



CWP-23455-2024 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP-23455-2024 (O&M)
Date of Decision: 12.12.2024**

Sukhdev Singh and others

....Petitioners

Versus

Superintending Canal Officer, Ludhiana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. S.K. Singla, Advocate
for the petitioners.

Mr. Baltej Singh Sidhu, Senior Advocate assisted by
Mr. Gurpreet S. Brar, Advocate and
Mr. Kanwarpal S. Randhawa, Advocate
for the respondents.

HARSH BUNGER, J. (Oral)

Petitioners have filed the instant Writ Petition under Articles 226/227 of the Constitution of India seeking a writ in the nature of Certiorari for setting aside order dated 28.06.2024 (Annexure P-5), passed by the Superintending Canal Officer, Sirhind Canal Circle, Ludhiana.

2. Briefly, respondent No.3- Amanat Singh filed an application before the canal authorities seeking restoration of watercourse/*khal* from point C-D-E in the site plan (Annexure P-2) on the plea that the same has been illegally demolished by the petitioners.

2.1 It appears that the concerned *ziledar* submitted a report that there was a watercourse which was running from point A-B-C (as depicted



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in Annexure P-2), however, there was no watercourse in existence from point C-D-E. It was also stated that the area of respondent No.3-Amanat Singh was having another *kachha* watercourse from point L-M and there was also a pipeline existing there, which touches the area of respondent No.3-Amanat Singh.

2.2 It transpires that the learned Divisional Canal Officer while relying upon the aforesaid report, rejected the claim of respondent No.3 for restoration of watercourse vide order dated 19.07.2023 (Annexure P-1), however, on an appeal filed by respondent No.3, the matter was remanded to the learned Divisional Canal Officer vide order dated 04.12.2023 (Annexure P-3) passed by the learned Superintending Canal Officer.

2.3 On remand, the learned Divisional Canal Officer, again rejected the claim of respondent No.3 vide an order dated 12.03.2024 (Annexure P-4).

3. Being aggrieved against the aforesaid order dated 12.03.2024 (Annexure P-4), respondent No.3 preferred an appeal before the learned Superintending Canal Officer, which came to be allowed vide order dated 28.06.2024 (Annexure P-5); whereby the order dated 12.03.2024 (Annexure P-4) was set aside and a direction was issued for restoration of the watercourse from point C-D-E as claimed by respondent No.3.

4. In the aforementioned facts and circumstances, the petitioners have filed the instant writ petition before this Court for the reliefs as noticed above.

5. I have heard learned counsel for the petitioner as well as learned counsel representing the respondents.



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6. In the present case, the learned Superintending Canal Officer has allowed the claim of respondent No.3 for restoration of watercourse at point C-D-E by observing as under:

“Decision: On 28.06.2024, the file was again examined. The record added with the case and the decision of the Divisional Canal Officer, Bathinda Canal & Ground Water Division, Bathinda dated 12.03.2024 were also considered. The arguments advanced by both the parties on the date of hearing and record submitted by them were also seen. From examining the complete file and record it is clear that the decision of Divisional Canal Officer, Bathinda Canal & Ground Water Division, Bathinda dated 12.03.2024 does not seem to be correct because the Deputy Collector, Bathinda had sanctioned new warabandi under Section 68 on 12.07.2022 and in the said warabandi, the Illaqa Zildar after carrying out the spot inspection of Pucca and Katcha watercourses which were running at the spot, the Nakkas were fixed thereon. The other party Angrej Singh son of Darshan Singh etc. themselves have admitted in their statements that by considering the small water channels as watercourse the Nakkas have been fixed, from this it is proved that the katcha watercourses were running at the spot and the same were used by the other party for the irrigation of their area. When new warabandi was sanctioned by the Deputy Collector, no objection was raised by any shareholder of the Outlet from which it is clear that the watercourse is duly sanctioned in warabandi. The Divisional Canal Officer, Bathinda Canal & Ground Water Division, Bathinda has not given any attention that due to non-sanctioning of this watercourse, the irrigation of 05-06 shareholders falling ahead on this watercourse shall also be stopped. The mention made by the Divisional Canal Officer, Bathinda Canal & Ground Water Division, Bathinda regarding



