

CWP No.12221-2012

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

CWP No.12221-2012

Date of Decision: 10.12.2015

Telu Ram

... Petitioner(s)

Versus

Superintending Canal Officer, Bhakra Water Services Circle-I, Hisar and
others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed
to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

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

Mr. Sandeep S. Mann, Sr. DAG, Haryana.

Ms. Harpriya Khaneka, Advocate,
for respondent No.4.

Paramjeet Singh, J.

Instant writ petition has been filed under Articles 226/227 of
the Constitution of India for setting aside the order dated 16.05.2012
(Annexure P-4) passed by respondent No.1-Superintending Canal
Officer and the order dated 03.11.2011 (Annexure P-2) passed by
respondent No.3-Deputy Collector, Water Services Division, Hansi.

Brief facts of the present case are to the effect that respondent
No.4-Ram Phal moved application to the Sub Divisional Officer, Water
Services, Hansi that *bharai-jharai* (residue) be given to his fields. In

CWP No.12221-2012

pursuance of the application, matter was referred to the Deputy Collector, Hansi, W/S Division Hansi under Section 55 of the Haryana Canal and Drainage Act, 1974 (hereinafter referred to as 'the 1974 Act'). The case was got investigated through Zileadar, who made recommendations in favour of applicant-respondent No.4. Vide impugned order dated 03.11.2011 (Annexure P-2), respondent No.3-Deputy Collector after considering the statements came to the conclusion that respondent No.4 is entitled for *jhara* at the inter-section of *Naka* taking point 69//24 x 70//5 and *Naka* giving point (delivery) 89//1 x 9. Thereafter, the petitioner preferred appeal before respondent No.2-Divisional Canal Officer, who vide order dated 13.01.2012(Annexure P-3) set aside the order dated 03.11.2011 passed by the Deputy Collector holding that land of Rangi son of Dhan Singh falls prior to the land of Mange Ram son of Dhan Singh on lined watercourse at point 70//7 x 15. Thereafter, respondent No.4 filed revision before respondent No.1-Superintending Canal Officer who vide impugned order dated 16.05.2012 (Annexure P-4) set aside the order dated 13.01.2012 passed by the Divisional Canal Officer, Hansi and found that the Divisional Canal Officer has not considered location of taking point of respondent No.4 and principle that land located at the distant most point on the watercourse or on its branch would get benefit of *jhara*. Respondent No.1 also came to the conclusion that *naka* taking point for respondent No.4 is at 69//24 x 70//5, however, the Divisional Canal Officer has wrongly considered the *naka* taking point and thereby has made an error

CWP No.12221-2012

in judging the rightful claimant for *jhara*. Hence, this writ petition.

In pursuance of notice of motion, respondent No.1 filed reply with the averments that holdings of Chhabila is located upstream of the petitioner whereas holdings of respondent No.4 lies downstream of holdings of the petitioner. The water taking point for respondent No.4 is at 69//24 x 70//5 which is closer to the holdings of the petitioner. The distant killa of respondent No.6 lies at distance of 1452 ft. from the taking point (69//24 x 70//5) whereas holdings of the petitioner is located at a distance of only 792 ft. (4 acres only) and therefore, respondent No.4 has rightly been allowed the benefit of *jhara*.

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

Before proceeding further, it would be apposite to reproduce relevant provisions necessary for disposal of the present controversy.

Section 55 of the 1974 Act reads as under:

“Section 55 : Power of Deputy Collector to order use or distribution of water and settlement of differences:

55. (1) The Deputy Collector may, if in his opinion it is necessary so to do, pass an order as to the use or distribution of water from a watercourse amongst persons in any estate or a group of estates or in any holding or group of holdings in such estate or estates :

Provided that no such order shall be passed by the Deputy Collector without making any inquiry into the matter and without giving a notice to all the persons interested that, on a day to be named in such notice, he shall proceed to inquire into the said matter.

(2) Whenever a difference arises between two or more persons in regard to their mutual rights or liabilities in respect of the use, construction or maintenance of a watercourse, any such person may apply in writing to the Deputy Collector stating the matter in dispute.

(3) On receipt of an application under sub-section (2) the Deputy Collector shall give notice to the other persons interested that, on a day to be named in such notice, he shall proceed to enquire into the said matter, and after the inquiry he shall pass an order thereon.

(4) An order passed under sub-section (1) or sub-section (3) as to the use or distribution of water for any crop sown or growing at the time when such order is made or with regard to the construction or maintenance of a watercourse shall, subject to an order passed on appeal or revision under sub-sections (5) and (6), be final.

(5) An appeal shall lie to the Divisional Canal Officer against an order referred to in sub-section (4) within a period of thirty days from the date of such order.

(6) The Superintending Canal Officer within whose jurisdiction the watercourse is situated, may, suo motu or on an application made in this behalf by an aggrieved person, revise an order passed in appeal by a Divisional Canal Officer under sub-section (5) :

Provided that no such application shall lie unless it is made within a period of thirty days from the date of such order.

(7) No order passed under this section shall be liable to be called in question in any civil court.”

