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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-23780-2024 (O&M)
Date of Decision: 23.10.2024

Chander Bhan and another

....Petitioners

Versus

The Superintending Canal Officer, Hisar and others

....Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. R.N. Lohan, Advocate
for the petitioners.

Ms. Upasana Dhawan, AAG, Haryana.

HARSH BUNGER, J. (Oral)

Petitioners have filed the instant Writ Petition under Articles 226/227 of the Constitution of India seeking issuance of writ in the nature of Certiorari for quashing the order dated 29.07.2024 (Annexure P-7) passed by the Superintending Canal Officer, Bhakra Water Services Circle No.1, Hisar (in short 'the S.C.O.').

2. Briefly, the petitioner No.1 submitted an application for lining of the watercourse 'A' to 'B', in the length of 6 killas in the *chak* of outlet RD 15240-TR, Siswal, Sub Minor No.2. The said application is stated to have been allowed by the Divisional Canal Officer, Adampur Water Service

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Division, Hisar vide order dated 23.12.2019, however the same was subject to the confirmation by the learned S.C.O.

3. The petitioners along with others submitted another application dated 01.01.2024 before the Sub Divisional Canal Officer, Adampur (Hisar) for restoration of the watercourse on the plea that the watercourse which was running on the western side of Rectangle No.333//21 had been dismantled by respondent No.4- Sh. Mahender Singh s/o Sh. Banwari Lal.

3.1 The said application came to be allowed by the learned Sub Divisional Canal Officer, Adampur vide order dated 20.02.2024 (Annexure P-3) whereby a direction was issued to restore the watercourse on the western line (dol) of Killa No.333//21 of the watercourse AB.

3.2 Thereafter, respondent No.4 preferred an appeal before the Divisional Canal Officer under Section 24 (4) of the Haryana Canal and Drainage Act, 1974 (in short '1974 Act') challenging the order dated 20.02.2024 (Annexure P-3), however, the said appeal was dismissed vide order dated 03.06.2024 (Annexure P-5).

3.3 Thereafter, respondent No.4 preferred the Revision Petition before the learned S.C.O., which came to be allowed vide order dated 29.07.2024 (Annexure P-7) and the matter was remanded back to the Sub Divisional Canal Officer for conducting field investigation afresh.

4. In the aforementioned circumstances, the petitioners have filed the instant Writ Petition before this Court for the reliefs as noticed above.

5. Learned counsel for the petitioners submits that the impugned order dated 29.07.2024 (Annexure P-7) is without jurisdiction as an order passed by the Divisional Canal Officer under Section 24 (4) of the 1974 Act is final and no further appeal is maintainable. It is submitted that the learned

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S.C.O. has failed to consider and appreciate the pleaded case of the petitioners, who had applied for restoration of the watercourse. It is further submitted that existence of watercourse AB was proved from the *warabandi* of the year 1988 which was duly sanctioned by the Deputy Collector, Adampur on 07.04.1988, and the same was further upheld by the Divisional Canal Officer vide order dated 13.05.1988 (Annexure P-8).

6. Learned counsel for the petitioners next submitted that the learned S.C.O. has failed to appreciate that the learned Sub Divisional Canal Officer had inspected the spot on 15.02.2024 and had found the evidence of dismantled watercourse in the length of 1 acre and thus, there was no dispute regarding the identity of the watercourse, accordingly, it is submitted that the learned S.C.O. has erred in setting aside the orders passed by learned Sub Divisional Canal Officer/Divisional Canal Officer, and further remanding the matter to the Sub Divisional Canal Officer for fresh decision. With the aforesaid submissions, a prayer has been made for setting the order dated 29.07.2024 (Annexure P-7) passed by learned S.C.O.

7. I have heard learned counsel for the petitioners and perused the paper-book with his able assistance.

8. As regards the first contention that the impugned order (Annexure P-7) is without jurisdiction, I do not find any merit in the same as a similar issue has already been decided by this Court vide order dated 22.08.2024 passed in **CWP-17828-2024** titled as ***Manoj vs. State of Haryana and others***. In view of the above referred decision, the aforesaid contention of the petitioner that impugned order suffers from jurisdictional error, is hereby rejected.

