

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.W.P.No.17578 of 2014 (O&M)

Date of Decision: May 18, 2017

Gurmukh Singh

...Petitioner

Versus

Superintendent Canal Officer, Amritsar & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.C.M.Munjal, Advocate,
for the petitioner.

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

Mr.B.R.Mahajan, Senior Advocate with
Mr.Prateek Mahajan, Advocate,
for respondent No.3.

AMIT RAWAL, J. (Oral)

Prayer in the present writ petition is for quashing the order dated 29.5.2014 (Annexure P-2) passed by the Superintending Canal Officer.

Mr.C.M.Munjal, learned counsel for the petitioner submits that the Superintending Canal Officer has set-aside the orders of the Sub Divisional Officer and the Divisional Canal Officer with regard to the restoration of the watercourse 'BC' without adverting to certain documents, including the reports of the Ziledar and the Sub Divisional Officer, much less as to how the orders of the aforementioned authorities are wrong.

On the contrary, Mr.B.R.Mahajan, learned Senior counsel assisted by Mr.Prateek Mahajan, representing respondent No.3 submits that

the Superintending Canal Officer had conducted the spot inspection and prepared the Aks-shijra and noticed that there was no proof of demolition of the water course. He also recorded a finding that watercourse is in existence in khasra No.5 of Rect.No.10.

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

For the sake of brevity, the relevant portion of the findings of the Superintending Canal Officer reads as under:-

“The appellate court came to the conclusion that after considering the written arguments submitted by the appellant and the affidavit submitted by the opposite party and investigation of the spot as well as the evidence recorded, this court came to the conclusion that Akash Sharja vide order of the Court No.1425 dated 11.03.2014 which was got prepared of Halqa Patwari and Zileadar in which as per the revenue record, the Division of Killa No.13 has been developed at 13/1 and 13/2 as per spot and the opposite party has failed to produce any documentary proof with regard to the existence and demolition of water course situated at Killa No.5 of Rectangle No.10. Therefore, I hereby agreed with the arguments advanced by the appellant and on the basis of the documents produced in the case file showing the water course from point 'A to B', 'B to C' is situated at the spot and water course point 'C' to 'D' and 'D' to 'E' in Killa No.13/1 and 13/2 of Rectangle No.10M is hereby restored for the irrigation of the land of the applicant under Section 30 FF under Northern India Canal and Drainage Act. The decision of the Court below is hereby set aside and the appeal of the appellant is hereby accepted.”

The relevant portions of the reports of the Zileadar and the Sub Divisional Officer are reproduced as under:-

“Report of the Ziledar

Spot was inspected. At the spot one Mogha Burji 6439 Right Side Rajbah Chehratta Village, Adliwal, Tehsil Ajnala, District Amritsar the water shows from point `A to `B, `B to B1 are in running condition and from point `B' to `C', the water course which is situated at Killa No.5 of Rectanble No.10 M has been demolished at the spot and further from point `C' to `D' also the water course is running.

At the spot the Water Course shown from point `B' to `C' on the land 10M/5 on the western wat has been demolished. Keeping in view the spot inspection and the facts and circumstances, it is proved that the applicant Gurmukh Singh was irrigating the land from the water course `B' to `C'. Therefore I hereby recommend the water course from point `B' to `C' to be restored under Section 30 FF of the Canal and Drainage Act 1873.”

Report of the Sub Divisional Officer

From the report of the ziledar and on perusal of the record, the demand of the applicant seems to be genuine. Therefore keeping in view the report of the Ziledar and the demand of the applicant finding to be genuine and in the site plan the water course has been shown to be demolished from point `B to `C', I hereby also recommend for restoration of the water course under Section 30FF and submit the report before the order itself for further action.”

On conjoint reading of the reports of the Ziledar and the Sub Divisional Officer, I am of the view that the Superintending Canal Officer has not adverted to both the reports. He has not given any reasoning as to how the orders of the Sub Divisional Officer and the Divisional Canal Officer are wrong. Certain facts have also not been noticed entailing the acceptance of the appeal. This is what scope of the appeal is. Having not adverted to the aforementioned basic requirement, I am of the view that the

matter requires to be re-visited at the level of the Superintending Canal Officer.

Resultantly, the order of the Superintending Canal Officer is set-aside. The matter is remitted back to the Superintending Canal Officer concerned with a direction to decide the matter afresh in view of the observations made above, much less the rival contentions of the learned counsel for the parties or other additional evidence which the parties intend to rely, within a period of two months from the date of receipt of certified copy of this order.

The parties, through their counsel are directed to appear before the Superintending Canal Officer concerned on 31.5.2017.

Writ petition stands disposed of.

May 18, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No