
(2013) 01 P&H CK 0252
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 22579 of 2010

Gram Panchayat and Others

APPELLANT

Vs

Superintending Canal Officer and Others

RESPONDENT

Date of Decision : 14-01-2013

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Northern India Canal and Drainage Act, 1873 — Section 13, 24, 70

Citation : (2013) 3 RCR(Civil) 31

Hon'ble Judges : Rameshwar Singh Malik, J

Bench : Single Bench

Advocate : Namit Gautam, for the Appellant; Pankaj Mulwani, DAG, Punjab and Mr. Ashok Kumar Sama, Advocate for Respondent Nos. 3 to 6, for the Respondent

Final Decision : Allowed

Judgement

Rameshwar Singh Malik, J.—Feeling aggrieved against the impugned order dated 16.12.2009 passed by respondent No. 1, thereby dismissing the appeal of the petitioners upholding the order dated 21.11.2007 passed by respondent No. 2, vide which the water-course in question was ordered to be restored, at the instance of private respondents, petitioners have approached this Court by way of instant writ petition, under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari for quashing the afore-said impugned orders. Brief facts of the case are that the private respondents moved an application before the Divisional Canal Officer, Eastern Canal Division, Canal Colony, Ferozepur, for the restoration of water course, which was allegedly demolished by petitioner No. 2, thereby causing a prejudice to their rights adversely affecting irrigation of their land. Respondent No. 2 allowed the application vide order dated 21.11.2007, appended at Annexure P-2.

2. Dissatisfied with the order passed by respondent No. 2, petitioners filed an appeal before the Superintending Canal Officer, Ferozepur Canal Circle, Ferozepur-respondent No. 1, who dismissed the same vide order dated

16.12.2009, appended at Annexure P-3. Having been left with no other option, petitioners have approached this Court by way of present writ petition.

3. While issuing notice of motion on 13.1.2011, the following order was passed, by this Court:-

The gram Panchayat and two others have filed this writ petition. Vide the impugned orders, it has been directed that Khal CD be restored to its original position, the same having been demolished by Pardeep Kumar son of Jhanda Ram (petitioner No. 2).

Learned counsel contends that there never existed any Khal and therefore, there is no question of restoration of the same.

Learned counsel further states that in case there was a Khal, there would have been a wara-bandi. It was a relevant circumstance for the authorities under the Canal Act, to have been taken into account before ordering restoration of Khal.

Notice of motion for 9.2.2011.

In the meantime, Superintending Canal Officer, Ferozepur Canal Circle, Ferozepur, shall file reply clearly indicating the material available with the authority to indicate that there existed a Khal and there was a wari fixed for irrigation from the Khal.

4. In response to the above-said order, reply by way of affidavit dated 20.10.2011 of Sukhvir Singh, Divisional Canal Officer, Eastern Canal, Canal Colony, Ferozepur, was filed on behalf of respondent Nos. 1 and 2. However, despite the specific directions having been issued to the Superintending Canal Officer, Ferozepur Canal Circle, Ferozepur, to file reply clearly indicating the material available with the authority to indicate that there existed a Khal and there was a wari (turn of water) fixed for irrigation from that khal, no such reply was filed by respondent No. 1. A separate written statement was filed on behalf of respondent Nos. 3 to 6, but almost on similar lines.

5. Learned counsel for the petitioners vehemently contended that the impugned orders have been passed by the respondents-canal authorities without recording a finding, as envisaged u/s 30FF of the Northern India Canal and Drainage Act, 1873 (for short "the Canal Act"). He further submits that in the absence of the finding, as required by law to be recorded, the impugned orders were wholly without jurisdiction and not sustainable in law. He next contended that the impugned orders were also based on no evidence and without any supporting material available on the record. Finally, he prays for acceptance of the writ petition.

6. Per contra, learned counsel for the State submits that there was no illegality in the impugned orders passed by respondents-canal authorities and the orders under challenge deserve to be upheld.

7. Similarly, learned counsel for the private respondents, while supporting the

argument raised by learned counsel for the State, submits that there was no substance in the writ petition filed by the petitioners. He concluded by submitting that since the impugned orders were not suffering from any illegality, the writ petition was liable to be dismissed.

8. Having heard the learned counsel for the parties at a considerable length, after careful perusal of the record of the case and giving thoughtful considerations to the rival contentions raised, this Court is of the considered opinion that the impugned orders are not sustainable in law and the present writ petition deserves to be allowed. To say so, reasons are more than one, which are being recorded hereinafter.

