

CWP-10024-2015

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

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Date of Decision:26.08.2015

Krishan Kumar

... Petitioner(s)

Versus

The Sub Divisional Canal Officer, Dhanger Water Services Sub
Division, Fatehabad 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. Ashok Verma, Advocate,
for the petitioner.

Mr. Rajneesh Chadwal, DAG, Haryana.

Mr. Radhey Shyam Sharma, Advocate,
for respondent Nos.4 and 5.

Paramjeet Singh, J.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the order dated 10/16.04.2015 (Annexure P-11) passed by respondent No.3-Superintending Canal Officer, Bhakra Water Services Circle, Fatehabad.

Brief facts of the case are to the effect that the petitioner

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filed application before the canal authorities for restoration of watercourse 'CD' emerging from outlet RD-64070/L Munshiwala Minor, Village Dhani Thoba, Tehsil and District Fatehabad under Section 24 of the Haryana Canal and Drainage Act, 1974 with the averments that respondent Nos.4 and 5 have dismantled the watercourse 'CD' as shown in site plan Annexure P-1. The holdings of petitioner is shown with red colour and that of the private respondents with blue colour in the site plan (Annexure P-1). The demolished watercourse 'CD' has been shown in the site plan with marks of 'dashes' over blue line indicating demolished portion of the watercourse. It is the case of the petitioner that he is owner of 32 kanals 8 marlas comprised in rect. No.3 killa No.24 (0-13) Chahi, Rect. No.10 killa No.4(7-11), 7(8-0), 8(8-0), 13(8-0) and 14/1 (0-4), Nehri. The said land was being irrigated from watercourse 'BCDE' and now watercourse 'CD' has been demolished. The parties are relatives and earlier the land was joint and it has been partitioned. It is also averred that with dismantling of watercourse, irrigation of land of the petitioners shown with red colour, has been affected. Respondent No.1-Sub Divisional Canal Officer ordered the restoration of watercourse in dispute, vide order dated 07.07.2014 (Annexure P-8). Against that, respondent Nos.4 and 5 preferred appeal before the Divisional Canal Officer, Fatehabad which has been dismissed vide order dated 07.11.2014 (Annexure P-9). Against that, respondent Nos.4 and 5 filed revision before respondent No.3-Superintending Canal

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Officer which has been allowed vide impugned order (Annexure P-11).

Hence, this writ petition.

In pursuance of notice of motion, respondent Nos.1 to 3 have filed written statement with the averments that watercourse in dispute 'CD' was neither a consolidation watercourse, nor it was sanctioned under law. The watercourse has not remained in existence for more than six months and it is purely a temporary watercourse arranged by the share holders and a temporary watercourse on its demolition, can be restored only for six months in order to meet with emergent necessity of canal water to the crop of the shareholders. The Sub Divisional Canal Officer and Divisional Canal Officer have rightly held the watercourse in dispute as temporary watercourse and ordered the same to be restored for a period of six months only. The impugned order (Annexure P-11) has been passed in accordance with law.

Respondent Nos.4 and 5 also filed reply with the averments that the petitioner had got fixed his '*wari*' without watercourse prior to Khata No.17 and stated that they will arrange the watercourse at their own level. Accordingly, the Deputy Collector, Fatehabad vide its order dated 07.06.2010 fixed the *warabandi* without existence of water course. As there was no watercourse in existence and, therefore, the same cannot be restored.

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

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Admittedly, to prove the existence of watercourse, it is necessary to place on record certain documents specifically *warabandi*. However, Zildar concerned has come present along with record including *warabandi*. Perusal of the record including *warabandi*, brought by Zildar, reveals that turn of water of petitioner has been fixed without existence of watercourse. Once *warabandi* clearly indicates that the same has been fixed without watercourse, question of existence of watercourse does not arise. Otherwise also, the Sub Divisional Canal Officer has recorded a finding that no sanctioned watercourse was existing and only '*Bhaichara*' (brotherly) watercourse was in existence. He has only ordered for restoration of watercourse for six months on temporary basis and that period too has already expired.

Admittedly, land holdings of the petitioner is there which needs watercourse. The parties were also present in the Court and an offer was made to one of the private respondents that they can take land equivalent to the watercourse 'CD' or may take compensation in lieu thereof, but he refused to accept any of the proposals, rather submitted that he is not ready to provide watercourse. So far as the impugned order (Annexure P-11) is concerned, the same is not illegal or perverse. However, the land of petitioner is surrounded by the land of private respondents and area of the petitioner falls under the cultural command area and it is fit for irrigation, therefore, the petitioner can apply for carving out of watercourse by way of acquisition of land. The petitioner

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will be at liberty to move application before the authorities concerned for acquisition of land in order to provide watercourse to him in accordance with law. In case the land is acquired for the watercourse, the petitioner shall incur the expenses of acquisition and compensation be paid to the person whose land will be acquired. If the petitioner moves appropriate application before the authorities concerned, needful shall be done expeditiously preferably within six months.

Disposed of.

26.08.2015
parveen kumar

(Paramjeet Singh)
Judge