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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 24.04.2017

1.

CWP-20332-2013

Harlal and another

... Petitioner(s)

Versus

Superintending Canal Officer and others

... Respondent(s)

2.

CWP-27986-2013

Harlal and another

... Petitioner(s)

Versus

The Deputy Collector, Sirsa and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Ashok Verma, Advocate
for the petitioner(s).

Mr. Rajbir Singh, AAG, Haryana.

Ms. Rupinder Thind, Advocate
for respondent No.4.

AMIT RAWAL, J. (ORAL)

This order of mine shall dispose of two writ petitions bearing

CWP No.20332 of 2013 titled as **“Harlal and another V/s Superintending**

Canal Officer and others” and *CWP No.27986 of 2013* titled as *“Harlal and another V/s The Deputy Collector, Sirsa and others”* filed against the order dated 19.02.2013 passed by respondent No.2/Divisional Canal Officer and order dated 29.07.2013 passed by the Superintendent Canal Officer/respondent No.1.

The facts are being taken from *CWP No.20332 of 2013*.

Mr. Ashok Verma, learned counsel appearing on behalf of the petitioner(s) submits that since the watercourse 'AB', as per site plan (Annexure P-1), was destroyed by the private respondent(s), the petitioner(s) moved an application to the Sub-Divisional Canal Officer/respondent No.3, who vide order dated 31.10.2012 (Annexure P-3) ordered for restoration of the same. The appeal preferred by the private respondent(s) was accepted by the Divisional Canal Officer//respondent No.2 vide order dated 19.02.2013 (Annexure P-4). The petitioner(s) approached this Court by way of CWP No.6216 of 2013 for setting aside the order dated 19.02.2013 (Annexure P-4) and this Court vide order dated 21.03.2013 relegated the petitioner(s) to approach Superintending Canal Officer/respondent No.1. However, in compliance of the order dated 21.03.2013 passed by this Court, the petitioner(s) preferred a revision before respondent No.1, who, vide order dated 29.07.2013 (Annexure P-5), dismissed the revision petition. The petitioner(s) again filed the present writ petition bearing CWP No.20332 of 2013 challenging the impugned orders and this Court vide order dated 13.09.2013 dismissed the same. However, the petitioner(s) preferred the Letters Patent Appeal bearing No.2163 of 2013 and the same was allowed by remanding the matter back.

He further submits that the impugned orders, under challenge, are not sustainable in the eyes of law, for, the new watercourse assigned to the petitioner(s) i.e. CD, as per site plan attached, is very small chunk of land and though, no *warabandi*, at any point of time, had been granted or sanctioned. Even in the other writ petition bearing No.27986 of 2013, the Deputy Collector had refused to grant the *warabandi* vide order dated 31.05.2011 (Annexure P2), but the Divisional Canal Officer/respondent No.2 had granted the same by setting aside the order 31.05.2011 and it is, in this aspect of the matter, the petitioner(s) was constrained to file the other writ petition.

He further submits that the provisions of Section 17 of the Haryana Canal and Drainage Act, 1974 (for short 'the 1974 Act') give the ample powers to Divisional Canal Officer, who may on his own motion or on the application of a shareholder, to prepare a draft scheme for all or any of the matters i.e. (a) the construction, alteration, extension and alignment of any watercourse or re-alignment of any existing watercourse; (b) allotment of any new areas to a watercourse or an outlet or re-allotment of areas served by one water-course to another or from one outlet to another, or for exclusion of an area, from an outlet or a watercourse; (c) construction of a new outlet, shifting or modification of an existing outlet.

Since it is a conceded case of the private respondent(s) that there was a watercourse at point 'AB', at the best, an application under the aforementioned provisions could have been submitted to the authorities, but not in the manner and mode. As per sub-Section 15 of Section 2 of the 1974 Act, the watercourse 'AB' is/was in existence by prescription and the

petitioner(s) had already been granted the *warabandi*, but the same was refuted on the premise that no proof of the *warabandi* has been placed on record. In support of his contentions, he relies upon the *ratio decidendi* culled out by the Division Bench of this Court in **“Budh Singh V/s State of Haryana and others” 2016 (3) RCR (Civil) 473** to contend that no one has a right to demolish a watercourse merely because other party has an alternate watercourse available and an aggrieved party can avail the remedy before the authorities under the Act and similarly on the points of the applicability of the provisions of Section 17 of the 1974 Act, he relies upon the *ratio decidendi* culled out by this Court in **“Satbir Singh and others V/s The Deputy Director, Hisar Water Services Division, Hisar” 2002 (3) RCR (Civil) 206.**

