

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

1. CWP No.11338 of 2012 (O&M)
Date of decision : 06.02.2017

Ram Chander and another ...Petitioners

Versus

State of Haryana and others ..Respondents

2. CWP No.19463 of 2007 (O&M)
Date of decision : 06.02.2017

Rati Ram and another ...Petitioners

Versus

State of Haryana and others ..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Arun Jindal, Advocate for the petitioners
(In CWP No.11338 of 2012)

Mr. Rakesh Gupta, Advocate for the petitioners
(In CWP No.19463 of 2007)

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

Mr. R.N. Lohan, Advocate for respondent Nos.4 to 6
(In CWP No.19463 of 2007)

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of aforementioned two writ petitions. One is CWP No.19463 of 2007 filed by Rati Ram and another represented by Mr. Rakesh Gupta, Advocate challenging the orders dated 16.10.2007 (Annexure P-8), 21.12.2006 (Annexure P-7) passed by respondent Nos.1 and 2 and 01.06.2006 (Annexure P-5) of respondent

No.3, whereas new water course according to Mr. Gupta, without following procedure prescribed under Section 18 of the Haryana Canal and Drainage Act, 1974, has been provided. In the other writ petition bearing CWP No.11338 of 2012 titled as Ram Chander and another Vs. State of Haryana and others, prayer is for quashing the impugned orders dated 10.04.2006 (Annexure P-4) of respondent No.3 and 29.01.2006 (Annexure P-2) of respondent No.4 and with a further direction for implementation of the orders dated 16.10.2007, 21.12.2006 and 01.06.2006 passed by the Competent Canal Authorities.

The gamut of the discord between both the petitioner(s) and the respondent(s) represented by Mr. R.N. Lohan, Advocate in CWP No.19463 of 2007 is with regard to the water course bifurcated from the outlet RD-141000/L to outlet RD 139150/L. It is conceded position on record that bifurcation of both the outlets is not in dispute.

Grievance of the client of Mr. Rakesh Gupta, Advocate is that as per the site plan (Annexure P-2), the water course shown as ABC and B to E have been allegedly dismantled by the respondents and, therefore, in this regard application for restoration of the same was moved but same was allowed on the basis of the report and as well as by the inspection. The order aforementioned has attained finality but however vide Annexure P-8 on the application of the private respondent, new water course shown in the site plan (Annexure P-6) as ABCDEFG for which a new water course from the outlet RD141000L, has been provided.

He submits that owing to the aforementioned fact, there is

complete bifurcation of the land of the petitioner, whereas the existing of the water course was also catering the irrigation to all the concerned persons. In this regard, he has drawn the attention of this Court to the affidavit dated 16.08.2010 filed by Mr. S.P. Aggarwal, Executive Engineer, Narwana, to contend that the factum of the publication i.e. report of the Chowkidar and Lambardar with regard to the scheme under Rule 96 of 1974 Act i.e. dated 19.04.2006 was not recorded, much less, publication of scheme was also not mentioned in the notice regarding Village Julehra, thus, it is a sufficient requirement that the petitioners were not afforded any opportunity.

He further submits that in case the water course ABCDE in the site plan is restored, private respondent would not be effected as it is stated to be into their field, in essence, fields are being irrigated by carving out of the water course.

On the contrary, Mr. R.N. Lohan, learned counsel appearing on behalf of private respondents submits that newly carved out water course has been sanctioned as the water is being irrigated from the bifurcated outlet which as per the site plan is more convenient and close to the fields of all the persons located therein. It is not only bifurcation on the petitioner's land, but land of the others which is being accepted by them. Petitioner failed to file any objections to the so called frame as indicated in the impugned orders, thus, orders under challenge are perfectly legal and justified and writ petition is liable to be dismissed.

