither for the supply of water through any intervening watercourse as envisaged by section 20 nor for the restoration of any demolished watercourse as envisaged by section 30-FF. Similarly the Divisional Canal Officer has not ordered the construction or providing of a new watercourse for purposes of irrigation the lands of the owners concerned. As already pointed out, he has merely asked the subordinate authorities to dig up the watercourse in the area demarcated for the said purpose by the consolidation authorities which area, as already indicated above, does not belong to the appellant. We thus find that the action of the Divisional Canal Officer as referred to in Annexure "C" is not in any way violative of a rule or principle of law. We are also of the firm opinion that the appellant has no locus standi or right to ask for the non-utilization of the area demarcated by the consolidation authorities for the purpose concerned."

In view of the fact that watercourse was already left at the time of consolidation and also the fact that the parties agreed to incur the expenses for the pucca construction of watercourse at least to the extent of passing through their land, the impugned orders are set aside. Needful shall be done expeditiously by the canal authorities preferably within four months. The canal authorities shall ensure that watercourse is dug out and is made pucca in accordance with law. However, if the parties are not complying with the undertaking given to respondent No. 1, then the canal authorities will be at liberty to proceed in view of Section 30-FF (2) of the Northern India Canal and Drainage Act, 1873.

Disposed of in the aforementioned terms.