Per contra, Ms. Rupinder Thind, learned counsel appearing on behalf of the private respondent No.4 submits that the petitioner(s) have not placed on record any order of *warabandi* with regard to the watercourse 'AB'. The respondent moved an application to the authorities for allocating the *warabandi*/turn of the water at watercourse 'CD' which was rejected by the Deputy Collector, but thereafter, Divisional Canal Officer allowed the application of the private respondent(s), it is, in this aspect of the matter, the petitioner(s) filed the other writ petition. The existence of the watercourse 'AB' has not been proved on record, much less, there is compliance of the provisions of sub-Section 15 of Section 2 of the 1974 Act, whereas the watercourse 'CD' established the sanctioning/running water-line, thus, holdings of the petitioner(s) can very-well irrigate from the other sources, rightly so, the authorities below except Sub-Divisional Canal

Officer/respondent No.3 have found that there is no justification for restoration of the watercourse 'AB', thus, urges this Court for dismissal of the writ petitions.

I have heard the both the learned counsels for the parties and appraised the paper book and as well as site plan (Annexure P-1) and of the view that though, in the site plan, there is a watercourse 'CD' which is of bigger length, but only a very fraction of land is attached to it i.e. through the corner of the land of the petitioner(s) shown in the green colour, whereas the holding of the petitioner(s) is being irrigated through watercourse 'AB'. The factum of the existing of the watercourse 'AB' and its demolition has not been denied by both the parties, but rejected on the premise that once the other watercourse was available, therefore, the petitioner(s) can very-well irrigate. Such procedure cannot be adopted by any of the neighbour for demolition as the remedy for the aggrieved party is under Section 17 of the 1974 Act and it is, in this aspect of the matter, the application was moved. Nothing prevented the other side also to move an application under Section 17 of the 1974 Act for alteration or direction to the petitioner(s) to use the other watercourse. The moving of an application by the private respondent(s) for allocating the *warabandi*/turn of the water, itself, is a pointer that the petitioner(s) had never drawn any water or irrigated the field from the watercourse 'CD'. The *ratio decidendi* culled out by the Division Bench of this Court in **"Budh Singh's case"** (supra) is squarely applicable to the facts of the case. For the sake of brevity, the findings rendered in paragraph No.5 read as under:-

"Learned counsel for the appellant though could not point out

any jurisdictional error or perversity in the orders passed by the canal authorities, but he argued that the private respondents were having an alternative water course available to irrigate their fields, therefore, there was no justification for the canal authorities to order restoration of the demolished water course. This argument was also raised before the learned Single Judge. While rejecting this contention, the learned Single Judge observed that availability of an alternate water course cannot be an absolute bar to the restoration of a demolished water course. It depends upon facts and circumstances of each case. In our view, this contention has rightly been rejected by the learned Single Judge. Under the provisions of the Act, no person has a right or liberty to demolish an existing water course. If any person demolishes such water course, the aggrieved person has a right to get it restored by moving an application before the canal authorities. If a person has some grouse with regard to an existing water course, or he wants that the same should be changed or closed, or its alignment be changed, he has liberty to move to the canal authorities for the same, but he has no right to demolish the existing water course himself, merely on the ground that the aggrieved person may irrigate his fields from an alternate water course. In our opinion, to maintain the discipline in the fields, no body can be permitted to demolish an existing water course himself. He can avail his remedy before the canal authorities. In the present case, a finding of fact has been recorded by the canal authorities that an existing water course was demolished by the appellant, which was ordered to be restored by the canal authorities after providing an opportunity of hearing to both the parties. The question as to whether a water course was existing or not is a question of fact, which has to be decided by the canal authorities. Once the canal authorities have recorded a finding of fact, the same

does not require any interference either in the writ jurisdiction of this court or in the Letters Patent Appeal."

Nothing prevented the private respondent(s) to come out with a plea that the petitioner(s) can get at his own convenience used the watercourse 'CD', as noticed above, though only fraction of land can be utilized from the watercourse i.e. through the brim of the land of the petitioner(s). All these factor have not been taken into consideration by the authorities below.

Keeping in view the aforementioned facts, the impugned order dated 19.02.2013 and order dated 29.07.2013 are not sustainable in the eyes of law being opaque and arbitrary and the same are hereby set aside and that of Sub-Divisional Canal Officer/respondent No.3 i.e. 31.10.2012 (Annexure P-3) is restored. The impugned order in the other writ petition bearing CWP No.27986 of 2013 allocating the *warabandi* to the watercourse 'CD' is also hereby set aside.

With the aforesaid observations, both the writ petitions stands allowed.

24.04.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**