9. It is the settled proposition of law that in the cases of restoration of allegedly dismantled water course, a positive finding has to be recorded before ordering the restoration that the water course was either sanctioned by law or sanctioned by agreement between the parties or has been prescribed by way of easement. If no such finding is recorded in view of the provisions of law contained in Section 30FF of the Act, order of restoration of a water course will not stand the test of judicial scrutiny. Since the present case revolves around the interpretation of the provisions of Section 30 F.F. of the Canal Act, it would be appropriate to reproduce the same, which reads as under:-

30-FF. (1) If a person demolishes, alters enlarges or obstructs a water-course or causes any damage thereto, any person affected thereby may apply to the Divisional Canal Officer for directing the restoration of the water course to its original condition. New Section 30-FF inserted by Punjab Act 23 of 1965, section 13.

(2) On receiving an application under sub-section (1) the Divisional Canal Officer may, after making such enquiry as he may deem fit, require by a notice in writing served on the person found to be responsible for so demolishing altering, enlarging, obstructing or causing damage, to restore at his own cost, the water-course to its original condition within such period as may be specified in the notice.

(3) If such person fails, to the satisfaction of the Divisional Canal Officer, to restore the watercourse to its original condition within the period specified in the notice served on him under sub-section (2) the Divisional Canal Officer may cause the watercourse to be restored to its original condition and recover the cost incurred in respect of such restoration from the defaulting person.

(4) Any person aggrieved by the order of the Divisional Canal Officer, may prefer an appeal within thirty days of the passing of such order to Superintending Canal Officer whose decision on such appeal shall be final.

(5) Any sum which remains unpaid within a period to be specified for this purpose by the Divisional Canal Officer may be recovered by the Collector from the defaulting person as if it were an arrear of land revenue.

10. Reverting back to the impugned orders passed in the present case, none of the orders is a speaking one. The initial order dated 21.11.2007 passed by the Divisional Canal Officer is a cryptic order on the face of it. The relevant part of this order reads as under:-

Persons came present have been heard. The arguments advanced by them have been considered. Case has been perused at length and found that the application of applicant is proved u/s 30-F.F. of Canal Act. As per the site inspection conducted by Sub Divisional Officer at the spot, no Khal is belonging to the applicant. As such, by accepting the demand of applicant, the portion C.D. of the Khal A.B.C.D. Is restored in its old condition. Respondent immediately start the Khal at the spot.

11. A bare reading of the above-said order would show that the Divisional Canal Officer failed to record any cogent finding before passing the order. Similarly, respondent No. 1 also fell in serious error of law while not recording any finding as required by law before upholding the above-said order granting restoration of the watercourse. The relevant part of the order dated 16.12.2009 passed by respondent No. 1 reads as under:-

Present appellant and respondent have been heard at length. The appellant demanded that we have not demolished any Khal, nor any Khal was in existence in my land, nor I am willing to give the Khal. As such, the appeal may be accepted. The respondent demanded that out of the Khal A.B.C.D. leading to my land, the appellant has demolished the portion of C.D., due to which, the irrigation of our field has been stopped. No other Khal is leading to our Tak. As such, the demolished C.D. Khal may be restored. Appeal be dismissed.

Verification conducted. Record has been perused. Report of Field Staff has been considered. They have recommended for restoration of the demolished C.D. Khal. There is no other Khal leading to the Tak of respondent. The appellant has not produced any solid proof regarding the non-existence of Khal at the spot. Taking into consideration the irrigation system and production of more yields and after taking into consideration the reports of Field Staff, the demolished Khal C.D. is restored u/s 30-F.F. Of Northern India Canal and Drainage Act 8 of 1873, Punjab Amendment 23 of 1965 by the undersigned by agreeing with the demand of the respondent. Appeal is dismissed. Meaning thereby the order dated 21/11/2007 passed by Divisional Canal Officer, Eastern Canal Division, Ferozepur, is maintained.

12. A bare perusal of the provisions of law, reproduced above, would show that Section 30 F.F. of the Act applies to a water-course, which has been lawfully brought into existence. The Divisional Canal Officer would always be under legal obligation to record a positive finding that the demolished water-course was one out of the three types of water-courses duly recognised by law. Further, he will be duty bound to refer to the relevant material available on the record to substantiate his finding. I say so because the authorities under the Act exercise

their quasi-judicial powers and they are supposed to give reasons, while passing a speaking order in conformity with the provisions of the Act, and rules made thereunder. It is the requirement of natural justice, as well.

