CWP-17968-2014 and
CWP-20051-2014

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 22.03.2016

1. CWP-17968-2014

Malkiat Singh

... Petitioner(s)

Versus

Superintending Canal Officer, Ferozepur and others

... Respondent(s)

AND

2. CWP-20051-2014

Major Singh

... Petitioner(s)

Versus

Superintending Canal Officer, Ferozepur and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH DHALIWAL

1) Whether Reporters of the local papers may be allowed to see the judgment ?. **YES**
2) To be referred to the Reporters or not ?. **YES**
3) Whether the judgment should be reported in the Digest ? **YES**

Present: Mr. S.P.S.Tinna, Advocate,
for the petitioner in CWP-17968-2014 and
for respondent No.4 in CWP-20051-2014.

Mr. Sandeep Khunger, Advocate for
the petitioner in CWP-20051-2014 and
for respondent No.4 in CWP-17968-2014.
Mr. S.S.Chandumajra, Addl. A. G. Punjab.

Mr. Peeyush Gagneja, Advocate,
for respondent No.3 in both the petitions.

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Paramjeet Singh Dhaliwal, J.

The above mentioned both writ petitions bearing CWP Nos. 17968 and 20051 of 2014 arise from the same impugned order, therefore, are being disposed of by a common judgment.

Both the writ petitions have 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 21.02.2014 (Annexure P-7) passed by respondent No.1-Superintending Canal Officer and the order dated 28.02.2013 (Annexure P-6) passed by respondent No.2-Divisional Canal Officer whereby respondent Nos.1 and 2 have ordered restoration of water course which is alleged to be in contravention of the order dated 07.09.2012 (Annexure P-5) passed by this Court.

The facts are being extracted from CWP No.17968 of 2014.

In brief, the facts relevant for disposal of the writ petition are to the effect that respondent No.4-Major Singh (petitioner in CWP No.20051-2014) and his brother Balkaran Singh moved application dated 11.08.1995 (Annexure P-1) under Section 30-FF of the Northern India Canal and Drainage Act, 1873 (for brevity, 'the Act') before respondent No.2-Divisional Canal Officer, Abohar Division, Abohar for restoring the demolished .portion of watercourse, alleged to be demolished by Jaskaran Singh and Iqbal Singh sons of Naib Singh, to its original position leading from Outlet No.191484/L Lambi Rajbaha, village Rajpura. It is averred in the application that they are joint owners

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of the land. Out of the said land, respondent No.3 purchased some area about 10 years back. The applicants have been irrigating their fields through watercourse for the last more than 40 years. On the intervening night of 09/10.08.1995, Jaskaran Singh and Iqbal Singh sons of Naib Singh son of Santa Singh demolished the watercourse running in rect. No.76//10 and 11 through which the applicants were irrigating their fields consisting of rect. No.76//12, 13, 18, 19 and 23 and their naka taking and giving were also sanctioned at rect. Nos.57/75 stone line. Respondent No.2 marked an inquiry to the Sub Divisional Officer, who sought report of the Ziledar. The Ziledar concerned inspected the spot and recorded statements of concerned parties. He came to the conclusion that watercourse was running in rect. No.76//1, 10 and 11/1 and a portion in rect. No.76//10 and 11/1 has been demolished by Naib Singh. The Ziledar, vide its report dated 29.08.1995, also found that demolished part of watercourse is in the land of Naib Singh, small plants of 'gawara crop' were standing in a strip whereas in the remaining land, 'cotton crop' was standing which clearly establishes the demolished portion of watercourse. The said report was forwarded by the S.D.O. vide letter dated 04.09.1995 (Annexure P-2). Thereafter, vide order dated 21.06.1996, the Divisional Canal Officer allowed the application under Section 30-FF of the Act and instead of restoration of the watercourse in rect. No.76//10 and 11, restored it in rect. No.75//5, 6 and 15 in the land of petitioner herein. Aggrieved against that, petitioner-Malkiat Singh

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approached respondent No.1-Superintending Canal Officer, who set aside the order of respondent No.2-Divisional Canal officer and remanded the case vide order dated 18.11.1996. However, respondent No.2-Divisional Canal Officer again ordered restoration of watercourse in rect. No.75//5, 6 and 15 vide order dated 29.12.1997. (Annexure P-3). Thereafter, petitioner-Malkiat Singh preferred an appeal before respondent No.1-Superintending Canal Officer, who dismissed the same vide order dated 08.04.1999 (Annexure P-4) and upheld the order of respondent No.2-Divisional Canal Officer. Feeling aggrieved, Malkiat Singh and others filed CWP No.6839 of 1999 which was disposed of vide order dated 07.09.2012 (Annexure P-5) whereby orders dated 29.12.1997 (Annexure P-3) and 08.04.1999 (Annexure P-4) were set aside and matter was remanded to Divisional Canal Officer, Abohar for fresh decision. In pursuance of the order dated 07.09.2012 passed by this Court, respondent No.2-Divisional Canal Officer proceeded with the matter and after hearing the parties restored the watercourse in rect. No.75//5, 6 and 15 vide impugned order dated 28.02.2013 (Annexure P-6). Against that, Malkiat Singh and Major Singh preferred appeal before respondent No.1-Superintending Canal Officer which has been dismissed vide impugned order dated 21.02.2014 (Annexure P-7). Hence, this writ petition.

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

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Learned counsel for the petitioner in CWP No.17968 of 2014 and for respondent No.4 in CWP No.20051 of 2014 vehemently contended that watercourse running in rect. No.76// 10 and 11 has been demolished. No watercourse was existing in rect. No.75//5, 6 and 15 i.e. land of petitioner-Malkiat Singh. He further contended that respondent Nos.1 and 2 have wrongly ordered restoration of the watercourse in his land.

