
(2014) 11 P&H CK 0045
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 7504 of 2013

Lakhwinder Singh

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 20-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Northern India Canal and Drainage Act, 1873 — Section 20 30-A 30-FF

Citation : (2015) 3 RCR(Civil) 756

Hon'ble Judges : Paramjeet Singh, J

Bench : Single Bench

Advocate : Ashok Goel, Advocate for the Appellant; Deepa Singh, Addl. A.G.,
Advocate for the Respondent;

Final Decision : Dismissed

Judgement

Paramjeet Singh, J.

1. Instant writ petition has been filed under Article 226 of the Constitution of India for setting aside the order dated 05.03.2013 (Annexure P-5) passed by respondent No. 2-Superintending Canal Officer, Bhakhra Main Line Circle, Patiala and order dated 17.01.2013 (Annexure P-4) passed by respondent No. 3-Divisional Canal Officer, Devigarh Division, Patiala, District Patiala whereby restoration of alleged dismantled watercourse by the petitioner has been ordered without considering the revenue records specifically Aks Latha. In short, brief facts of the case are to the effect that the petitioner, respondent No. 7 and others are co-sharers as shown in jamabandi for the year 2006-07 and their land is being irrigated through canal water from Outlet No. 14452-L Rajwaha Rasoli Minor. Respondent No. 7 along with his father is in possession of khasra No. 11//20/1, 12//16, 17, 18, 14 and khasra No. 12//13, 14 and some area of 12//16, 12//19/2 duly irrigated by the aforesaid outlet. There is no khal in existence in rect. No. 12 and khasra No. 13. The same has been wrongly ordered to be restored by the authorities and the impugned orders are not sustainable in

the eyes of law. However, the said watercourse was never a running watercourse and never came in existence. The petitioner has not demolished the same.

2. Upon notice, respondents No. 1 to 6 filed reply with the averments that watercourse was left at the time of consolidation and watercourse "DE" was in existence in rect. No. 12//13 and 14, as a result of which, irrigation of private respondent was being done. Similarly, it is pleaded that impugned orders are legal and valid. Watercourse "BCDE" as shown in site plan Annexure P-3 was left at the time of consolidation of holdings out of which portion "DE" in rect. No. 12, khasra No. 13 was dismantled and same has rightly been ordered to be restored.

3. I have heard learned counsel for the parties and perused the record.

4. It is the case of the petitioner that respondent No. 7 has wrongly filed application for restoration of watercourse allegedly left at the time of consolidation. Actually, it was never in existence and it was never running at any point of time. In pursuance of the application, the canal authorities have ordered for restoration of the watercourse "DE" dismantled in rect. No. 12, khasra No. 13.

5. It needs to be specifically mentioned that vide order dated 13.10.2014, parties were directed to produce the jamabandi to show that watercourse was left at the time of consolidation and bears khasra number. The vernaculars were brought by the Zildar as well as respondent No. 7. As per the jamabandi, watercourse was left during consolidation at the place starting from killa No. 18/1 as shown in Annexure P-2 and then it comes along side abadi bearing khasra No. 134 and as per the revenue record, this watercourse has been given khasra No. 204 and total area of this watercourse from the starting of outlet till its end has been shown as 21 kanals and 18 marlas and in the jamabandi for the year 2011-12, it has been shown to be as gair mumkin khal. Otherwise also, area has been deducted killa numbers and watercourse has been carved out accordingly from the respective killa numbers and thereafter it runs in straight line which is clearly visible in the site plans Annexures P-2 and P-3 and watercourse runs through rect. No. 12, 13, 14, 18, 25, 23, 24 dismantled part of watercourse is shown in site plan (Annexure P-3) as "DE"

6. In the case of Sajjan Singh v. Mukand Singh 1985 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 utilising 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 an 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-utilisation of the area demarcated by the consolidation authorities for the purpose concerned."

7. Admittedly, the watercourse in question was left at the time of consolidation after imposing cut in the respective khasra numbers and specific khasra No. 204 has been assigned to it. Restoration of watercourse left at the time of consolidation has been ordered by the canal authorities. In view of the fact that watercourse was already left at the time of consolidation, this Court does not find any illegality or perversity in the impugned orders.

8. Dismissed. No order as to costs.