13. In the present case, respondents-canal authorities have miserably failed to record a positive finding, referring to the relevant record that the water-course in question was falling in any one of the three categories of water-courses, as envisaged u/s 30 F.F. of the Act.

14. It is pertinent to note that the specific averment taken by the petitioners in para 6 of the writ petition that respondent No. -2 did not record any finding about the existence of water-course, has not been denied by the respondents. Para 6 of the writ petition and the corresponding paragraph of the written statement, filed on behalf of respondent Nos. 1 and 2 read as under:-

Writ petition:

6 That the order Annexure P2 passed by respondent No. 2 is non- speaking one. The respondent No. 2 had not given reasons for arriving at the conclusion reached at by him. The respondent No. 2 had not discussed the relevant merits and demerits of the case. The respondent No. 2 had not discussed all the relevant facts in respect of the present case. The respondent No. 2 did not give a specific finding as to whether, the alleged water course was existing at the site in question? The respondent No. 2 was duty bound to give a specific finding that as to whether, a water course was existing at the spot?

Written statement:

6. That the contents of para No. 6 of the petition are wrong and hence denied. Order Annexure P-2 was even passed after visiting the spot by the SDO Irrigation department.

15. Thus, it becomes clear that respondent No. 2 has not even denied the specific averments taken by the petitioners, in para 6 of the writ petition, despite the specific observation made by this Court in the order dated 13.1.2011, reproduced above. This makes the impugned order passed by respondent No. 2, wholly misconceived and unsustainable in law.

16. The view taken by this Court also finds support from the two Division Bench judgments of this Court in Joginder Singh v. The Sub-Divisional Canal Officer, Ghaggar Water Services Sub-Division, Tohana and others reported as 2003 (2) RCR (Civil) 768 followed in Yadwinder Singh v. Superintending Canal Officer and others, (CWP No. 289 of 2003) decided on 26.2.2004. The relevant observations made by the Division Bench in paras 8 and 9 of the judgment, which aptly apply in the present case, read as under:-

8. After hearing the counsel for the parties, this Court is of the opinion that this writ petition deserves to succeed. A bare look at the orders passed Annexure P-5 and Annexure P-6 indicates that these orders are non- speaking. Both

respondents No. 1 and 2 have failed to give any finding as to whether watercourse in dispute was sanctioned one or the same was running at the spot on the basis of an agreement between the parties or on the basis of some easement. No finding has been given whether the watercourse in dispute was temporary one or was a permanent one. Provisions of Section 30-FF of the Northern India Canal and Drainage Act, 1873 are similar to the provisions of Section 24 of the Act and a Division Bench of this Court in Jagar Singh Vs. Superintending Canal Officer, Hissar Bhakra Canal Circle, Hissar and others, , while interpreting the provisions of Section 30-FF and Section 70 of the Northern India Canal and Drainage Act, 1873, specifically held that these sections contemplate only three types of watercourses, that is:

- (a) sanctioned by law;
- (b) sanctioned by agreement between the parties and
- (c) which have been prescribed by way of easement.

It has further been held that a watercourse which does not answer the description of the watercourse set out above would surely fall outside the ambit of Section 70 and so also Section 30-FF.

9. Ratio of the above mentioned judgment squarely covers the dispute in the present case. Both the authorities below have passed non-speaking orders and no finding has been given as to in which category, watercourse in dispute will fall.

17. Respectfully following the law laid down by the Division Bench of this Court in Joginder Singh's case (supra), this Court feels no hesitation to conclude that since the respondents-canal authorities failed to record positive finding, the impugned orders suffer from patent illegality because of which, both the impugned orders are liable to be set aside.

18. No other argument was raised. Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, it is unhesitatingly held that the impugned orders dated 21.11.2007 and 16.12.2009 passed by respondent Nos. 2 and 1, respectively, suffer from patent error of law. In this view of the matter, the impugned orders are hereby ordered to be quashed. The matter is remitted back to the Divisional Canal Officer, Eastern Canal Division, Canal Colony, Ferozepur-respondent No. 2, for fresh decision on merits, in accordance with law, after giving due opportunity of hearing to both the parties.

Resultantly, the instant petition stands allowed. However, no order as to costs.