

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.10365 of 2014
DATE OF DECISION: January 10,2017

Ram Partap and another

...Petitioners

versus

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr.Gaurav Mohunta, Advocate for the petitioners.
Mr.D.Khanna, Addl. A.G., Haryana.
Mr.Ashok Verma, Advocate for respondent Nos.5
to 7.

AMIT RAWAL, J.

The petitioners have approached this Court by invoking the provisions of Article 226/227 of the Constitution for quashing of the order dated 26.11.1975, Annexure P.3, passed by respondent No.2-Superintendent Canal Officer vide which order dated 10.4.1975, Annexure P.2, passed by respondent No.3-Divisional Canal Officer whereby the watercourse sanctioned from point ABDEF was set aside and modified watercourse as AECBA had been sanctioned.

Mr.Gaurav Mohunta, learned counsel appearing for the petitioners submits that in pursuance to the application, having been submitted to respondent No.3-Divisional Canal Officer for alignment of the watercourse, the same was heard and ultimately vide order dated 10.4.1975, Annexure P.2, the watercourse ABDEF was sanctioned. Feeling aggrieved of the same, Nathu Ram-predecessor-in-interest of respondent Nos.5 to 7 challenged the same and the respondent No.2-Superintendent Canal Officer vide order dated 26.11.1975, Annexure P.3, modified the watercourse as AECBA. The aforementioned decision was challenged by filing a civil suit. The same was decreed by the judgment and decree dated 12.3.1979, Annexure P.4. The appeal, at the instance of private respondents, was also dismissed. However, in regular second appeal bearing No.116 of 1985, Annexure P.7, interim protection of status quo was granted. The said appeal was allowed vide judgment dated 10.10.2013, Annexure P.6, by holding that the Civil Court did not have the jurisdiction. In this background, the present writ petition has been filed by challenging the sanctioned order cannot be said to be hit by the doctrine akin to "Delay and Laches". He submits that during the pendency of writ petition, the petitioners are irrigating the suit land on the aforementioned alignment and the school in

the name of Chaudhary Bhag Chand Meel Education Society, affiliated to the Haryana School Education Board, is being run. He further submits that the order under challenge is not sustainable as respondents No.5 to 7 have not been seriously affected and the petitioners are irrigating their own land. By virtue of efflux of time, the order dated 26.11.1975, Annexure P.3, has become redundant and, therefore, liable to set aside.

During the pendency of writ petition, an affidavit dated 9.11.2016 annexing the site plan, Annexure P.12, has been filed for the purpose of cutting the controversy short, in a sense, a separate site plan attempted to be shown to this Court by providing the watercourse at Old Mochi Wali Minor, RD-6060-L but due to break in the linkage of 200 feet in Murba No.9, killa No.12, the fields of the private respondents shown in yellow colour at the top of the chak plan are not being irrigated and the chak plan would not adversely prejudice to the interest of the respondents, therefore, the order under challenge can always be modified owing to the passage of time, as noticed above.

The petitioner is agreeable to the aforementioned chak plan and therefore, he is willing to bear all the litigation expenses.

Mr.Ashok Verma, learned counsel appearing for the private respondents, before arguing the case on merits, has drawn attention of this Court to the order dated 12.7.2016 to contend that the petitioners had sought time to get instructions to file an affidavit as to whether they would be agreeable to lay down the pipeline on the dividing line of killas No.25 and 21, so as to avoid any demolition of the school building, but no affidavit in this regard has been filed. The alignment of watercourse reflects in the site plan Annexure R5/1, which is shortest route sanctioned by the Divisional Canal Officer and thus, urges this Court that the writ petition is to be dismissed with exemplary costs. The construction of a school building is a pointer in causing impediment in the implementation of the order dated 26.11.1975, Annexure P.3, therefore, no equity lies in favour of the petitioners.

I have heard learned counsel for the parties and am of the view that there is no force in the arguments of learned counsel for the petitioners.

As noticed above, the judgments and decree of the Courts below were ultimately set aside vide decree dated 10.10.2013, Annexure P.7. Again another round of litigation, i.e, the present writ petition has been filed, therefore, this Court while granting interim stay, directed

the petitioners to deposit an amount of Rs.1 lacs, which is not disputed. In my opinion, the order dated 26.11.1975 passed by Superintendent Canal Officer is legal and justifiable as the watercourse provided therein and depicted in the site plan Ex.R5/1 is the best route of irrigation for the private respondents. Even the petitioners have chosen not to file an affidavit in pursuance of the order dated 12.7.2016 which reads as under:

"Learned counsel for the petitioners seeks time to get instructions and also to file affidavit of one of the petitioners that they shall lay down the pipeline on the dividing line of Killas No.25 and 21, so as to avoid any demolition of the school building.

Learned counsel for the contesting respondents No.5 to 7 also states that such a course of action would be acceptable to the contesting respondents also."

The petitioners had chosen the path which is not possible. It is not comprehensible as to how and in what manner, land has been acquired, yet the construction of the school was raised. It is an attempt to delay/obstruction the implementation of the order dated 26.11.1975, Annexure P.3, which is in my opinion is deplorable.

In view of the aforesaid discussion, I do not find any merit in the present writ petition and the order dated 26.11.1975, Annexure P.3, does not fall within the scope of interference and doctrine of judicial review and apparently cannot be said to be an illegal and arbitrary. Accordingly, the order dated 26.11.1975 Annexure P.3 is upheld.

The costs of Rs.1 lacs is ordered to be released in faovur of the private respondents 5 to 7 who have been deprived of the fruits of the order dated 26.11.1975, Annexure P.3, i.e. almost more than forty years.

Accordingly, the writ petition is dismissed.

January 10,2017
KD

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No