
(2002) 05 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 15388 of 2000

Joginder Singh

APPELLANT

Vs

Sub Divisional Canal Officer, Ghaggar Water Services Sub
Division, Tohana and others

RESPONDENT

Date of Decision : 09-05-2002

Acts Referred:

Citation : (2003) 2 LLR 281 : (2002) 2 PLJ 338

Hon'ble Judges : Swatanter Kumar, J and Jasbir Singh, J

Advocate : L.N. Verma, Advocate.S. Bhanot, D.A.G. Punjab, Vinod Gupta,
Advocate., Advocates for appearing Parties

Judgement

Jasbir Singh, J.—Petitioner has challenged the order dated 21.12.1999 (Annexure P5) passed by respondent No. 1 and order dated

16.9.2000 (Annexure P6) passed by respondent No. 2 and has prayed that a proper writ/order be issued to quash the above mentioned orders

having been passed illegally and without application of mind.

2. From the reading of the paper book, it comes out that private respondent No. 3 Smt. Parkasho Devi moved one application under Section 24

of the Haryana Canal and Drainage Act, 1974 (hereinafter referred to as "the Act") for restoration of the watercourse `CD" as shown in the Site

Plan (Annexure P1) situated in the command area of outlet RD 13125 TR Zabtewala minor. In that application, it was alleged that watercourse

"CD" was running at the spot and petitioner dismantled the same without any justification. The case was got investigated through Zileadar, who,

after recording statements of the parties and inspection of the site, recommended that watercourse `CD" as shown in the Site Plan (Annexure P1)

be restored at the spot. A notice of the application was sent to the petitioner,

who appeared and opposed the demand raised by respondent No.

3. Thereafter, spot was inspected by the Sub Divisional Canal Officer on 21.12.1999 and vide order Annexure P5 of even date, he opined that

demand of respondent No. 3 applicant is genuine and ordered the restoration of watercourse "CD" at the spot.

3. Petitioner feeling aggrieved by that order, filed an appeal under Section 24(4) of the Act before respondent No. 2, who, vide order dated

16.9.2000, dismissed the same. Hence, he has filed this writ petition to challenge the orders Annexures P5 and P6.

4. Upon notice, respondents appeared and filed their separate written statements. Respondent No. 3 in her written statement has controverted the averments made by petitioner in writ petition.

5. Counsel for the parties heard.

6. Sh. L.N. Verma, Advocate appearing on behalf of the petitioner has vehemently contended that no watercourse, as restored, vide impugned

orders, ever existed at the spot. Authorities below have not given any finding as to whether this watercourse is a sanctioned one or was carved out

by an agreement between the parties or the same was running on the basis of some easement. He further stated that even no finding has been given

by the authorities whether the watercourse in dispute was a temporary one or otherwise. He stated that order passed by respondent No. 1 is

nonspeaking one and has been passed without application of mind. He further argued that when an attempt was made by private respondent to dig

watercourse in dispute forcibly, petitioner alongwith other cosharers filed a suit in the Civil Court. In that suit, application under Order 39 Rules 1

and 2 of CPC was moved for temporary injunction and after hearing both the parties, Civil Court came to a conclusion that watercourse was not

running on the spot and granted an injunction in favour of the petitioner on 18.8.1999, restraining the private respondent from digging out any

watercourse on the suit land forcibly, except in due course of law. He further stated that pending litigation before Civil Court and interim order

passed therein was brought to the notice of the authorities below, but they, very conveniently, chose not to refer the same. He further stated that

the land of the private respondent touches sanctioned watercourse, which is shown in Annexure P1 site plan as "ABDE" in blue colour. He stated

that the petitioner is the owner of Khasra Nos. 1 to 8 and Rectangle No. 47 but she moved an application before the authorities below by omitting to show his entire land.

7. Shri Vinod Gupta, Advocate appearing for respondent No. 3, controverted the arguments raised by petitioner. He stated that the watercourse was running on the spot and it was forcibly dismantled by the petitioner and now it has rightly been restored by the competent authority. He further stated that dismantled watercourse was ordered to be restored after spot inspection, and no other watercourse except disputed watercourse "CD" touches the land of the petitioner. He further argued that orders passed by the authorities below are self explanatory and have been passed after proper appreciation of the facts on file.

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 P5 and Annexure P6 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 30FF 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 v. Superintending Canal Officer and others*, 1972 PLJ 147, while interpreting the provisions of Section 30FF 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 30FF.

9. Ratio of the above mentioned judgment squarely covers the dispute in the present case. Both the authorities below have passed nonspeaking

orders and no finding has been given as to in which category, watercourse in dispute will fall.

10. It is also necessary to mention here that the authorities even have not given finding that the watercourse was a temporary watercourse and was

running at the spot for a period not less than six months prior to the date of its demolition. Under these circumstances watercourse in dispute

cannot even be treated as a temporary watercourse and can be restored.

11. Shri Verma, by referring to Site Plan Annexure P1, Jamabandi for the year 199899 Annexure P2 and Copy of ""Aks Shajra"" Annexure P3

contends that Babu Ram husband of respondent No. 3 is the owner of Khasra Nos. 1 to 8 of Rectangle No. 47 and his land touches another

sanctioned watercourse shown as "ABDE" in Site Plan (Annexure P1). He further stated that all these documents were on record but authorities

below have failed to give any finding thereon.

12. This argument of counsel for the petitioner prima facie seems to be justified.

13. A reading of the orders passed clearly indicates that these facts were not noticed by the authorities below. Authorities under the Act are

exercising the quasijudicial powers and are supposed to give reasoning and pass a speaking order in conformity with the provisions of the Act and

Rules. Application of mind is clearly lacking in this case, as such, dispute requires proper enquiry and investigation at the level of Canal Authorities.

14. In view of the reasoning given above, writ petition is allowed and orders Annexures P5 and P6 are quashed. Matter is remitted back to the

Sub Divisional Canal Officer, Ghaggar Water Services Sub Division, Tohana, District Fatehabad for fresh decision on merits, as per law, after

giving proper opportunity of hearing to both the parties. No order as to costs.