

CWP No.18337-2015

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

CWP No.18337-2015

Date of Decision: 23.07.2016

Gurdip Kaur

... Petitioner(s)

Versus

Superintending Canal Officer, Patiala and others

... Respondent(s)

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

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| 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. Vijay Sharma, Advocate,
for the petitioner.

Mr. B.S.Cheema, DAG, Punjab.

Mr. Harbhajan Singh, Advocate for
Mr. B.S.Sidhu, Advocate for
respondent No.3.

Paramjeet Singh Dhaliwal, J. (Oral)

Mr. K.K.Singla, Divisional Engineer, PWRM&DC, Lining
Division No.7, Bathinda, Mr. S.K.Singla, Divisional Engineer,
PWRM&DC, Lining Division No.8, Bathinda and Mr. Surjit Singh
Rajput, SDE, PWRM&DC, Lining Division No.7, Bathinda are present

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in Court.

This is another writ petition which arises out of a dispute of alleged demolished watercourse. Earlier too, this Court in many judgments has observed that the statutory authorities under the Northern India Canal and Drainage Act, 1873 (for short, 'the 1873 Act') decide the cases in casual manner. In one such case i.e. CWP-15005-2012, titled as **'Rajinder Singh @ Sonu vs. Superintending Canal Officer and others'**, decided on 05.04.2016, this Court has observed as under:

“Instant writ petition filed under Articles 226/227 of the Constitution of India arises out of a dispute of alleged demolished watercourse. The proper distribution of water through a watercourse for a farmer is very important. Irrigation is considered as lifeline for the farming community. A drop of water is like a drop of blood for the farmers. Often majority of disputes in rural areas resulting into injury cases and some times murder, occur over demolition of watercourse and taking turn of water. In such cases, many a time the canal officers specifically Divisional Canal Officer and the Superintending Canal Officer do not refer to the relevant provisions and instructions, rather decide such sensitive cases in a casual manner merely saying that prayer is allowed in the interest of better irrigation. The canal officers perform quasi-judicial functions and thus when an order is passed, it should contain point for determination and reasons for the decision. It is well settled that in quasi-judicial matters, the Tribunal or authorities concerned are expected to pass a speaking order. The canal officers must decide such

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sensitive disputes taking into consideration Sections 30-FF and 68 of the Northern India Canal and Drainage Act, 1873 (for brevity, 'the Act') and the Instructions contained in the Punjab Irrigation Manual. They must realize the importance of water for irrigation and its consequences.”

In the instant writ petition arising from the demolished watercourse, the petitioner has sought for issuance of a writ in the nature of certiorari to quash the order dated 08.07.2015 (Annexure P-13) passed by respondent No.1-Superintending Canal Officer, Patiala Circle, Patiala.

Brief facts of the present case are to the effect that the petitioner is a widow and is owner in possession of land comprised in rect. No.145//1, 2, 9, 10, rect. No.146//3/2, 3/3, 4, 5, 6, 7, 8, 13/2 and 14, as shown in blue colour in site plan Annexure P-12. It is pertinent to mention here that Karnail Singh, father-in-law and Maha Singh, husband of the petitioner have expired. However, the land still exists in the name of her father-in-law. The lands of respondent No.3 and his brother adjoin the land of the petitioner. Respondent No.3 is nephew of petitioner's husband and at one point of time, respondent No.3 was helping in cultivating the land of the petitioner.

While issuing notice of motion on 01.09.2015, a Coordinate Bench of this Court passed the following order:

“The petitioner is the owner of land shown in blue colour in site plan (Annexure P-1), whereas, her

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nephew/respondent No.3 is the owner of the land shown in grey colour. It is alleged that petitioner is a widow, who has given her land to her nephew for the purpose of cultivation. It is submitted that respondent No.3 has been taking water from watercourse BDE but he changed the watercourse to BC which was initially a kaccha watercourse but later on made it pucca watercourse with the permission of erstwhile Tubewell Corporation. The litigation came up to this Court in CWP No.15805 of 2013 which was disposed of on 13.11.2014 when this Court remanded the matter back to the Divisional Canal Officer for fresh decision and directed that while passing a fresh order, he would take into consideration the fact as to whether before sanctioning of construction of pucca watercourse, the said watercourse was in existence and in warabandi, 'naka taking' and 'nake giving' were shown at the relevant place. Besides this, he was also asked to take into consideration the recommendation of the Divisional Canal Officer that watercourse BC should be removed from that place and parallel watercourse BDE going along with the passage, nearest possible to the land of respondent No.3 be given.

