
(2008) 08 P&H CK 0050
In the Punjab And Haryana At Chandigarh

Hari Ram

APPELLANT

Vs

The Superintending Canal Officer, Yamuna Water Services
and Others

RESPONDENT

Date of Decision : 11-08-2008

Acts Referred:

Haryana Canal and Drainage Act, 1974 — Section 55

Citation : (2008) 152 PLR 116 : (2009) 1 RCR(Civil) 138

Hon'ble Judges : Satish Kumar Mittal, J; Daya Chaudhary, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish Kumar Mittal, J.—The dispute in this petition is about allotment of warabandi of outlet RD 72880-L, Rohtak distributory of village Sanghi, District Rohtak, u/s 55 of the Haryana Canal and Drainage Act, 1974 (hereinafter referred to as "the Act").

2. The petitioner moved an application u/s 55 of the Act before the Deputy Collector, Rohtak, for allotment of the warabandi. His prayer was that his "wari" be fixed after the "wari" of Ram Bhagat (respondent No. 4 herein). On the said application, report of the Zildar was sought who in his report recommended for the change of "Wari" as prayed by the petitioner. The Deputy Collector, after issuing notice to be effected persons, including respondent No. 4, and after providing opportunity of hearing to them, allowed the application of the petitioner, vide order dated 31.1.2002 (Annexure P-1) while observing that prayer of the petitioner was genuine.

3. Feeling aggrieved against the said order, respondent No. 4 Ram Bhagat filed an appeal before the Divisional Canal Officer, Water Services, Division Rohtak, which was dismissed vide order dated 19.4.2002 (Annexure P-2). Still not satisfied, respondent Ram Bhagat filed second appeal before the Superintending Canal Officer, Yamuna Water Services Circle, Rohtak, who also dismissed the appeal vide order dated 18.7.2002 (Annexure P-3), while observing as under:

Revenue Missal, Khakka plan and other relevant papers produced in the court examined. Arguments of both the parties heard and properly considered. The plea of the appellant that his "wari" may be fixed after the "wari" of the respondent has no merit because his holding is big. Moreover, the plea of the respondent that his "wari" is small and will finish in filling the water course has a merit. Keeping the above facts in view the appeal is rejected and D.C.O. Rohtak 5 Divn. Rohtak decision dt. 16.5.2002 is maintained.

It is admitted position that the said order became final between the parties as the same was not further challenged by respondent No. 4 in revision before the Chief Canal Officer.

4. After about two years of the passing of the above said order, respondent Ram Bhagat filed a fresh application before the Deputy Director, Gohana, u/s 55 of the Act for change of warabandi and prayed that his "wari" be fixed after the "wari" of the petitioner. The Deputy Collector, vide order dated 13.10.2004 (Annexure P-4), after taking into consideration the earlier decisions between the parties, as referred above, rejected the claim of respondent Ram Bhagat. However, it was observed that due to the high level of the area of Ram Bhagat, he should be given 15 minutes more time for filling his field.

5. Feeling aggrieved against the said order, respondent Ram Bhagat filed an appeal before the Divisional Canal Officer, Gohana. Before the Appellate Authority, his prayer was that his "wari" should be fixed after the petitioner at serial No. 13, because his fields and water course fall after the fields of petitioner Hari Ram, whose "wari" has been fixed at serial No. 13. The Divisional Canal Officer, vide the impugned order dated 24.6.2005 (Annexure P-5) has allowed the appeal filed by respondent Ram Bhagat and fixed his "wari" after the "wari" of petitioner Hari Ram, while observing as under:

From the close perusal of Khakaplan and scrutiny of relevant revenue record and after site inspection I find that the demand of applicant is quite genuine. The field and water course of respondent Sh. Hari Ram falls before the fields of Ram Bhagat. The fields of Sh. Hari Ram is in depression and field of applicant is in high level and the W/c refilled. Therefore, the decision of Dy. Collector dated 13.10.04 is hereby set aside and "warries" are fixed as under:

Sr. No. 11 Ram Kumar S/o Jage @TAB = Sr. No. 12 Hari Ram S/o Taken Sr. No. 13 Shri Ram Bhagat S/o Mauzi Ram Sr. No. 14 Gopi S/o Sahib Ram Sr. No. 15 Ram Phal S/o Bange and so on.

Decision given on 17.6.05 of conveyed to all concerned.

6. It is pertinent to mention here that while allowing the appeal of Ram Bhagat, the Divisional Canal Officer has not taken into consideration the fact that in the earlier litigation, the claim made by respondent Ram Bhagat about fixing his "wari" after the "wari" of Hari Ram was specifically rejected and the said order has become final. He has also not considered the fact that after considering the

earlier decision, the Deputy Collector has rejected the claim of respondent. Without noticing these facts, the Divisional Canal Officer has passed the aforesaid impugned order.

7. Feeling aggrieved against the said order, the petitioner filed an appeal before the Superintending Canal Officer, which has been dismissed while observing as under:

From the close perusal of the Khakha Plan, it is clear that there is no substance in the statement of the appellant because the DCO W/C Divn. Gohana has fixed the nakas rightly as per the principles of warabandi. It was also observed that the field boundary of appellant is only in a length of + acre along Water Course whereas the land of the respondent runs with the water course in 2-1/4 acres. Therefore, the respondent deserves to be fixed after the "wari" of the appellant. The appellant also needs to be compensated because he shall have to carry water from a length of 4 acres.

In this petition, the petitioner has challenged both the aforesaid orders.

8. Learned Counsel for the petitioner submits that on earlier occasion, the application filed by the petitioner before the Deputy Collector, Rohtak on 19.6.2001 for change of "wari" was allowed, after hearing the respondent, and after taking into consideration the warabandi prepared by the Patwari after spot inspection. Undisputedly, the said order became final between the parties, as the appeal and revision filed by the respondent against the said order were dismissed. Learned Counsel submits that once the matter was decided between the parties, the subsequent application filed by the petitioner u/s 55 of the Act for change of "wari" was not maintainable and the same was rightly rejected by the Deputy Collector, Gohana, but wrongly and illegally allowed by the Divisional Canal Officer as well as the Superintending Canal Officer.

9. Learned Counsel for the respondent No. 4 though does not dispute the aforesaid factual position as well as the decision in the earlier litigation to again consider the prayer of respondent No. 4 and his claim is accepted while taking into consideration the fact that field of the petitioner exists after the field of respondent No. 4.

10. After hearing learned Counsel for the parties and perusing the impugned order, we are of the opinion that the Divisional Canal Officer has acted illegally, while allowing the application of respondent No. 4 filed u/s 55 of the Act for change of "Wari" without taking into notice that in earlier litigation between the parties, the claim made by respondent No. 4 for fixing his "wari" after the "wari" of the petitioner was specifically rejected. A perusal of the order dated 13.10.2004 (Annexure P-4) passed by the Deputy Collector, Gohana, clearly indicates that he has rejected the application of respondent No. 4 while taking into consideration the earlier litigation between the parties, but the Divisional Canal Officer, even without considering the fact that the earlier litigation between the parties was finalized, has illegally allowed the appeal, while observing the

claim of respondent No. 4 is genuine.

11. In our opinion, once the dispute between the parties u/s 55 of the Act has been finalized, the same cannot be re-opened on the fresh application made by the defeated person.

12. In view of the above, this petition is allowed. Consequently, the orders dated 24.6.2005 and 5.9.2005 Annexures P-5 and P-6, passed by the Divisional Canal Officer and the Superintending Canal Officer are set aside and the order dated 13.10.2004, Annexure P-4, passed by the Deputy Collector, Gohana, is restored.