

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

Civil Writ Petition No.12175 of 2014

Date of decision: January 11, 2017

Sukhdev Singh

....Petitioner

versus

State of Punjab & others

....Respondents

Present: Mr.D.S.Gurna, Advocate
for the petitioner.

Mr.Yatinder Sharma, Addl.A.G.Punjab,
for the State.

Mr.Aditya Jain, Advocate,
for respondent No.4.

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

AMIT RAWAL J.

The petitioner has sought indulgence of this Court under Article 226/227 of the Constitution of India for setting-aside the orders dated 20.11.2013 (Annexure P-3) passed by the Divisional Canal Officer, Devigarh Division, Patiala and 3.6.2014 (Annexure P-4) of the Superintending Canal Officer, Bhakra Main Line Circle, Patiala, whereby the application of respondent No.4 has been allowed and the watercourse from point B to C along khasra No.454 on the side of the passage was ordered to be restored under Section of 30-FF of the Northern India Canal & Drainage Act 1873 (for short "1873 Act").

Mr.D.S.Gurna, learned counsel for the petitioner has submitted that respondent No.4 by deploying JCB machine dug an area of 6 feet deep and 7 feet wide along khasra No.454 owned and possessed by the petitioner

in connivance with the officials of the Canal Department. The area was dug out on the side of the passage, thereby blocking the entry of the petitioner to his own fields despite the fact that the watercourse is running along side the same very khasra No.454 and passes along petitioner's other khasra Nos.455, 456, 457 and 458. Resultantly, respondent No.4 gave an application to the Canal Authorities for making out the case for restoration of the watercourse. He further submitted that the officials from the Canal Department supported the plea of respondent No.4 and submitted recommendation to the Divisional Canal Officer. The petitioner appeared before the authority along with co-sharer Bant Singh and raised objection that no watercourse, as alleged by the petitioner, was running along khasra No.454, but the watercourse, as stated above, was going along side of khasra No.454 abutting khasra Nos.474 and 471 owned by Amrik Singh, yet the Divisional Canal Officer passed the order dated 30.1.2013 in favour of respondent No.4.

Feeling aggrieved of the aforementioned order, the appeal was filed and the same was accepted vide order dated 16.7.2013 (Annexure P-2) and the matter was remitted back to the Divisional Canal Officer. The matter was again taken up by the Divisional Canal Officer, but the petitioner was not duly served. Respondent No.4 failed to prove the demolition of the watercourse, much less any evidence of existence of watercourse, much less even temporary watercourse as per 1873 Act. However, respondent No.3 passed the impugned order dated 20.11.2013 by holding that the watercourse was in existence from point B to C along the passage and ordered its restoration. Appeal filed against the said order, vide order dated 3.6.2014 (Annexure P-4), was dismissed by respondent No.2-

Superintending Canal Officer.

He further submitted that the impugned orders are liable to be set-aside on the following grounds:-

- a) The impugned orders are not sustainable in the eyes of law as the matter does not fall within the provisions of Section 30-FF of 1873 Act and the alleged watercourse was neither sanctioned one nor had been given under any mutual consent or agreement;
- b) The authorities have decided the matter without verification of the records. No reference whatsoever has been made to any scheme promulgated under Section 30-A of 1873 Act.
- c) The best evidence was withheld and, therefore, the orders are on supposition, much less conjectures and liable to be set-aside.

Per contra, Mr.Aditya Jain, learned counsel for respondent No.4 has submitted that the respondent is owner in possession of land bearing khasra No.443 (8-15), 445 (9K-16M), 450 (3K-8M), 451 (3K-8M), 452 (5K-8M) and 453 (10K-10M), whereas the petitioner and his brother Bant Singh-respondent No.5 had illegally and with an intention to cause loss to the crops, who had been irrigating the crops through the watercourse for the last more than fifty years, demolished the watercourse, The existence of watercourse had been admitted in the Panchayati Rajinama/compromise dated 10.8.2012 (Annexure R-3) attached with the reply of respondent Nos.1 to 3, wherein the petitioner consented for leaving the space of passage and watercourse/khal. He is estopped to challenge the

impugned orders. Spot inspection was done by the Zileadar and it was found that the watercourse was in existence. No objection qua spot inspection had been raised and, thus, urges this Court for dismissal of the writ petition.

