

(2020) 02 P&H CK 0143
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9614 Of 2015

Darshan Singh

APPELLANT

Vs

Superintending Canal Officer, Sirhind Canal Circle, Ludhiana
And Others

RESPONDENT

Date of Decision : 14-02-2020

Acts Referred:

Northern India Canal And Drainage Act, 1873 — Section 30FF

Citation : (2020) 02 P&H CK 0143

Hon'ble Judges : Sudhir Mittal, J

Bench : Single Bench

Advocate : Baltej Singh Sidhu, Vikas Mohan Gupta , Jagdev Singh Sidhu

Final Decision : Dismissed

Judgement

Sudhir Mittal, J

The dispute in the present writ petition is regarding restoration of a watercourse allegedly demolished by the petitioner. The private respondents moved

an application for change of warabandi in the year 2010 and vide order dated 10.02.2010, the learned Deputy Collector allowed the same. Aggrieved

by that order, the petitioner approached the Divisional Canal Officer by way of an appeal, which was allowed vide order dated 28.03.2012 (Annexure

P-5). The Divisional Canal Officer returned a finding that there was no KHAL in existence and thus, change of warabandi could not be permitted.

The private respondents challenged this order before the Superintending Canal Officer who, vide order dated 17.05.2012, remanded the case for a

fresh decision. On remand, the Divisional Canal Officer, vide his order dated 19.07.2012 sought a report from the Deputy Collector. The Deputy

Collector submitted a report dated 22.02.2013 finding that no watercourse was

in existence.

2. Meanwhile, respondent No.4 filed an application dated 13. 02.2013 (Annexure P-2) for restoration of a demolished watercourse. This application

was allowed vide order dated 02.07.2014 (Annexure P-3) passed by the Divisional Canal Officer and appeal of the petitioner was dismissed vide

order dated 29.01.2015 (Annexure P-4). Hence, the present writ petition has been filed.

3. Learned counsel for the petitioner submits that the report dated 22. 02.2013 of the Deputy Collector in the proceedings for change of warabandi

clearly finds that no watercourse was in existence on the spot. This finding has become final and thus, the authorities below were in error in allowing

the restoration application. It is further submitted that the warabandi on which reliance has been placed by the authorities below was 40 years old and

thus, no reliance could have been placed thereupon.

4. Learned counsel for the private respondents submits that in the change of warabandi proceedings, the Superintending Canal Officer had remanded

the case vide his order dated 17.05.2012 with a direction to determine the existence/otherwise of a watercourse on the basis of old warabandis. The

old warabandi was not perused after remand and an erroneous report dated 22.02.2013 regarding non-existence of the watercourse was given by the

Deputy Collector. However, in the same report, he had stated that an application under Section 30-FF of the Northern India Canal and Drainage Act,

1873 (hereinafter referred to as the Act) be filed for restoration of the watercourse, whereupon, the present application was filed. The learned

Divisional Canal Officer perused the old warabandis and allowed the application vide his order dated 02.07.2014. Old warabandis are the best

evidence of existence/otherwise of watercourses. He places reliance upon Ajit Singh and another vs. Superintending Canal Officer and others,

2017(1) RCR (Civil) 279.

5. Learned State counsel submits that during the course of hearing on 22.01.2019, a direction had been given to the State to file a specific affidavit

regarding the existence/otherwise of a watercourse with reference to the findings of the Deputy Collector in order dated 10.02.2010. Accordingly, an

affidavit dated 12.02.2019 of the Divisional Canal Officer has been filed and therein it has been specifically mentioned that a watercourse was in

existence and that the same has been demolished. Thus, the writ petition deserves dismissal.

6. From the sequence of events, it is evident that the private respondents demanded a change of warabandi on the ground that their land comprised in

Khata No.92 was not getting adequate irrigation. The filing of an application under Section 30-FF of the Act was necessitated on account of the

observations of the Deputy Collector made in order dated 22. 02.2013. While deciding this application, the Divisional Canal Officer has seen the old

warabandi and has come to a conclusion that a watercourse was in existence. This finding is supported by affidavit dated 12.02.2019 filed by the

Divisional Canal Officer pursuant to direction issued by this Court. In *Ajit Singh (supra)* it has been held that record of warabandi is the best evidence

of existence/otherwise of a watercourse. I respectfully agree with the ratio of the said judgment. In view of the material on record, the finding that a

watercourse was in existence is inescapable.

7. Thus, the writ petition has no merit and is dismissed.