
(2011) 01 P&H CK 0073
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1643 of 2011

Manohar Singh

APPELLANT

Vs

Superintending Canal Officer and Others

RESPONDENT

Date of Decision : 28-01-2011

Acts Referred:

Haryana Canal and Drainage Act, 1974 — Section 24

Citation : (2011) 162 PLR 602 : (2011) 5 RCR(Civil) 677

Hon'ble Judges : Ajai Lamba, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajai Lamba, J.—Challenge in this petition is to Order dated 19.7.2010 (Annexure P-1) passed by Respondent No. 3 i.e. Sub Divisional Canal Officer, Deosar Water Services Sub Division, Hisar; Order dated 18.10.2010 (Annexure P-3) passed by Respondent No. 2 i.e. Divisional Canal Officer, Hisar Water Services Division, Hisar; and Order dated 15.12.2010 (Annexure P-5) passed by Respondent No. 1 i.e. Superintending Canal Officer, Bhakra Water Services Circle No. 1, Hisar.

2. It appears that an application was submitted by a number of persons to the Zileadar for report and verification to the effect that the Petitioner has a house close to the water course. Rain water drainage of the house is damaging the water course and also polluting the water being carried in the water course for various purposes.

3. An enquiry was conducted whereupon Respondent No. 3 i.e. Sub Divisional Canal Officer, Deosar Water Services Sub Division, Hisar, found that Respondent (Petitioner herein) had installed a gargoye (Patnala) on the roof of his house, water of which falls in the water course that causes damage, time and again to the water course. So as to maintain the water course and avoid damage to the water course, orders have been passed directing the Petitioner to remove the gargoye (Patnala).

4. It needs to be noticed that in order, Annexure P-1, following has also been recorded:

On 29.6.2010 the Respondent by coming present made statement that he is unable to remove the gargoyles in such a short period because for the damage of water the roof of the house has to be broken. The spot inspection in this case was conducted on 3.7.2010.

5. Consideration of the above extracted portion indicates that the Petitioner accepted that water course was being damaged and therefore undertook to remove the gargoyles, however, sought time for the said purpose.

6. The Petitioner, however, carried an appeal to the Divisional Canal Officer, Hisar Water Services, Division Hisar. Relevant portion from order (Annexure P-3) passed by the Divisional Canal Officer reads as under:

Decision: From the perusal of revenue record, Civil Court decision other related record, Khaka plan and pleading and argument of the parties have been persuaded and considering in detail. The Appellant encroached upon the berm of the lined water course, while constructed his house on plot in murba No. 66/3 and also unauthorizedly left mori and fixed an Gargoyles on the roof of house which discharge polluted water and water falls on the bank of the lined water course and cause damage the water course outlet RD 21300/R Harita Minor which used for irrigation and cattle drinking. By this cause Appellant is putting obstruction in smooth use of Canal Water. So it is clearly case comes u/s 24 of the Canal Act. I directed Appellant to remove the mori and Gargoyles immediately. Hence decision of SDCO Deosar, Water Services Sub Division is upheld and appeal is dismissed.

7. Petitioner further carried proceedings to the Superintendent Canal Officer who has held that he had no jurisdiction to hear the matter in view of the fact that it arises out of a case u/s 24 of the Haryana Canal & Drainage Act, 1947.

8. On facts, I find that other than admission of the Petitioner, as disclosed from extracted portion above, from the site plan, it has emerged that the Petitioner has encroached upon the berm of the lined water course while constructing his house on a plot in Murba No. 6673. The Petitioner has also unauthorizedly left a mori and fixed a gargoyles on the roof of house from which water is discharged on the bank of the lined water course. The said offending act of the Petitioner caused damage to the water course outlet RD 21300/R Harita Minor which is used for irrigation and cattle drinking purposes. In such circumstances, I find that the authorities have acted within their legal jurisdiction in directing removal of obstruction in smooth use of canal water.

9. Learned Counsel has tried to develop an argument that u/s 24 of the Haryana Canal & Drainage Act, removal of gargoyles could not have been ordered.

10. On a reference to Section 24 of the Act *ibid*, it transpires that if a person causes any damage to a water course or obstructs a water course, he can be

proceeded against and he can be directed to restore the water course at his own cost. In view of such legal position, the argument addressed by the learned Counsel does not hold good.

11. In equity also, the Petitioner has no case, in so much as, for his personal convenience, the water from the roof is being drained in the pacca water course, causing damage to the water course that is used for common purposes. Thus in law or in facts, the Petitioner cannot succeed.

12. The petition is accordingly dismissed.