

CWP- 26851-2014

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

CWP- 26851-2014

Date of Decision: 19.05.2016

Krishan

... Petitioner(s)

Versus

Superintending Canal Officer, Bhakra Water Services, Circle-I, Hisar
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 ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. C.R.Dahiya, Advocate,
for the petitioner.

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

Mr. Ajit Sihag, Advocate,
for respondent No.4.

Paramjeet Singh Dhaliwal, J.

Instant writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari quashing the order dated 07.08.2007 (Annexure P-3) passed by respondent No.3-Sub Divisional Canal Officer, Hisar, order dated 29.10.2007 (Annexure P-4) passed by respondent No.2-Divisional Canal Officer and order dated 05.11.2014 (Annexure P-6) passed by respondent

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No.1-Superintending Canal officer, Hisar, under Section 24 of the Haryana Canal and Drainage Act, 1974 (for brevity, 'the 1974 Act') and the rules framed thereunder.

In brief, facts of the case are to the effect that respondent No.4-Ghanshyam moved application before respondent No.3 that his area is situated in rect. Nos.79 and 80 and he had been irrigating his field for the last more than 40 years through watercourse coming through the fields of Udmi Ram son of Tulsi Ram. Petitioner-Krishna son of Udmi Ram has demolished watercourse in two acres as a result of which loss has occurred to the applicant and a prayer was made for restoration of the watercourse. The case was sent to Zildar for enquiry, who submitted the report. Respondent No.3 also personally visited the spot and watercourse (khal) was found to be dismantled and vide impugned order dated 07.08.2007 (Annexure P-3), respondent No.3 ordered restoration of the watercourse. Against that, the petitioner preferred appeal before respondent No.2-Divisional Canal Officer who dismissed the same vide impugned order dated 29.10.2007 (Annexure P-4) and came to the conclusion that watercourse running for 20 years has been dismantled. Being dissatisfied, the petitioner filed revision before respondent No.1-Superintending Canal Officer which has been dismissed being not maintainable vide order dated 23.06.2010. Being dissatisfied with the orders passed by the canal authorities, the petitioner filed CWP-16674-2010 before this Court which was allowed vide order dated 07.03.2014

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(Annexure P-5) whereby it was held that revision lies before respondent No.1-Superintending Canal Officer; order dated 23.06.2010 passed by respondent No.1-Superintending Canal Officer was set aside and matter was remitted to the same authority for decision afresh. In pursuance of the order dated 07.03.2014 (Annexure P-5), respondent No.1 proceeded with the matter and dismissed the revision filed by the petitioner vide impugned order dated 23.06.2010 (Annexure P-6). Hence, this writ petition.

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

Learned counsel for the petitioner vehemently contended that watercourse does not fall within the definition "watercourse" as defined in Section 2(15) of the 1974 Act, it has been wrongly restored by the authorities. In fact, another watercourse, which was left at the time of consolidation, reaches upto the field of private respondent and from there, he has been irrigating his land. As such, the impugned orders are not sustainable in the eyes of law.

Per contra, learned State counsel and learned counsel for respondent No.4 vehemently opposed the contentions of learned counsel for the petitioner and contended that due to demolition of the watercourse, respondent No.4 has been irrigating his land by using tubewell/engine and is suffering huge loss. Respondent No.4 had been taking water at rect. No56//8 x 14 and also giving at the same point.

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Reference has been made to *warabandi* dated 19.12.1977 [Annexure R-4 (Colly.)] and *warabandi* dated 25.09.2000 (Annexure R-5) to indicate that Ram Rattan, grand-father of respondent No.4 was taking water at rect. No.56//8 x 14.

I have given my anxious and thoughtful consideration to the rival contentions of learned counsel for the parties.

Perusal of *warabandi* dated 19.12.1977 [Annexure R-4 (Colly.)] (page 81 of paper-book) reveals that *naka* taking point of Ram Rattan was at rect. No.56//8 x 14 . A perusal of site plan (Annexure P-1) reveals that *naka* has been fixed at rect. No.56//8 x 14, marked with round and watercourse was existing which is alleged to have been dismantled by the petitioner. The existence of watercourse has been proved by way of documentary evidence i.e. *warabandis* [Annexure R-4 (Colly.) and P-5]. The aforesaid documents show that the watercourse had been in existence for more than 30 years and, therefore, the same has rightly been restored by the canal authorities.

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

Dismissed.

Costs made easy.

19.05.2016
parveen kumar

(Paramjeet Singh Dhaliwal)
Judge