CWP No.12221-2012

Rule 6 of the Haryana Canal and Drainage Rules, 1976 (in short 'the 1976 Rules') reads as under:

Rule 6. Alteration in outlet : *No alteration in outlet shall be carried out during the period from the 11th May to the 30th September and from the 16th November to the 31st March without obtaining the prior approval of the Chief Canal Officer.*

Provided that in cases involving increase in size of outlet, or alteration sanctioned at the request of all the irrigators, alteration may be made at any time."

Instructions 5, 6 and 8 of Appendix E of Punjab Irrigation Manual read as under:

"5. Method of framing of wahr-bandi. - Wahr-bandi should be framed in accordance with the following principles. When alterations are proposed, the principle to be followed should be that those desired by the majority of the shareholders should be accepted, subject in equity to the interests of the minority being safeguarded.

6. Period of rotation. - The period of rotation of a wahr-bandi may be fixed-

(a) As an integral number of days.

The number most usually used are seven and ten.

The former has the advantage that, when operation is continuous, a share holder's turn always occurs at the same time on the same day of the week. The length should generally conform with that usual in the district, which will be suitable for use with the periods of the rotational distribution of the canal concerned.

(b) An odd number of half-days.

A disadvantage of the integral number of days is that in the continuous operation it affords no relief from turns occurring at night. This is avoided by this method.

(c) From the size of the chaks.

In this case, the turns are calculated from a fixed time allowance per unit of area usually 12 hours per square. This system has the disadvantage that, in the case of very large or small chaks the water received during a turn may be more or less than is suitable for a single watering.

8. Order of turns. - The order of turns should be definitely laid down in accordance with one of the following systems:-

(a) Down the watercourse, i.e. in order of distance of the off-take from the outlet. In this case, the order proceeds down the main watercourse to the head of the first branch; then down the branch before continuing down the main watercourse. Similarly as regards sub-branches.

(b) Round the watercourse i.e. down one bank and up the other branches being treated as in (a) above.

The later system has the advantage that it distributes lead and nikal more evenly, but the former system is generally preferable as holdings usually lie on both sides of a watercourse.

Where two or more holdings are served by off-takes close together and lead or nikal is of importance, the order of turns should alternate between the holdings.”

CWP No.12221-2012

It may be mentioned here that Section 68 of the Northern India Canal and Drainage Act, 1873 is *pari materia* to Section 55 of the 1974 Act.

It is the general principle that turns of water are required to be fixed on the basis of '*first come first serve*', meaning thereby whose land falls first on the watercourse, he/she should be given the turn first. Perusal of site plan (Annexure P-5) reveals that watercourse is going upstream. First of all, the land of Chhabila comes, as shown in sky blue colour, touching the pucca watercourse, as shown with green colour, at point 'A'. It is the matter in dispute in the present case as to whom, Chhabila will give the turn of water. Admittedly, after the land of Chhabila, the watercourse reaches the fields of Rangi, as shown with orange colour. It is not the case of Rangi that he had got two separate *waris*, i.e. one touches the land of petitioner (Telu Ram son of Mange Ram) and other touches the land of Chhabila. Only one *khata* has been allotted to Rangi son of Dhan Singh and so far as land of Telu Ram son of Mange Ram is concerned, from the perusal of record, it transpires that earlier land was joint between Rangi and Mange Ram, father of the petitioner, who were brothers and they appears to have partitioned the land. During partition, land shown with orange colour came to the share of Rangi and land shown with violet colour came to the share of Mange Ram. If the principle of '*first come first serve*' is applied between Rangi and Mange, the land as shown in orange colour first touches the

CWP No.12221-2012

watercourse which is just parallel to the land of Chhabila. In this manner, *jhara* (residue) will go to the last person i.e. Mange son of Dhan Singh. Another thing which has been admitted by the Divisional Canal Officer, present in Court that *Naka* has been wrongly fixed qua the rights of Rangi because a part of land of Chhabilla is adjacent to the land of Mange and a part prior to that touches the land of Chhabila. It means that Naka taking and naka giving points were firstly with Chhabila, who is required to give turn of water to Rangi and thereafter Mange is entitled for the turn of water from Rangi. If Rangi had two separate turns, i.e. one for two kills which is just touching the land of Chhabila and another for his other killas. In such circumstances, he could have claimed *jhara*. Here, in the present case, there is only one *khata* of Rangi. The turn of Mange will come after the turn of Rangi and, therefore, he will be entitled to *jhara*. In the alternative, if two turns of Rangi are fixed, both the lands will come parallel and it would only happen if Rangi gets two separate turns i.e. one for two acres adjoining the land of Chabbila and another parallel to the land of Mange. The *jhara* can be given alternatively in view of Instructions 8 of Appendix E of Irrigation Manual.

In view of above, instant petition is allowed and the impugned order dated 16.05.2012 (Annexure P-4) and 03.11.2011 (Annexure P-2) are set aside and order dated 13.01.2012 (Annexure P-2) passed by the Divisional Canal Officer is restored. It will be open for respondent No.4

CWP No.12221-2012

to approach the Deputy Collector for two separate turns. On doing so by respondent No.4, the Deputy Collector will decide the *jhara* in accordance with law.

10.12.2015
parveen kumar

(Paramjeet Singh)
Judge