Learned counsel for respondent No.4 in CWP No.17968 of 2014 (petitioner in CWP No.20051 of 2014) contended that watercourse has been demolished in rect. No.76//1, 10 and 11/1. He further contended that petitioner-Malkiat Singh is taking *naka* at rect. No.58//23/2 and 75//4 and Major Singh is taking water at rect. Nos.57/75, stone line shown as red line.

Per contra, learned State counsel and learned counsel for respondent No.3 supported the impugned orders. They submitted that watercourse was alongside rect. No.75//5, 6 and 15 as is evident from the order dated 19.07.1989 (Annexure R-3/2).

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

So far as the contention of learned counsel for respondent No.3 that in the impugned order dated 28.02.2013 (Annexure P-6), it is specifically mentioned that the watercourse was in existence at the spot on the eastern side of rect. No.75//5, 6 and 15, as per order dated

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19.07.1989 (Annexure R-3/2), is concerned, the same is not sustainable for the reason that Naib Singh had sold a part of his land out of the land holding about 10 years prior to the occurrence. The issue in the order dated 19.07.1989 (Annexure R-3/2) was with regard to the allotment of residue (*nikal)*. In the said order, it is mentioned that watercourse was in rect. No.75//5, 6 and 15 on the eastern side along the 'pahi' (passage). The perusal of site plan clearly indicates that the 'pahi' is alongside rect. No.75//1, 2, 3, 4 and 5 and there is no 'pahi' in rect. no.75//6 and 15, meaning thereby the earlier turns were joint and Major Singh was having separate turn. The warabandi is a temporary arrangement. As and when the land is purchased or sold by parties falling on the watercourse, their turns are also changed in the *warabandi.* On this account, the existence of watercourse, as alleged in view of order dated 19.07.1989 (Annexure R-3/2), is not established. To prove the existence of watercourse, latest warabandi i.e. when the application for restoration was moved, is relevant. The same has not been annexed. Rather, the *warabandi* on record clearly establishes that the situation has changed after the sale of a part of land by Naib Singh. Otherwise also, site plan (Annexure R-1) shows that Naib Singh takes his turn at inter-section of rect. No.57//21 and 76//2, therefore, he takes his turn after Pritam Singh whereas Major Singh etc. take their turn at stone line shown as red line of rect. Nos.57 and 75, meaning thereby turn is taken by them at the inter sections of rect. Nos.57//21 and 75//2/3. The report of Ziledar proves that the entire

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field of Naib Singh was having 'cotton crop' except the demolished portion where small '*gawara* crop′ was standing, meaning thereby after demolishing watercourse, it has been sown and if the watercourse would not have been in existence, the entire area would have 'cotton crop'. This fact also clearly indicates that to remove the evidence of demolished watercourse, Naib Singh had sown the crop of '*gawara'* in that part only. If the water course allegedly demolished would have been on the side of Malkiat Singh, then a strip of small plants of '*gawara* crop' would not have been on the side of Naib Singh, rather his entire fields would have cotton crop. The strip of small '*gawara'* plants clearly indicates that it has been sown at the place of demolished watercourse. This fact is clear from the report of Ziledar dated 29.08.1995 (Annexure P-1 in CWP No.20051-2014) which is only after 19 days of the date of demolition i.e. intervening night of 08/09.08.1995. It means that the watercourse was on the side of Naib Singh which has been demolished by his sons and was not on the side of Malkiat Singh i.e. in rect. No.75//5/3, 6 and 15; the demolished watercourse falls in rect. No.76//10 and 11/1 which is in the killas of Naib Singh. The report of Ziledar indicates that watercourse has been demolished from rect. no.76//10 and 11 and relying upon the report of Ziledar, SDO recommended that demolished watercourse be restored on rect. no.76//10 and 11 and 76//11/1. In the application moved to D.C.O. by Major Singh, one of the petitioners, and Balkaran Singh, it is mentioned that Jaskaran Singh and Iqbal Singh sons

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of Naib Singh have demolished the watercourse falling in rect. Nos.76//10 and 11 and a part of the watercourse is still existing in the land of Pritam Singh. It appears that D.C.O and S.C.O have created a new case for restoration of watercourse which was beyond their jurisdiction being contrary to the prayer in the application for restoration and ordered restoration of watercourse wrongly on rect. no.75//6 and 15. Furthermore, the existence of watercourse in rect. No.76//1 belonging to Pritam Singh is also not in dispute. It clearly indicates that the remaining watercourse was on the side of respondent No.3-Naib Singh.

In view of above, both the writ petitions are allowed and the impugned orders in both the petitions are set aside. The watercourse is restored on rect. No.76//10 and 11/1 on the side of Naib Singh in continuation of the watercourse existing in rect. No.76//1 on the side of Pritam Singh.

Both the writ petitions are disposed of in the aforementioned terms.

Irrigation is vital component of agriculture production. Water, together with soil are the underpinning assets of land and agriculture business. In the present case, the parties have been litigating since August, 1995 for restoration of watercourse. Almost two decades have lapsed in this litigation. One can imagine the loss as a result of non-irrigation to fields of the concerned petitioner as well as to the nation. So the canal authorities are reminded that they should decide such cases

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at the earliest in accordance with law so that evidence at the spot may not be destroyed. The canal authorities are further directed that on receipt of an application of demolition of watercourse, they should immediately visit the spot and videography and photography should be carried out by the officer/official at the cost of the applicant(s) and annexed with the report.

Copy of this order be sent to the Secretary, Irrigation Department, State of Punjab for issuing necessary directions to the Canal Authorities to act promptly as observed above.

22.03.2016 **(Paramjeet Singh Dhaliwal)**
parveen kumar **Judge**

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