It is submitted that the Divisional Canal Officer has though taken into consideration the direction issued by this Court and passed the order in favour of the petitioner but the Appellate Court, namely, the SCO has erred in referring to Section 30 FF of the Northern Canal Drainage Act, 1873 and decided the case against the petitioner on the ground that the watercourse BC has been running over the past six months before demolition, which has to be restored.

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It is submitted that the aforesaid direction by this Court has not been taken into consideration.

Notice of motion for 15.9.2015.

In the meantime, status quo as it exists today shall be maintained.”

In pursuance of notice of motion, official respondent Nos.1 and 2 and private respondent No.3 filed their separate replies wherein they denied the averments made in the petition and have prayed for dismissal of the writ petition being devoid of merit.

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

During the pendency of this writ petition, the petitioner and respondent No.3 have effected a compromise. Admittedly, an alternative watercourse is already existing which has been marked on the site plan (Annexure P-1) as 'BDE' and demolished portion 'BC' is in the land of the petitioner. The petitioner and respondent No.3 have agreed that the petitioner will bear the expenses for construction of watercourse 'DE' in kill Nos.17 and 18 of rect. No.146. The department concerned is reconstructing the entire watercourse as already existing *pucca* watercourse has lived its life and it is brought to the notice of the Court that the petitioner has deposited 10% of the amount of cost of construction as per her share qua 'DE' portion of the watercourse.

Earlier also, the petitioner approached this Court by way of CWP No.15805-2013 which was disposed of vide order dated

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13.11.2014. A relevant extract of the order dated 13.11.2014 reads as under:

“At this stage, learned counsel for the parties agree that they have no objection, if the impugned orders be set aside and fresh order be passed by the competent authority in accordance with law. In view of consent given by learned counsel for the parties after seeking instructions from their clients, impugned orders are set aside and case is remanded to respondent no.2-Divisional Canal Officer for fresh decision on merit in accordance with law. While passing fresh order, respondent no.2 will take into consideration the fact whether before sanctioning for construction of pucca watercourse, watercourse was in existence and in warabandi, 'naka taking' and 'naka giving' have been shown at the relevant places. Besides this, there is recommendation (Annexure P-3) by the Deputy Collector whereby report has been made that watercourse 'BC' should be removed from that place and parallel watercourse 'BDE' going along with passage is nearest possible to the land of respondent no.3 be given. The parties through their counsel are directed to appear before respondent no.2-Divisional Canal Officer, Mansa Division, I.B.Jawaharke on 25.11.2014. Needful shall be done expeditiously.

Disposed of in the aforementioned terms.”

Perusal of file reveals that respondent No.1-Superintending Canal Officer has passed the impugned order dated 08.07.2015 (Annexure P-13) without complying with the directions issued by this Court.

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Now the parties have compromised the matter. When this case came up before this Court on 20.07.2016, it was pointed out that some other persons were causing hindrance in the re-construction of the said watercourse and police help was sought by the department. Senior Superintendent of Police, Bathinda and S.H.O., Police Station Sangat were directed to provide police help in this regard. Today, it has been pointed out that re-carpeting and bedding of the watercourse in rect. No.146 killa Nos.17 and 18 is being done. As per the officials present in the Court, the bedding has already been laid in *killa* No.18 and the remaining portion is likely to be completed within a few days. Senior Superintendent of Police, Bathinda shall ensure that till Department requires the police help, the same is provided to them.