Mr.Yatinder Sharma, learned Addl.A.G.Punjab, appearing for respondent Nos.1 to 3 submitted that the restoration of the watercourse is covered in Aksh Latha and Warabandi. The revenue record, i.e., jamabandi for the year 2007-08 (Annexure R-2) also reflected the aforementioned fact. The compromise said has not been objected to at any point of time or withdrawn. The site plan/sketch (Annexure R-1) clearly depicts that the watercourse has been shown in red-blue from point A to D, whereas the petitioner and respondent No.5 have demolished the watercourse from point B to C. The watercourse prior to point B and after point C was/is intact. In the proceedings conducted by the Zileadar for the purpose of spot inspection, respondent No.5-co-sharers and the petitioner refused to sign. The spot inspection was done on 21.9.2012 and, thus, urges this Court for dismissal of the writ petition.

I have heard the learned counsel for the parties, seen the paper book and the annexures attached thereto and of the view that there is no force and merit in the submissions of Mr.Gurna. The orders under challenge are perfectly legal and justified. The spot inspection and the compromise leave no manner of doubt that there was a watercourse in existence from point AB to CD, whereas from point B to C, the watercourse has been demolished. Watercourse prior to point B and after point C was intact. The contents of the compromise read as under:-

“ *PANCHAYATI COMPROMISE*

Today on 10.8.2012, the compromise has been arrived at by the Panchayat in the presence of following persons on the

Application filed against Bant Ram son of Puran Ram and application filed by Shiv Kumar son of Harmesh Kumar resident of Ahru Kalan. It is compromised that the water course (Khals) was dig by Harmesh Kumar, the depth of the same will be kept half feet more than the rear water course, remaining will be filled up by putting earth and pipe will be laid in the passage and to pass tractor etc. Harmesh party will make the passage. Both the parties have agreed that after leaving the space of passage and water course (Khal), remaining space will be covered with their land. Compromise has been effected with the consent of both the parties. The applications be consigned to the office.

*LTI Bant Ram s/o Puran
R/o Ahru Kalan
9876994370*

*Sd/-Shiv Kumar
Sd/-Nirmal Singh
Sd/-Charanjeet Singh
Sd/-Nabh Singh”*

*Sd/-Shiv Kumar
s/o Harmesh Dass
R/o Ahru Kalan
09466385294
Sd/-Harmesh Kumar
Sd/-Kishan Chand
Sd/-Subeg Singh*

The existence of the watercourse has also been proved through jamabandi as noticed above. In my view, the existence of the watercourse/khal has been admitted, thus, it does not lie in the mouth of the petitioner to raise grievance of non-existence of the watercourse, much less reference to any record. For the sake of brevity, relevant portion of the proceedings conducted by the Zileदार dated 1.11.2012 reads thus:-

“After verifying at the spot and after recording the statements of the applicants, I came to the conclusion that the water course BC has been found to be demolished by Shri Bant Singh etc. At the spot, the marks of demolition of the water course were present, whereas water course AB and water court CDE are present at the spot and also water course BF are present at the spot. The Panchayat Compromise was also produced, wherein both the parties have compromised the matter that water course in question would be restored. Therefore, the

restoration of the demolished water course BC is recommended under Section 30-FF of the Canal and Drainage Act 8 of 1873.”

All these factors have been duly considered by the authorities and there is no scope of judicial interference or review. The orders are strictly as per the provisions of Section 30-FF of 1873 Act. No ground for interference is made out.

Resultantly, the writ petition is dismissed.

**(AMIT RAWAL)
JUDGE**

January 11, 2017
ramesh

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No