

CWP No. 4167-2014

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

CWP No. 4167-2014

Date of Decision: 13.01.2015

Sukhdev Singh

... Petitioner(s)

Versus

Superintending Canal Officer, Bhakra Water Services Circle, Sirsa 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. J.S.Thind, Advocate,
for the petitioner.

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

Mr. Ashok Verma, 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 23.05.2011 (Annexure P-3) passed by respondent no.3-Deputy Collector, Rori Water Services Division, Sirsa and order dated 14.10.2011 (Annexure P-5) passed by respondent no.2-Divisional Canal Officer, Rori Water Services Division, Sirsa and order dated 28.11.2011 (Annexure P-7) passed by respondent no.1-Superintending Canal Officer, Bhakra Water Services

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Circle, Sirsa whereby 'Nikal' (residue of water) has been allotted to respondent no.4.

Brief facts of the case are that on the application of Jai Pal son of Kishori Lal, resident of village Lohgarh, District Sirsa, case was taken up by respondent no.3-Deputy Collector under Section 55 of the Haryana Canal and Drainage Act, 1974 (in short, 'the 1974 Act') to set up *Warabandi* of outlet No.RD-1720-L Fatehpur Minor Distributary of village Lohgarh. The Deputy Collector after hearing the parties decided the claims of various persons. The claims of respondent no.4 and petitioner were decided as under:

Jagroop Singh-respondent no.4:

“4. Sh. Jagroop Singh son of Sampuran Singh khata no.73 stated that according to the proposed warabandi jhara (residue) has given khata no.75 but we are entitled to the same thus residue be given to us.

Decision:

Demand is genuine. His holding falls on the length w/c. Hence jhara is allowed to khata no.77. Bharai Jharai be adjusted as per location of holdings. Decision be conveyed dated 19.05.2011.”

Sukhdev Singh-petitioner

“7. Sh. Sukhdev Singh son of Ajmer Singh khata no.75 has stated that after hearing the statement of khata no.73 of Jagroop Singh son of Sampuran Singh. Our turn of water has proposed by the Ziledar which is correct because my water course is lengthy and residue of mine be remained as it is.

Decision:

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Decided at sr. No.4 dated 19.05.2011.”

Against that, the petitioner preferred appeal before respondent no.2-Divisional Canal Officer which has been dismissed vide impugned order dated 14.10.2011 (Annexure P-5). Feeling aggrieved, the petitioner preferred revision before respondent no.1-Superintending Canal Officer which has also been dismissed vide impugned order dated 28.11.2011 (Annexure P-7). Hence, this writ petition.

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

Learned counsel for the petitioner has vehemently contended that Khata number of the petitioner is 69 and 'tak' of the petitioner falls at the end of the main watercourse which starts from outlet RD-1720-L Fatehpur Minor and goes along with the Gang Canal. Out of the main watercourse, two branch watercourses emerge i.e. one from rect. nos.24 leading upto khata no.67 which is not relevant for deciding the controversy in hand and second is along with the red line which irrigates fields of khata nos.70, 74 and 75. The flow of water of second watercourse is south to north. Learned counsel further contended that since 'tak' of the petitioner i.e. khata no.69 falls on the main watercourse at the end and field of respondent no.4 falls on the branch watercourse, the petitioner is entitled to the residue of water as per his entitlement. The impugned orders passed by the canal authorities are non-speaking, without recording any reasons and following the principles of fixing turns of water.

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Per contra, learned counsel for respondent no.4 has vehemently opposed the contentions of learned counsel for the petitioner and contended that length of watercourse leading to his fields is more, as such residue of water has been rightly given to respondent no.4. Learned counsel further contended that since holding of the petitioner is less, therefore, he cannot be granted residue entirely beyond his entitlement and remaining residue is required to be given to respondent no.4 whose holding is at the end of branch watercourse.

Learned State counsel endorsed the arguments made by learned counsel for respondent no.4 and submitted that the impugned orders have been rightly passed by the irrigation authorities in accordance with law.

I have considered the rival contentions of learned counsel for the parties.

Admittedly, the main watercourse starts from outlet No.RD-1720-L where rect. no.39 is mentioned in site plan (Annexure R-1). It goes along the Gang Canal. The first branch watercourse emerges towards north out of this main watercourse and leads to khata no.67. Thereafter, the second branch watercourse emerges along with the red line which is a passage and passes through khata nos.70, 74 and thereafter turns towards khata no.75 belonging to respondent no.4. Then, the main watercourse continues and firstly it touches khata no.68. Thereafter, it ends at the land of the petitioner at khata no.69. The perusal of site plan (Annexure R-1) reveals that main watercourse goes along with the Gang Canal and ends at khata of the petitioner. From the

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main watercourse, two branch watercourses arise. The watercourse which irrigates the fields of respondent no.4 is along side the passage shown with red line in site plan (Annexure R-1). It irrigates the fields falling in khata nos.70, 74 and 75. Order of turns of water and residue are fixed as per the Instruction 8 of Appendix E of Punjab Irrigation Manual which reads as under:

“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 offtakes close together and lead or nikal is of importance, the order of turns should alternate between the holdings.”

The Instruction 8 of Appendix E of Punjab Irrigation Manual provides that order of turns are fixed down the water course i.e. in order of distance of the off-take from the outlet meaning that down the

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watercourse to the head of the first branch and then down the branch before continuing down the main watercourse. Even order of turns of sub branches will also be in the same manner. It also provides similar procedure for round the watercourse. When two or more holdings are served by off-takes close together and lead or nikal (residue) is of importance, the order of turns should alternate between the holdings.

In view of admitted position that first turns of water are to be fixed on the first branch watercourse which leads to khata no.67, which though is not relevant in this case. The second branch watercourse goes upto the field of respondent no.4. Thereafter, water runs into the main watercourse and the same ends at the khata of the petitioner. In this manner, the residue is required to be given to the petitioner to the extent of his holdings. It has been pointed out by learned State counsel as well as learned counsel for respondent no.4 that residue is much more than the entitlement of the petitioner. As such, he cannot consume the entire residue and the same is required to be distributed amongst other shareholders as per their entitlement.

In CWP-16139-2011, titled '*Dharambir vs. The Deputy Collector, Adampur Water Services Division, Hisar and others*', decided on 13.10.2014, this Court has held that firstly the main watercourse is to be determined and thereafter turn of water are fixed and residue should go at the end of the main watercourse and if residue remains more than the entitlement of a person, the same shall be distributed amongst the shareholders as per the provisions.

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Thus, the canal authorities have erred in allowing entire residue to respondent no.4 and holding that his turn falls at the end. The impugned order (Annexure P-3) passed by the Deputy Collector is non-speaking and no reason has been recorded for giving the residue to respondent no.4, although he is at the fag end of second branch watercourse and his holding also appears to be smaller. The main watercourse ends at the fields of the petitioner. Even the Divisional Canal Officer and Superintending Canal Officer had agreed with the order of Deputy Collector without recording any reason. In these circumstances, the impugned orders are otherwise also not sustainable being non-speaking, cryptic and no reference has been made to the rules and how the turns of water and residue have been fixed.

In view of above, the impugned orders (Annexures P-3, P-5 and P-7) are set aside and matter is remanded to respondent no.3-Deputy Collector for fresh decision after recording the reasons and referring to the rules of fixing turns of water specifically Instruction 8 of Appendix E of Punjab Irrigation Manual.

Parties through their counsel are directed to appear before Deputy Collector on 28.01.2015.

13.01.2015
parveen kumar

(Paramjeet Singh)
Judge