8.1 Further, the petitioners had approached the Canal Authorities

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seeking restoration of the demolished watercourse AB, running on the western (dol) of Rectangle No.333//21. The learned Sub Divisional Canal Officer vide order dated 20.02.2024 (Annexure P-3) ordered restoration of the watercourse as claimed by the petitioners and even an appeal filed by respondent No.4 against the order passed by the Sub Divisional Canal Officer was also dismissed. However, on a revision petition filed by respondent No.4, learned S.C.O. has set aside the orders passed by the Sub Divisional Canal Officer/Divisional Canal Officer; vide the impugned order dated 29.07.2024 (Annexure P-7) by holding as under:

“Decision:-

I have gone through the record contained in the revenue missal, including khaka plan. Arguments of the parties for and against the restoration of watercourse have also been considered at length.

No doubt the disputed watercourse was demolished at site and irrigation of the area located on Northern side of the lined watercourse running on the common line of rectangles No. 332-349 of village Siswal, Tehsil Adampur Distt, Hisar has been stopped. Thus restoration of the demolished watercourse is obligatory on the part of irrigation Department. But during initial field investigations the field staff has failed in establishing the important fact that whether the disputed watercourse was running in rect./killa No 332//5,6,15,16 & 25 or in rect./killa No. 333// 1,10,11,20 & 21. Even the major significant issue that the pucca nakka/field opening was constructed in rect./killa No. 332//25 or 333//21 has also not been investigated correctly.

Clear position is depicted from the site photograph as submitted by the petitioner Mohinder Singh that the pucca nakka is located in rect./ killa No. 332//25. Thus it is established that the watercourse was running in rect./killa No

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332//5,6,15,16 & 25 prior to its demolition. Resultantly, the trial as well as appellate Courts have wrongly restored the watercourse on other side without confirming the actual facts/site conditions.

In the light of facts enunciated above, the under signed reaches the conclusion that the issue needs detailed fresh field investigations prior to arriving la finale. Thus the case is hereby remanded to the Sub Divisional Canal Officer, Adampur Water Services Division Hisar for conducting field investigations afresh and redeciding the issue on merits after hearing the parties establishing the actual location of pucca nakka and considering all pros and cons of the issue.

Decision taken on 29.07.2024 and be conveyed to all concerned.”

9. A perusal of the above extracted order passed by the learned S.C.O. would show that there is no dispute as regards the fact that the watercourse was demolished at the site and that the irrigation of the area had been stopped and also that the restoration of the demolished watercourse was obligatory on the part of the department. However, the learned S.C.O. has observed that the field staff had failed to establish that whether the disputed watercourse was running in Rectangle/Killa No.332//5, 6, 15, 16 and 25 or in Rectangle/Killa No.333//1, 10, 11, 20 and 21. It is further observed that even the location of the *pakka naka* had not been established as to whether the same was constructed in Rectangle/Killa No.332//25 or 333//21. Although the learned S.C.O. has observed that the *pakka naka* is located in Rectangle/Killa No.332//25 and that the watercourse was running in Rectangle/Killa No. 332//5, 6, 15, 16 and 25 prior to its demolition, however, the learned S.C.O. thought it appropriate to remand the matter to the learned Sub Divisional Canal Officer, Adampur to carry out detailed

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fresh field investigations prior to arriving at any final conclusion as regards the location of the existence of the *pakka naka* and also the watercourse in question.

10. In my considered view, the matter has been remanded by the learned S.C.O. only with a view to ensure that the demolished watercourse is constructed at its exact location where it was running prior to its demolition. Learned counsel for the petitioners has failed to show as to what prejudice has been caused to the petitioners with the order passed by the learned S.C.O. as the findings on the issue of demolition of watercourse as well as the liability of the department to restore the demolished watercourse has been affirmed.

11. In view of the above, I do not find merit in the instant Writ Petition, therefore, the same is accordingly dismissed.

12. All pending applications (if any) shall also stand closed.

23.10.2024
Himani

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No