

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.953 of 2003

Date of decision: 27.09.2016

Ram Singh

... Petitioner

Vs.

The Sub Divisional Canal Officer and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Ashok Verma, Advocate
for the petitioner.

Mr. R.K. Doon, AAG, Haryana.

Mr. Mukund Gupta, Advocate
for respondent No.3.

RAMESHWAR SINGH MALIK, J. (ORAL)

Instant writ petition is directed against the order dated 25.11.2002 (Annexure P-6) passed by Divisional Canal Officer, Tohana Water Services Division, Tohana, whereby the operation of watercourse in question, shown as AB in the site plan (Annexure P-1), was ordered to be restored.

Notice of motion was issued and status quo was directed to be maintained between the parties, vide order dated 21.01.2003 passed by a Division Bench of this Court. Contesting respondent No.3 filed his written statement. Short reply was filed on behalf of respondents No.1 and 2. The writ petition was admitted for regular hearing vide order dated 16.10.2003 passed by a Division Bench of this Court. That is how, this Court is seized of the matter.

Heard learned counsel for the parties.

It is a matter of record that initially the order dated 02.08.2001 (Annexure P-3) was passed by Sub Divisional Canal Officer, dismissing the application of respondent No.3 seeking restoration of watercourse AB, alleging that this portion of watercourse was dismantled by the petitioner. That order dated 02.08.2001 was challenged by respondent No.3 before Divisional Canal Officer, who accepted his appeal vide order dated 28.08.2001 (Annexure P-4), ordering restoration of watercourse AB. Petitioner felt aggrieved and approached this Court by way of CWP No.15952 of 2001, which was allowed by a Division Bench of this Court vide order dated 26.04.2002 (Annexure P-5).

Relevant operative part of the order dated 26.04.2002 passed by a Division Bench of this Court, at page 26 of the paper book, reads as under: -

“Reading of the order, reproduced above, would show that Divisional Canal Officer did not apply his mind to the facts of the case at all. The officer did not even choose to go through the order passed by Sub Divisional Canal Officer and the reasons given by him. The impugned order is cryptic and non-speaking and has come into being without taking into consideration the rival contentions of the parties. That being so, the order passed by Divisional Canal Officer, impugned in the present petition, needs to be set aside. So ordered. The matter is remitted to Divisional Canal Officer to decide the appeal afresh by passing a well reasoned and speaking order after noticing the contentions of the parties.”

In compliance of the abovesaid order passed by this Court, Divisional Canal Officer, vide his impugned order dated 25.11.2002 (Annexure P-6) maintained his earlier order dated 28.08.2001 (Annexure P-4), again

ordering restoration of watercourse AB.

A bare perusal of the site plan (Annexure P-1) would make it crystal clear that the watercourse starts from Point C and goes upto Point D. This watercourse goes on the killa line of Killa Nos.25-21, 16-20, 15-11 and 6-10. Once this watercourse goes on the dividing line of these khasra numbers, there was no reason as to why this should not go straight on the killa line.

The only argument on merits of the case raised by learned counsel for respondent No.3 is that because there was some depression in his land from point A to B, this was the reason that from point A to B, there was a curve in the watercourse. However, giving anxious consideration to the solitary contention raised by learned counsel for respondent No.3, the same has been found wholly misplaced, which is not worth acceptance. It is so said because providing curves, in the otherwise straight watercourse, would cause only wastage of water and it would serve nobody's purpose. Giving curves in the straight watercourse would be contrary to the basic principle of better irrigation. Even if there was some depression from point A to B, there would have been no difficulty for respondent No.3 to raise the level of watercourse from point A to B by putting some quantity of earth, if it was so required.

Another technical argument raised by learned counsel for respondent No.3, regarding availability of alternative remedy to the petitioner, is to be noted to be rejected. It is so said because petitioner cannot be relegated to his alternative remedy at this stage after a period of 13 years. Further, availability of an alternative remedy is not an absolute rule in every given situation, for not entertaining the writ petition. He also submits that watercourse AB was as per khakha plan and revenue record. This argument is also without any force because

it does not appeal to reason at all. In fact, present one is a clear case of complete misreading of the relevant record by the respondent canal authorities and the impugned order cannot be sustained.

Divisional Canal Officer fell in serious error of law, while passing the impugned order, which runs counter to the abovesaid directions issued by the Division Bench of this Court vide order dated 26.04.2002, allowing the earlier writ petition filed by the petitioner. Divisional Canal Officer has tried to reiterate his earlier stand taken, which was a patently illegal approach adopted by him. This time also, Divisional Canal Officer did not even refer to the cogent reasons assigned by Sub Divisional Canal Officer in his order dated 02.08.2001 (Annexure P-3). Further, there would be no occasion for the petitioner to cause any damage to the watercourse from point C to D, because he himself was also irrigating his fields from this very watercourse. Under these circumstances, it can be safely concluded that since Divisional Canal Officer failed to appreciate all the relevant factors, while passing the impugned order, the same cannot be sustained, for this reason also.

No other argument was raised on behalf of either of the parties.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned order runs contrary to the abovesaid directions issued by a Division Bench of this Court and also contrary to the fact situation obtaining at the site, the same cannot be sustained in the eyes of law. Accordingly, impugned order dated 25.11.2002 (Annexure P-6) passed by Divisional Canal Officer, Tohana Water Services Division, Tohana is hereby set set aside.

Respondent authorities are directed to provide a straight watercourse from point C to D on the killa line, so as to avoid any wastage of extra land as well as wastage of water, providing the facility of irrigation to the petitioner as well as to respondent No.3.

Resultantly, with the abovesaid observations made and directions issued, present writ petition stands allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

27.09.2016
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Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No