sanctioning of Nakka on the Pipeline, it is the private property of somebody. Therefore it is clear from the above mentioned facts that the decision of the Divisional Canal Officer, Bathinda Canal & Ground Water Division, Bathinda dated 12.03.2024 is not correct and is set aside. In the interest of better irrigation of the appellant and other shareholders falling on the above watercourse, the watercourse shown at Point-C-D-E in the site plan added with the case is hereby restored. This decision is being rendered under Section 30-FF of the Northern India Canal & Drainage Act 8-1873 Punjab Amendment Act 23-1965.

As this decision was kept reserved, therefore both the parties be informed in writing about this decision.”

6.1 A perusal of the above extracted findings returned by the Superintending Canal Officer would manifest that while allowing the restoration of watercourse, the Superintending Canal Officer has relied upon an order dated 12.07.2022 passed under Section 68 of the Northern India Canal and Drainage Act, 1873 whereby a new *warabandi* has been sanctioned after carrying out spot inspection of *pucca* and *kachha* watercourses running at the spot and the *nakkas* were fixed thereon.

6.2 It appears that the present petitioners had admitted the fixation of *nakkas* on the small water channels by considering the same as watercourse. The learned Superintending Canal Officer has observed that when new *warabandi* was sanctioned by the Deputy Collector, no objection was raised by any of the shareholders of the outlets and therefore the watercourse was duly sanctioned in the *warabandi*. It has further been observed that due to non-sanctioning of the watercourse, the irrigation of 5-6 other shareholders falling ahead of this watercourse shall also be stopped.



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7. At this stage, learned counsel representing the petitioners had attempted to persuade that the watercourse cannot be ordered to be restored merely on the basis of *warabandi* and that too without recording a finding as to whether the watercourse is a sanctioned watercourse or not.

8. It is well established that in order to see the existence of a watercourse, *warabandi* is one of the important documents. It is also an established position that if the *warabandi* is sanctioned and the same is not challenged, then the restoration of the watercourse on the basis of said sanctioned *warabandi* is taken to be sanctioned watercourse.

8.1 This Court in the case of “*Ajit Singh v. Superintending Canal Officer*”, 2017(1) RCR (Civil) 279, held that “*Warabandi*” is the best proof of turn of canal water for irrigation.

8.2 Further, the observations made by this Court in the case of “*Brij Lal v. State of Punjab*”, 1985 RRR 76; are also apt, which are as under:-

“...What is more in the written statement filed on behalf of respondents Nos. 1 to 3, it has been clearly mentioned that on the water course warabandi has been sanctioned in favour of the aggrieved share-holders under Section 68(4) of the Act to which no objection had been taken by the petitioner at any stage. In view of the above fact either by implication the water-course would be taken as a sanctioned water course or in any case it would be taken that the petitioner had agreed to the use of the said water-course by the respondent-shareholders and that is why no objection had been raised when the department sanctioned warabandi on the said water course giving right to the respondent shareholders to take water through that water course to their fields...”

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9. In the present case as well, the canal authorities have ordered restoration of watercourse on the basis of sanctioned *warabandi*.

10. When the above fact is seen in the light of what has been observed by this Court in case of ***Brij Lal (supra)***, it can be safely held that the watercourse in question be taken as a sanctioned watercourse and/or in any case, it would be taken that the concerned shareholders (*including the predecessors of the petitioners*) of the watercourse in question; had agreed to the use of the said watercourse by the respondent No. 3 and also the other shareholders.

11. In view of above discussion, I do not find any merit in the instant civil writ petition and same is accordingly dismissed.

12. All pending application(s), if any, shall stand closed.

12.12.2024*Himani***(HARSH BUNGER)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No