

CWP No.7627-2015

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

CWP No.7627-2015

Date of Decision: 28.03.2016

Labh Singh and another

... Petitioner(s)

Versus

Superintending Canal Officer 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. G.L.Bajaj, Advocate,
for the petitioners.

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

Mr. K.S.Sidhu, Sr. Advocate with
Mr. A.S.Sandhu, Advocate for
Respondent Nos.4 and 5.

Paramjeet Singh Dhaliwal, J.

Instant writ petition filed under Articles 226/227 of the Constitution of India arises out of a dispute of use or distribution of water from a watercourse known as *Wahr-bandis* (fixing of turns of water). The distribution of water 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

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in rural areas resulting into injury cases and some times murder, occur for taking turn of water. In this case, it appears that the canal authorities specifically Divisional Canal Officer and the Superintending Canal Officer did not apply their minds to the relevant provisions and instructions, rather decided the case in a casual manner. They must decide such sensitive disputes taking into consideration Section 68 of the Northern India Canal and Drainage Act, 1873 (for brevity, 'the Act') and the Instructions contained in Appendix E of the Punjab Irrigation Manual. They must realize the importance of water for irrigation.

In this writ petition, prayer made is for issuance of a writ of certiorari to set aside the order dated 02.02.2015 (Annexure P-4) passed by respondent No.1-Superintending Canal Officer and the order dated 07.10.2014 (Annexure P-3) passed by respondent No.2-Divisional Canal Officer under Section 68 of the Act.

Brief facts of the case are to the effect that Parshotam Lal son of Pala Singh and others, residents of village Ghuda, Tehsil and Distt. Bathinda, who were co-sharers in RD No.17050/L Doom Wali Minor moved an application before respondent No.2-Divisional Canal Officer, Bathinda for shifting their land to RD No.5811/R Kot Guru Sub Minor as their land is nearer to the said sub minor. Respondent No.2 approved the scheme under Section 30-B (2) of the Act and ultimately demand of Parshotam Lal etc. was accepted and area measuring 44.11/43.45 acres GA/CCA was transferred from RD No.17050/L Doom Wali Minor to RD No.5811/R Kot Guru Sub Minor vide order dated 10.04.2013

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(Annexure P-1). In order to implement the order dated 10.04.2013 (Annexure P-1), the concerned Zileadar prepared proposed *Wahr-bandi* of RD No.5811/R Kot Guru Sub Minor and sent the same to the Deputy Collector who after giving notice and hearing the parties concerned, fixed the turns of water to which respondent Nos.4 and 5 objected to on the ground that their *wari* of khata Nos.59, 60 and 62 be fixed after the turns of petitioner No.1 at khata No.64 and petitioner No.2 at khata No.66. Respondent No.3-Deputy Collector fixed the *waris* (turns) vide order dated 17.06.2014 (Annexure P-2). Against that, private respondent Nos.4 and 5 preferred appeal before respondent No.2 who set aside the order dated 17.06.2014 (Annexure P-2), vide impugned order dated 07.10.2014 (Annexure P-3). Against that, the petitioners preferred an appeal before the Superintending Canal Officer which has also been dismissed vide impugned order dated 02.02.2015 (Annexure P-4). Hence, this writ petition.

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

I am constrained to observe that learned counsel for the petitioners did not render any assistance to this Court and was not in a position to explain even the location of the fields of the respective parties.

On the other hand, learned State counsel and learned senior counsel for respondent Nos.4 and 5 vehemently supported the impugned orders passed by the Superintending Canal Officer and the Divisional

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Canal Officer.

Learned counsel for the State produced the original record of the case, brought by the Zileadar, for perusal.

I have considered the rival contentions of learned counsel for the parties and perused the original record.

For the sake of convenience, this Court has put alphabets 'A, B, C, D and E' on the site plan (Annexures P-5 and P-6) indicating watercourse.

This Court has perused the 'site plan/*Aks-Sajra*' annexed with the original record and a partial copy of it has been annexed with the writ petition as Annexure P-5 and by way of CM No.15051-CWP-2015, another copy of site plan has been placed on record as Annexure P-6. In the site plan (Annexure P-6), watercourse 'ABCE', shown in green colour, is coming from the north to south. At point 'B', it bifurcates into two branches i.e. 'BD' and 'BCE'. The watercourse 'BCE' is relevant for resolving the dispute between the petitioners and respondent Nos.4 and 5. The land of private respondents falls in khata Nos.59, 60, 61, 62 and 63 whereas land of petitioners falls in khata nos.64 and 66, respectively. The land of respondent Nos.4 and 5 at khata no.59 touches both watercourse branches i.e. 'BD' and 'BCE' as watercourse 'AB' splits at point 'B'; watercourse 'BD' goes towards eastern side alongside killa No.198//16/1, 16/2, 17/1, 17/2, 17/3, 18/1, 18/2, 19/1 and 19/2 and watercourse 'BCE' goes downward and it goes along side killa No.197//20, 21, killa No.211//1, 10, 11 and on the other side, it goes

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alongside killa No.198//16/2, 25 and killa no.210// 5, 6, 15 and 16 on the common *watt*.

