

CWP No. 21030 of 2014

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

**CWP No. 21030 of 2014
Date of Decision : 23.09.2015**

Bharpur Singh

...Petitioner

Versus

Superintendent Canal Officer and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

Present: Mr. Vijay Sharma, Advocate for the petitioner.

Mr. S.S. Chandumajra, Addl. A.G., Punjab.

Mr. I.S. Mann, Advocate for respondent No. 3.

Mr. Munish Kumar Singla, Advocate for respondent No. 4.

Paramjeet Singh, J.(Oral)

In pursuance of the order dated 19.09.2015 Sh. Dalbir Singh Dhaliwal, Divisional Canal Officer and Sh. Ashish Midha, Superintending Canal Officer are present in Court. Sh. Ashish Midha, Superintending Canal Officer, Patiala has filed affidavit in Court today. The same is taken on record.

The instant writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the orders dated 17.09.2014 (Annexures P-4 and P-5) passed by respondent No. 1 and

order dated 10.12.2013 (Annexure P-3) passed by respondent No. 2.

Brief facts of the case are that respondent No. 4 moved an application before respondent No. 3 for amendment of the warabandi. In pursuance of that, after considering the site plan got prepared from Circle Canal Patwari and statements of concerned co-sharers, Ziledar submitted report to the Deputy Collector and recommended that the application of respondent No. 4 may be filed for the reasons that the length of watercourse ACD going to land of petitioner is more than the length of watercourse AB of the respondent No. 4. It was further recommended that the existing wari is correct. The Deputy Collector after considering the claim of the respective parties, passed the following order :-

“During the hearing of this case applicant argued that his land is after the land of respondent. Therefore, his wari be fixed at last branch AB and residue be given to him whereas respondent has opposed the statement of applicant and argued that his land is at end of branch ACD, therefore, he is entitled to residue at last branch.

File was perused. Both parties were heard. Report of Ziledar Manwala was seen. Ziledar has recommended to file the application of applicant and from revenue record also the right of respondent is proved that on watercourse ACD his land is at end. Therefore, as per departmental instructions the wari is kept as it is on first come first basis, meaning thereby the right of respondent to residue is upheld.”

Aggrieved against the said order, respondent No. 4

approached the Divisional Canal Officer. The Divisional Canal Officer set-aside the order of Deputy Collector in a cryptic manner. Against that, petitioner preferred a revision, which has also been dismissed by the SCO vide order dated 17.09.2014 (Annexure P-4). Hence this writ petition.

In pursuance of the notice of motion, parties appeared and reply was filed. It was one of the grounds in the reply that the turn of water has been fixed in accordance with law, no prejudice will be caused to the petitioner in this regard, therefore, the petitioner is not entitled to residue water (Nikal). Principle of first come first serve has been applied.

Sh. Dalbir Singh Dhaliwal, Divisional Canal Officer, Mansa Division and Ashish Midha, Superintending Canal Officer, Patiala are present in Court. They have tried to explain the impugned orders passed by them.

I have heard learned counsel for the parties, perused the record and have given a thoughtful consideration to the arguments raised by learned counsel for the parties.

Perusal of the warabandi (Annexure P-9) reveals that petitioner is having separate khatas and for each separate khata warabandi was earlier existing in the name of petitioner. The part of land has been sold by the petitioner for which a separate khata was carved out.

The khata of the father of the petitioner is 47 and 49 and khata of the

petitioner is 48. Perusal of site plan Annexure P-8 shows that the land of the petitioner and his family, which is shown in Pink colour, falls at the end of the watercourse ACD. Earlier Nakka of the petitioner was at Rect. No. 118, killa Nos. 8, 12 and khata of father of the petitioner was at Rect. No. 73, killa Nos. 3 and 7. The land of the petitioner and his parents shown in Pink colour comes at the fag end i.e. point D, where watercourse end. The land of respondent No. 4 shown in yellow colour is prior to the land of the petitioner.

The turns of water are fixed following the principle of first come first serve. The land of respondent No. 4 comes first, hence, its turn of water will come first. The land of petitioner and his family is at fag end of watercourse.

The residue water is to be given to the petitioner as his land is at the fag end of watercourse. The turns of water can be alternative, only if both the parties have their lands together at the end of the watercourse. In the present case, this is not the situation. Accordingly, the impugned orders dated 17.09.2014 (Annexures P-4 and P-5) and 10.12.2013 (Annexure P-3) are set-aside. The order passed by the Deputy Collector dated 06.11.2013 (Annexure P-2) is restored.

This Court would have imposed costs upon the Officers as the DCO has not recorded any reasons. The order is non-speaking and cryptic, which cannot be sustained in any manner. After looking at the order of the DCO, the SCO should have at least remanded the matter for

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re-consideration. Instead of doing that the order dated 17.09.2014 (Annexure P-4) has been passed by the SCO, which apparently appears to be wrong and contrary to the provisions of irrigation manual. Since the DCO and SCO have felt sorry in Court, this Court restrains from imposing the costs.

Disposed of.

September 23, 2015.
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(PARAMJEET SINGH)
JUDGE