

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.10244 of 2013
Date of decision: 25.10.2016

Hukmi and others

... Petitioners

Vs.

Sub Divisional Canal Officer and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Raj Kapoor Malik, Advocate
for the petitioners.

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

None for respondent No.4.

RAMESHWAR SINGH MALIK, J. (ORAL)

Feeling aggrieved against the impugned order dated 18.04.2013 (Annexure P-4) passed by Superintending Canal Officer, Bhakra Water Services Circle, Kaithal, whereby the watercourse in question was ordered to be restored for a limited period of one year, modifying the order dated 05.08.2011 (Annexure P-3) passed by Divisional Canal Officer, Narwana Water Services Division, Narwana and order dated 16.06.2011 (Annexure P-2) passed by Sub Divisional Canal Officer, Kalayat Water Services Sub Division, Kalayat, restoring the watercourse on permanent basis, petitioners have approached this Court, by way of present writ petition under Articles 226/227 of the Constitution of India, seeking a writ in the nature of certiorari, for quashing the impugned orders.

Notice of motion was issued vide order dated 13.05.2013. As per

office report dated 01.08.2013, service was complete. However, nobody put appearance on behalf of the contesting respondent No.4. Case was finally admitted for regular hearing vide order dated 25.04.2014. No written statement has been filed either by official respondents No.1 to 3 or by contesting respondent No.4. Numerous orders passed by this Court on 06.08.2013, 20.09.2013, 29.01.2014 and 25.04.2014 would show that none had put appearance on behalf of respondent No.4 at any point of time.

Learned counsel for the petitioners submits that on the application moved by the petitioners vide Annexure P-1, it was rightly considered and appreciated by Sub Divisional Canal Officer that the watercourse in question had been running at the site for about 20 long years. Warabandi of the parties has also been duly sanctioned on this watercourse, which turns downwards from point B, out of the outlet RD 6000/TF, as it is clear from the certified copy of site plan (Annexure P-5) issued by the respondent Canal Department. Further, referring to the site plan, learned counsel for the petitioners would submit that portion of this watercourse from point A to B was dismantled by respondent No.4 causing serious prejudice to the facility of irrigation to the fields of the petitioners.

He also submits that in addition to the petitioners, there were very many other co-sharers also on this watercourse, whose land was being irrigated only through this watercourse for the last about 20 years. He submits that in such a situation, respondent No.4 would have no authority in law to dismantle the watercourse. The fact situation obtaining at the site was rightly appreciated by Sub Divisional Canal Officer, while passing his order (Annexure P-2), restoring the watercourse in question on permanent basis. When respondent No.4 filed his appeal, it was rightly dismissed by Divisional Canal Officer vide his order dated

05.08.2011 (Annexure P-3).

However, Superintending Canal Officer, while exercising his revisional powers, proceeded on a misconceived approach, by modifying the abovesaid orders passed by Sub Divisional Canal Officer and Divisional Canal Officer, contained in Annexures P-2 and P-3 and restricted the restoration of the watercourse in question only for one year. He concluded by submitting that since the impugned order passed by Superintending Canal Officer is non-speaking and cryptic one, it is liable to be set aside.

Learned counsel for the State submits that it was respondent No.4 who was the contesting respondent and no State interest, as such, is involved in any of the canal matters, including the present one. Learned counsel for the State has been found well justified in saying so, because the real contest would be between the petitioners and respondent No.4, who has chosen not to appear despite having been duly served.

Having heard the learned counsel for the petitioners as well as learned counsel for the State, after careful perusal of the record of the case and giving thoughtful consideration to the contentions raised, this Court is of the considered opinion that since the impugned order passed by Superintending Canal Officer has been found patently illegal order, besides being a cryptic and non-speaking one, the same cannot be upheld. The writ petition deserves to be allowed, following more than one reasons.

A bare combined reading of the orders passed by Sub Divisional Canal Officer as well as Divisional Canal Officer, at Annexures P-2 and P-3, would show that they rightly appreciated the true fact situation obtaining at the site, regarding the watercourse in question. The watercourse from point B, which

goes downwards towards the fields of the petitioners, was found running at the site for about 20 years and the parties were enjoying the facility of irrigation as per their sanctioned warabandi on this watercourse. Under such undisputed fact situation, respondent No.4 would have no authority to dismantle the watercourse from point A to B, causing manifest injustice to the petitioners and other similarly situated co-sharers.

The genuine grievance raised by the petitioners was rightly appreciated by the Sub Divisional Canal Officer, while passing his order (Annexure P-2), whereby the watercourse in question was ordered to be restored on permanent basis. Divisional Canal Officer also rightly upheld the order passed by Sub Divisional Canal Officer, while passing his order (Annexure P-3), dismissing the appeal filed by respondent No.4. Concurrent finding of facts recorded by Sub Divisional Canal Officer and upheld by Divisional Canal Officer deserved to be upheld even by the higher canal authorities, Superintending Canal Officer in the present case.

However, Superintending Canal Officer exceeded his jurisdiction, while passing the impugned order dated 18.04.2013 (Annexure P-4), which is not only an order without jurisdiction but also a cryptic and non-speaking one. In fact, Superintending Canal Officer failed to assign any reason, whatsoever, while curtailing the duration of restoration of the watercourse to one year only. It was least expected from the Superintending Canal Officer to support his order by assigning cogent reasons but he failed to do so. No reason, whatsoever, has been assigned by Superintending Canal Officer, while passing his impugned order (Annexure P-4) and the same cannot be sustained, for this reason also.

Even if the petitioners and other co-sharers were having the facility

of irrigation from tubewell water, their entitlement for canal irrigation cannot be denied to them. This right of the petitioners was rightly appreciated by Sub Divisional Canal Officer as well as Divisional Canal Officer, while passing their respective impugned orders (Annexures P-2 and P-3). However, since Superintending Canal Officer fell in serious error of law, while passing his impugned order (Annexure P-4), the same cannot be sustained, for this reason as well.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that the since the impugned order passed by Superintending Canal Officer has been found suffering from patent illegality and perversity, it cannot be sustained. Accordingly, impugned order dated 18.04.2013 (Annexure P-4) passed by Superintending Canal Officer is hereby set aside and the order dated 05.08.2011 (Annexure P-3) passed by Divisional Canal Officer is restored. The writ petition deserves to be accepted.

Resultantly, with the abovesaid observations made, instant writ petition stands allowed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

25.10.2016
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Whether speaking/reasoned Yes/No

Whether reportable Yes/No