Mr. K.K.Singla, Divisional Engineer, PWRM&DC, Lining Division No.7, Bathinda states that persons other than the contesting parties herein have not deposited the share for reconstruction of the upstream watercourse and there may be a difficulty for irrigating the fields downstream the petitioner's land as construction of watercourse has already lived its life. Since the dispute before this Court is with regard to rect. No.146 killa Nos.17 and 18 and the petitioner has already deposited the amount qua her share, re-construction work should be completed by the department. If other persons are not interested in depositing the amount, the department shall proceed in accordance with law qua them regarding the said portion.

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So far as the existence of watercourse is concerned, Sh. Surjit Singh Rajput, S.D.E. PWRM &DC Lining Division No.7, Bathinda filed an affidavit dated 19.07.2016 along with *warabandi* for the year 1982 which is in vernacular. As per the said *warabandi*, *naka* taking and giving is at rect. No.146//9-13/2 and there is no *naka* for the alleged demolished watercourse and even the plea of the petitioner is that respondent No.3 is nephew of the petitioner and he had temporarily carved out this watercourse without her permission which has resulted into dividing her land and creating hindrances in cultivating the land. Sometimes it happens that villagers create their own temporary watercourse for their own convenience and keeping in view the level of land, the same cannot be treated as a running watercourse for all intents and purposes. This is an *ad hoc* arrangement made by the concerned person for his/her individual purpose only.

Admittedly, the alleged demolished portion 'BC' of the watercourse is dividing the land of the petitioner and creating difficulty in cultivating the same. This Court in the case of ***Pritam Singh vs. Superintending Canal Officer, Bhakra Main Line Circle, Patiala, 1996 PLJ 287*** and ***Karnail Singh vs. Superintending Canal Officer, Sirhind Canal Circle, Bathinda, 2015(1) R.C.R. (Civil) 657*** has held that watercourse passing through middle of the land of the owner creates problem in cultivation of the fields of the landowner. Even otherwise, the private parties in the present case have compromised the matter and

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the petitioner has already deposited her proportionate share of cost of reconstruction of watercourse and the Department has already started reconstruction of work. Otherwise also, no *naka* taking and giving points have been mentioned in the impugned order passed by respondent No.1 and the directions issued by this Court in CWP No.15805-2013 (supra) have not been complied with. So, the impugned order dated 08.07.2015 (Annexure P-13) is not sustainable. The existence of watercourse passing through the land of the petitioner is not proved as *naka* taking/giving is not proved from the *warabandi* for the year 1982. The watercourse has been constructed in the year 2006 but no document has been produced on record in respect of fixing *naka* taking/giving.

It has been pointed out that there is a passage between point 'E' of the watercourse and the land of respondent No.3. Therefore, a '*Puli*'/pipe is required to be constructed/laid to connect the land on the other side of the passage. Some persons who are irrigating their land from *kacha* watercourse are alleged to be causing obstruction. Police help has already been ordered and the concerned authorities will take appropriate measures.

It is a matter of concern that many a times, the statutory authorities under the 1873 Act are not discharging their duties in a free and fair manner and they decide the cases without making any reference to the provisions of law and the evidence, specifically the documentary evidence, which requires to be examined before arriving at a conclusion.

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They should apply the provisions in a realistic and practical manner. There is a need for evolving a mechanism for providing training programmes, seminars, refresher courses so that they may discharge their statutory duties in a well informed manner and emphasis should be on identifying and improving the areas of specialization. Administrative authorities entrusted with the quasi judicial powers should be so geared up that possibility of unnecessary litigation arising from their decisions is avoided.

In the result, the impugned order dated 08.07.2015 (Annexure P-13) is set aside. A *puli*/pipe shall be constructed/laid at the cost of respondent No.3. It is made clear that if any hindrance is caused by anyone in re-construction work, the petitioner, respondent No.3 and department concerned will be at liberty to approach this Court for assistance including police help and adequate action shall be taken against the obstructionists.

Disposed of in the aforementioned terms.

23.07.2016

parveen kumar

(Paramjeet Singh Dhaliwal)
Judge