

**CWP-14361-2015**

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

**CWP-14361-2015**

**Date of Decision: 31.05.2016**

Dharambir and others

... Petitioner(s)

Versus

Divisional

... Respondent(s)

**CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH  
DHALIWAL**

- 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. Jainainder Saini, Advocate,  
for the petitioners.

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

Mr. Ajit Sihag, Advocate,  
for respondent Nos.4 and 5.

**Paramjeet Singh Dhaliwal, J.**

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the order dated 12.06.2015 (Annexure P-3) passed by respondent No.1-Divisional Canal Officer whereby appeal filed by the petitioners against the order dated 25.11.2014 (Annexure P-2) passed by respondent No.2-Sub Divisional Canal Officer has been dismissed.

In brief, the facts as averred in writ petition are to the effect that land of the petitioners and private respondents was being irrigated

**CWP-14361-2015**

through outlet RD No.43970-R Balsamand Sub Branch of village Niyana, Tehsil and District Hisar. The said outlet had been running on the spot for the last 30 years but the same was allegedly dismantled. The private respondents moved application under Section 24 of the Haryana Canal and Drainage Act, 1974 before respondent No.2-Sub Divisional Canal Officer for restoration of alleged dismantled lined watercourse 'AB' at killa No.65//16, eastern line south to north, as shown in site plan Annexure P-5. The case was got investigated through Zileदार, Dewa who after investigation and site inspection recommended the case for restoration of alleged dismantled lined watercourse 'AB'. Vide order dated 25.11.2014 (Annexure P-2), respondent No.2-Sub Divisional Canal Officer ordered restoration of dismantled lined watercourse 'AB' at rect. No.65//16, eastern line south to north and costs of Rs.8,50,000/- have been ordered to be recovered from the present petitioners for dismantling the lined watercourse. Being dissatisfied, the petitioners preferred appeal before respondent No.1-Divisional Canal Officer who dismissed the same vide impugned order dated 12.06.2016 (Annexure P-3). Hence, this writ petition.

Upon notice, respondent Nos.1 and 2 filed written statement with the averments that the watercourse in question had been sanctioned and lined by the Haryana State Minor Irrigation Corporation at the costs of the Govt. and it was found that the alleged watercourse had been running for the last 35-40 years. During the site inspection on

**CWP-14361-2015**

24.11.2014, it was found to be dismantled and bricks with which it was made lined, had been taken away. The culvert was also found to be existing at points A and B. The watercourse was found to be passing under the path and watercourse was also found to be in existence after point 'B' which led to the fields of private respondents. The bricklining of alleged demolished watercourse is sufficient to prove that it had been sanctioned and brick-lined by the department after following due process. Other averments made in writ petition have been denied.

Respondent Nos.4 and 5 also filed their separate written statement with the averments that FIR No.56/2015 dated 24.01.2015 was registered at Police Station Sadar Hisar for causing loss of Rs.85,000/- to the Government exchequer by demolishing the lined watercourse. The watercourse linking the fields of both the parties as well as others to outlet No.RD-43970-R Balsamand Sub Branch was originally excavated by the irrigators themselves on mutual basis. It is denied that the petitioners and private respondents are having separate watercourse. Site plan showing *Naka* as per *warabandi* of outlet No.43970-R (Annexure P-4) is not related to the facts of the present case, the same has been prepared in some *warabandi* amendment cases relating to holding/*khata* Nos.29 to 35 whereas *wari*/turn of water of private respondents falls at Sr. Nos.25 to 27. The watercourse of private respondents was running in straight line of alignment 'ABE' (shown in site plan Annexure P-4) and before touching their holding, it used to pass

**CWP-14361-2015**

through two acres of the petitioners out of which it has been demolished in one acre. The *naka* taking and giving point for private respondents is at 65//15 x 64//20 i.e. on the same alignment where watercourse has been demolished. Other averments in writ petition have been denied and dismissal of writ petition has been prayed for.

I have heard learned counsel for the parties and perused the original record produced by Mr. Yashpal Singh, Sub Divisional Canal Officer along with other official present in Court.

Perusal of warabandi (Annexure R-3) reveals that *naka* taking point of Maiya son of Kishna against khata No.25 is at rect. No.72 x 97. Further perusal of site plan (Annexure P-4) also reveals that point 'B' is the inter-section of rect. Nos.72 and 97 and at this point, *naka* taking and giving has been fixed. Perusal of *warabandi* (Annexure R-3) further reveals that *naka* taking point of Sammat, Chhotu and Juglal against khata No.26 and *naka* giving point of Maiya son of Kishna against khata No.25 are at the inter-section of rect. Nos.65//15 x 64//20. Perusal of file further reveals that *naka* giving point of khata No.26 is at the inter-section of rect. Nos.40//16 x 41//21 (wrongly mentioned as 90//16 x 91//21 in *warabandi* Annexure R-3). The above facts clearly indicate that watercourse is going upward. The *naka* taking and giving points in *warabandi* (Annexure R-3) clearly prove the existence of watercourse and establishes the identity of land from where a person is getting irrigation. The canal authorities after visiting the spot have come

**CWP-14361-2015**

to the conclusion that watercourse 'AB', (shown in site plan Annexure P-5), which was a lined watercourse and constructed by the department concerned after adopting the due procedure of law, had been dismantled. The canal authorities also came to the conclusion that there is no alternate source of irrigation for the area of private respondents. The existence of *Naka* taking and giving on the watercourse 'ABE' (as shown in site plan Annexure P-4) and culvert under the path show the existence of bricklined watercourse, part of which has been dismantled. The canal authorities have rightly ordered restoration of dismantled watercourse.

In view of above, I do not find any illegality or perversity in the impugned orders.

Dismissed.

Costs made easy.

**31.05.2016**

parveen kumar

**(Paramjeet Singh Dhaliwal)**  
**Judge**