

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

CWP-27613-2013

Date of decision : 31.03.2015

PARAMJIT SINGH & ANR

...Petitioners

V/S

SUPERINTENDING CANAL OFFICER & ORS

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Sandeep Khunger, Advocate for the petitioners.

Mr. SPS Tinna, Advocate for the respondent No.3

Mr. Anil Dutt, Advocate for the respondent Nos.4 and 5

JITENDRA CHAUHAN, J. (Oral)

Prayer in the present petition filed under Articles 226 and 227 of the Constitution of India is for quashing the order dated 27.09.2013 (Annexure P-10) whereby respondent No.1 remanded the case back to the Divisional Canal Officer, Abohar with a direction that the case be considered again after hearing both the parties.

It is submitted that petitioners are the owners of a small piece of land. The land owned by the petitioners has been shown in green colour whereas the land owned by respondent Nos.3 to 5 has been shown in light blue colour in the site plan.

On 19.11.2012 (Annexure P-2) the respondent Nos.3 to 5 demolished the watercourse A-B-C, (Annexure-8), meant for the irrigation of the land of the petitioners, accordingly the petitioners

submitted an application to the Divisional Canal Officer, under Section 30-FF for the restoration of the water course. According to the provisions of Section 30-FF of the Act, if a person demolishes, alters or obstructs a water course or a temporary watercourse, the same is liable to be restored to its original condition.

The application of the petitioner dated 19.11.2012 was marked to the Sub Divisional Officer and the Sub Divisional Officer further marked the same to the concerned Zileadar, the spot was inspected by the Zileadar. The Zileadar recorded the statements of the petitioners and other shareholders namely Kashmir Singh Member Panchayat and also the joint statement of Jagtar Singh, Harbhajan Singh, Sukhraj Singh and Jugraj Singh was recorded (Annexure P3 to P5).

After recording the statements of the petitioners and other shareholders, the Zileadar recorded a finding of fact that watercourse from A-B-C had been demolished on the spot. It may be mentioned here that due to mistake in the application, Killa No.13 was mentioned instead of 17 whereas the water course demolished was in existence in Rectangle No.18 and Killa No.7/2-14-17. The Zileadar in his report dated 26.12.2012 (Annexure P-6) duly recorded that the watercourse was existed in Killa No.7/2-14-17 had been demolished at the spot (Annexure P-6).

The Sub Divisional Officer on receipt of the report from

the Zileadar himself inspected the spot and found that watercourse A-B-C had been demolished on the spot. Apart from this, it was also recorded that the petitioners have produced on record the certified copy of the site plan of Punjab State Tubewell Corporation Limited, perusal of which go to prove that a pucca watercourse was in existence on the spot, which stands demolished. Accordingly, the SDO recommended for the restoration of the watercourse.

The Punjab Tubewell Corporation Limited is a Corporation which has been entrusted the task of brick lining the watercourses in the State of Punjab. The watercourse in question shown as A-B-C in the site plan as Annexure P/1 also finds mention in the record maintained by the Punjab State Tubewell Corporation Limited and has been marked as P-P-1-P2 in the said plan.

After receipt of the case in the office of the Divisional Canal Officer, notices were issued to the petitioners as well as to respondent Nos.3 to 5. The Divisional Canal Officer considered all aspects of the case and held that prior to and after the demolished watercourse A-B-C, the watercourses were in existence from which it is proved that the watercourse A-B-C has been demolished. The site plan issued by the Punjab State Tubewell Corporation Limited was also considered and in the said site plan watercourse A-B-C was shown to be in existence. Therefore, considering the demand of the petitioners vide order dated 23.01.2013, the Divisional Canal Officer, ordered for

the restoration of the water course A-B-C.

Aggrieved against the order dated 23.01.2013 passed by the Divisional Canal Officer, the respondent Nos.3 to 5 approached the Superintending Canal Officer by filing an appeal. The Superintending Canal Officer without considering the reports submitted by the Zileadar as well as the Sub Divisional Officer and also a detailed finding of fact recorded by the Divisional Canal Officer by passing totally a non-speaking and cryptic order observed that the petitioners in their application have submitted that watercourse has been demolished in Killa No.7/2-14-13 of Rectangle No.18 whereas the Divisional Canal Officer has ordered for the restoration of the watercourse from Killa No.7/2-14-17 which does not tally with each other, therefore, it is prayed that the said decision may be reviewed and accordingly remanded the case to the Divisional Canal Officer to pass a fresh order.

On the other hand, learned counsel for the private respondents state that he was not served in the proceedings before the Divisional Canal Officer.

I have heard the rival contentions of both the parties and perused the relevant documents.

The provisions of Section 30-FF of the Act as reproduced in Para No.4 of the petition, reads as under:-

30FF (1) If a person demolishes, alters enlarges or obstructs a water course or a temporary water course or cause any damage thereto, any person

affected thereby may apply to the Divisional Canal Officer for directing the restoration of the water course or the temporary water course to its original condition.

(2) On receiving an application under Sub Section (1) the Divisional Canal Officer may, after making such enquiry as he may deem fit, require by a notice in writing served on the person found to be responsible for so demolishing, altering, enlarging obstructing or causing damage to restore at his own cost, the water course or the temporary water course to its original condition within such period as may be specified in the notice.

(3) If such person fails to the satisfaction of the Divisional Canal Officer may cause the water course or the temporary water course to be restored to its original condition and recover the cost incurred in respect of such restoration along with a penalty not exceeding one thousand rupees as may be imposed by the Divisional Canal Officer from the defaulting person.

(4) Any person aggrieved by the order of the Divisional Canal Officer may prefer an appeal within thirty days of the passing of such order to Superintending Canal Officer whose decision on such appeal shall be final.

(5) Any sum which remains unpaid within a period to be specified for this purpose by the Divisional Canal Officer may be recovered by the Collector from the defaulting persons as if it were an arrear of land revenue.”

Considering the fact that case of the parties is that the water course is passing through the Kila No. 17, the typographical mistake appears to be inadvertent.

Accordingly, the order dated 27.09.2013 (Annexure P-10) is hereby quashed and the parties are directed to appear before the Superintending Canal Officer on 04.05.2015, who will re-examine the matter after going through the orders passed by the DCO and the original application made by the petitioner wherein the details of the area have been mentioned by him.

Keeping in view the fact that the water course A-B-C has been demolished and there is no independent alternate source of irrigation available to the petitioner, needful shall be done within 6 weeks from the receipt of certified copy of this order

31.03.2015

ashok

(JITENDRA CHAUHAN)
JUDGE