At this stage, it would be appropriate to refer to Section 68 of the Act and relevant instruction out of the Instructions for the guidance of Canal Officers in the preparation and modification of *Wahr-bandis* as given in Appendix E. Section 68 of the Act and the Instruction 8 of the Appendix E of Punjab Irrigation Manual read as under:

“68. Power of Deputy Collector to order use or distribution of water and settlement of differences as to mutual rights and liabilities of persons interested in water-course. - (1) The Deputy Collector may, if in his opinion it is necessary so to do, pass an order as to the use or distribution of water from a water-course amongst persons in any estate or a group of estates or in any holding or group of holding in such estates:

Provided that no such order shall be passed by the Deputy Collector without making an inquiry into the matter and without giving a notice, to all the persons interested that, on a day to be named in such notice, he shall proceed to inquire into the said matter.

(2) Whenever a difference arises, between two or more persons in regard to their mutual rights or liabilities in respect of the use, construction or maintenance of a water-course, any such person may apply in writing to the Deputy Collector stating the matter in dispute.

(3) On receipt of an application under sub-section (2), the Deputy Collector shall give notice to the other persons interested that, on a day to be named in such notice, he shall proceed to inquire into the said matter and

after the enquiry he shall pass an order thereon.

(4) An order passed under sub-section (1) or sub-section (3) as to the use or distribution of water for any crop sown or growing at the time when such order is made or with regard to the construction or maintenance of water-course shall, subject to an order passed on appeal or revision under sub-section (5) and (6), be final.

(5) An appeal shall lie to the Divisional Canal Officer against an order referred to in sub-section (4) within a period of thirty days from the date of such order.

(6) The Superintending Canal Officer, within whose jurisdiction the water- course is situated, may, suo motu on or an application made in this behalf by an aggrieved person, revise an order passed in appeal by a Divisional Canal Officer under sub-section (5):

Provided that no such application shall lie unless it is made within a period of thirty days from the date of such order.

(7) No order passed under this section shall be liable to be called in question in any civil court.

APPENDIX E of Punjab Irrigation Manual

(Referred to in paragraphs 2.32 and 13.3.)

Instructions for the guidance of Canal Officers in the preparation and modification of Wahr-bandis

8. Order of turns. - *The order of turns should be definitely laid down in accordance with one of the following systems:-*

(a) Down the watercourse, i.e. in order of distance of the off-take from the outlet. In this case, the order proceeds down the main watercourse to the head of the first branch; then down the branch before

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continuing down the main watercourse. Similarly as regards sub-branches.

(b) Round the watercourse i.e. down one bank and up the other branches being treated as in (a) above.

The later system has the advantage that it distributes lead and nikal more evenly, but the former system is generally preferable as holdings usually lie on both sides of a watercourse.

Where two or more holdings are served by offtakes close together, and lead or nikal is of importance, the order of turns should alternate between the holdings.”

The Instruction 8 of Appendix E of Punjab Irrigation Manual provides that order of turns is fixed down the water course i.e. in order of distance of the off-take from the outlet meaning that down the watercourse to the head of the first branch and then down the branch before continuing down the main watercourse. Even order of turns of sub branches will also be in the same manner. It also provides similar procedure for round the watercourse. When two or more holdings are served by off-takes close together and lead and *nikal* (residue) is of importance, the order of turns should alternate between the holdings.

A perusal of site plan (Annexure P-6) reveals that khata no.59 belonging to the private respondents touches both the branches of watercourses, 'BCE' is going downward towards south and 'BD' going towards the western side. Since land of the private respondents touches on both the watercourses prior to the land of petitioners, therefore, their turn will come first as per the principle of '*first come first serve*'. The *naka* taking of the petitioners is at point 'E'. The turn of petitioner No.1

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is at khata No.64 will certainly come after the turn of khata No.59 of the private respondents as the flow of water in watercourse is from north to south. Even if the private respondents opt for fixing of their turn on watercourse 'BCE', which comes down towards south along common *watt* of killa No.197//20 and 21 and killa No.211//1, 10 and 11 and killa No.198//16/2, 25 and 210//5, 6, 15 and 16, their land comes prior to the land of petitioners and by applying the principle of '*first come first serve*', their turn will be fixed prior to the turn of the petitioners. If the private respondents opt for turn of water on watercourse 'BD', then their will be no dispute with the petitioners in respect of khata Nos.64 and 66.

In view of the above discussion, the impugned orders dated 02.02.2015 (Annexure P-4) passed by respondent No.1-Superintending Canal Officer and 07.10.2014 (Annexure P-3) passed by respondent No.2-Divisional Canal Officer are set aside being not sustainable in the eyes of law and the order dated 17.06.2014 (Annexure P-2) passed by respondent No.3-Deputy Collector is restored as the same has been passed as per Instruction 8 of the Appendix E of Punjab Irrigation Manual. The instant writ petition is allowed.

Original record tagged with the file for perusal has been returned to the Zileadar present in Court.

28.03.2016
parveen kumar

(Paramjeet Singh Dhaliwal)
Judge