On the other hand Mr. Arun Jindal, learned counsel appearing

on behalf of petitioners in second other petition submits that petitioners have not disclose the factum of the order dated 22.08.2005 (Annexure P-1). No doubt, the aforementioned order was assailed by the petitioner but the same attained finality, which is evident from the orders Annexures P-2 and P-3 but the impugned order Annexure P-5 in both the writ petitions dated 01.06.2006 is perfectly, legal and justified and no prejudice would be caused. He adopts the arguments of Mr. R.N. Lohan, Advocate and submits that his writ petition be allowed and prays for dismissal of the writ petition No.19463 of 2007.

Per contra, Mr. Rakesh Gupta, learned counsel for the petitioners in CWP No.19463 of 2007 submits that writ petition seeking the quashing of the orders dated 10.04.2006 (Annexure P-4) and 29.01.2006 (Annexure P-2) is not permissible as it is hit by doctrine akin to delay and latches and no explanation has come forth in not challenging the aforementioned orders and thus urges this Court for dismissal of the writ petition bearing No.11338 of 2012.

I have heard learned counsel for the parties and appraised the paper book.

For the sake of brevity, relevant para Nos.2 to 5 of the affidavit as indicated above, reads thus:-

“2. That the scheme prepared by the Ziledar Kharal was further submitted to the office of Divisional Canal Officer, Narwana Water Services Division, Narwana by the office of Sub Divisional Canal Officer, Dhamtan Water Service Sub Division, Narwana vide his office No.605 G dated 17.4.2006 on the basis of report of Zilledar Kharal.

3. *That the scheme for sanction of alignment of water course in question was issued for publication by the court of Divisional Canal Officer, Narwana Water Services Division, Narwana on dated 18.04.2006 with date of hearing of the scheme for 10.05.2006.*
4. *That the scheme of the case was published under Rule 96 of Haryana Canal and Drainage Act of 1974 on 19.04.2006 in Village Phulian Kalan in the presence of Village Chokidar and Lambardar. However, the reports of Chokidar and Lambardar were not recorded therein similarly, the date of publication of scheme was not mentioned on the notice of their affected village Julehra.*
5. *That the scheme regarding sanction of the alignment of water course A-B-C-D-E-F-G was heard on 10.05.2006 by giving the due opportunity of hearing to all the concerned parties by the court of the then Divisional Canal Officer, Narwana Water Services Division, Narwana and the scheme was approved under Section 18(2) of Haryana Canal and Drainage Act of 1974 on 28.05.2006.”*

The contents of the affidavit reveal that the factum of publication was not mentioned in the notice which was effected in Village Julehra, thus, in my view petitioners in writ petition bearing No.19463 of 2007 have not been given effective opportunity to file objection with the proposed scheme as indicated in the order dated 01.06.2006, thus, in my view, at this stage providing of a new water course in favour of private respondents according to the petitioners, tantamounts to carving out the water course, should be kept in abeyance with a liberty to the Divisional Canal Officer, Narwana Water Services Division, Narwana to take the decision on the application given under Section 18(2) of the Haryana Canal

and Drainage Act of 1974 regarding sanctioning of the alignment of the water course A-B-C-D-E-F-G in chunk of outlet No.RD141000L, Dhamtan, Distt. Village Julehra and Phulian Kalan by following the procedure as enshrined under Section 18-A of the Act for causing a publication and by affording an opportunity to the petitioners and all other similarly effected persons as indicated in the site plan Annexure P-9, whereby land of other people like Sham Sharan, Rameshwar etc. is also being bifurcated by carving out the alignment of water course ABCEFGH in the aforementioned chunk.

Let this exercise be done within a period of 5 months. Resultantly, order dated 01.06.2006 and consequently all other orders passed, are set aside. Matter is remitted back to the Divisional Canal Officer, respondent No.3 to decide the matter in controversy.

Divisional Canal Officer shall also give the opportunity to the petitioners in CWP No.11338 of 2012 to put across their case in support or against the alignment of the water course from chunk of outlet No.RD141000L.

Accordingly, both the writ petitions stand disposed of.

06.02.2017

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(AMIT RAWAL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No