

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

1. CWP No.18322 of 2013 (O&M)
Date of decision : 20.02.2017

Darbara

...Petitioner

Versus

Superintending Canal Officer, Bhakra Water Services Circle, Kaithal,
Haryana and others

...Respondents

2. CWP No.19246 of 2013 (O&M)
Date of decision : 20.02.2017

Vijay Singh

...Petitioner

Versus

Superintending Canal Officer, Bhakra Water Services Circle, Kaithal,
Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Raj Kapoor Malik, Advocate for the petitioner.
(In CWP No.18322 of 2013)
for respondent No.4 (In CWP No.19246 of 2013)

Mr. Vikram Singh, Advocate for the petitioner.
(In CWP No.19246 of 2013)
for respondent No.4 (In CWP No.18322 of 2013)

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

AMIT RAWAL, J. (Oral)

This order of mine shall dispose of aforementioned two writ petitions.

The petitioner namely Darbara in CWP No.18322 of 2013 is aggrieved of the impugned order, particularly, dated 24.07.2013 (Annexure P-7) rendered by Superintending Canal Officer, Bhakra Water Services Circle, Kaithal, whereby water course AB shown in the site plan Annexure P-8, had been ordered to be restored for a period of six months with a liberty to the respondents to apply for sanction of the water course, whereas the petitioner in CWP No.19246 of 2013 is aggrieved of the findings in the penultimate para of the same order, whereby they have been restricted not to take water from other two water course AXY and AXY1.

Mr. Vikram Singh, learned counsel appearing on behalf of petitioner in CWP No.19246 of 2013, submits that order of the Superintending Canal Officer tantamounts to giving a right and taking it back in one breath which is not sustainable in the eyes of law whereas it is not the scope of the provision of Section 24 of the Haryana Canal and Drainage Act 1974, whereas Mr. Raj Kapoor Malik, learned counsel appearing on behalf of petitioner in CWP No.18322 of 2013 submits that water course AB provided to the respondents was never in existence as it bifurcates the field of petitioner. Water Course XY reveals that the respondent can irrigate his land from water course XY or XY1. It is in this aspect of the matter, petitioner and private respondent being cousin brothers were aggrieved of the matter and partition proceedings has also been initiated and approached this Court. There is no satisfaction recorded with the existence of the water course, much less, compliance of the provision of

Section 2 of Sub-Section 15 of 1974 Act.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is some force and merit in the submissions of Mr. Vikram Singh, Advocate with regard to non-granting of the liberty to the respondents and petitioner in other writ petition with regard to raising of water course AXY and AXY1 but the fact remains that water course AB ordered to sanctioned for a period of six months, in my view, is not sustainable. Once it has been found that water course is in existence, in essence, there is compliance of Section 2(15) of the Act i.e. by prescription, in my view, embargo of period of six months should not have been imposed. However, under Section 24 temporary water course can be sanctioned for a period of one year with a liberty to apply for sanctioning but the fact remains that existence of water course is not in dispute.

For the reasons aforementioned, I am of the view that order under challenge is liable to be modified. Dismantled water course AB is ordered to be permitted to use by the respondents without any limitation i.e. restricting to six months as petitioner is also not effected and is also irrigating land from the other outlets.

With the aforementioned modification in the impugned order, both the writ petitions are disposed of.

20.02.2017

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No