

CWP No. 26081 of 2013
Date of decision : 17.03.2017

..... Petitioners

..... Respondents

Mr. P.S.Jammu, Advocate for the respondent No.4.

The petitioner has knocked the doors of this Court by invoking Articles 226 and 227 of the Constitution of India for quashing of order dated 11.05.2012 (Annexure P-7) of Divisional Canal Officer-respondent No.1, order dated 13.02.2013 (Annexure P-8) of Superintending Canal Officer-respondent No. 2 and order dated 19.08.2013 (Annexure P-9) rendered by Chief Canal Officer-respondent No.3.

Learned counsel appearing for the petitioners submits that respondent No.4, Prahlad son of Mota Ram along with his son Vinod Kumar, submitted an application to the Divisional Canal Officer for sanction of watercourse in rectangle No. 96 Killa No.3, Northern side in a width of 2 Karams for his holding falling on outlet 182240-L, Sheranwali Disty. of village Khari Sureran, Tehsil Elnabad, District Sirsa on compensation, on the premise that they did not have any watercourse to irrigate their

holding. In order to appreciate the aforementioned fact a reference has been made to site plan Annexure P-1. He submits that the aforementioned demand for sanction of watercourse AB was opposed by the petitioners on the premise that the demand for sanction of watercourse in the aforementioned rectangle and killa Nos. was not justified as watercourse in Killa Nos. 4, 5 in Rectangle No. 96 was the private watercourse of the petitioners and by sanctioning watercourse, as sought, the area would not be linked. The Divisional Canal Officer, after examination of the parties much less spot inspection, heard the parties and came to the conclusion that the demand of the respondents was not justified equal to open watercourse in Killa Nos. 4 and 5 and dismissed the application vide order dated 05.04.2006(Annexure P-2). The aforementioned order was not challenged. The private respondents again applied to the Divisional Canal Officer for sanction of the watercourse in Rectangle No. 96, Killas Nos. 3, 4 and 5 on the Northern side in a width of 2 karams from the same very outlet. The petitioners again appeared before the Divisional Canal Officer and opposed the sanctioning of the watercourse as indicated in the site plan Annexure P-1 and submitted that already watercourse K D (D E F) in the site plan Annexure P-1 from Rectangle No. 97 Killa Nos 5-6-15-16-25 leads to the area of the private respondents and thus watercourse K D was running at the site. The Divisional Canal Officer, after hearing the parties, vide order dated 17.10.2007(Annexure P-3) rejected the aforementioned request of the private respondent. The private respondent filed an appeal under Section 20(3) of the Haryana Canal and Drainage Act, 1974(hereinafter referred to as 'the Act' for short) before the Superintending Canal Officer who, after hearing the parties, remanded the matter back to the Divisional Canal

Officer. The Divisional Canal Officer vide order dated 28.12.2009 allowed the application of the private respondents ignoring all the objections despite having notice that holding of the petitioner would be bifurcated into two parts by sanctioning of the watercourse. The order dated 28.12.2009 (Annexure P-5) was assailed before the Superintending Canal Officer who heard the parties and allowed the appeal of the petitioners vide order dated 07.09.2010 (Annexure P-6) by remanding the matter back to the Divisional Canal Officer. The Divisional Canal Officer again decided the case vide impugned order dated 11.05.2012 (Annexure P-7) and accepted the demand of the private respondent. The petitioners again preferred an appeal before the Superintending Canal Officer and he chose to concur with the impugned order of the Divisional Canal Officer vide order dated 13.02.2013 (Annexure P-8). The petitioners filed an appeal before the Chief Canal Officer under Section 20(2) of the Act which was dismissed by him vide order dated 19.08.2013 (Annexure P-9).

Mr. Ashok Verma, learned counsel appearing for the petitioners submits that Vinod Kumar son of the private respondent lodged an FIR No. 168 dated 16.07.2005 against Subhash, petitioner No.1, his brother Kirpa Ram, his son Bharat Singh and neighbour of his fields Kanha Ram son of Mani Ram, under Sections 323, 326, 506/34 IPC and the Sub Divisional Judicial Magistrate, Ellenabad acquitted them of the charges under Sections 326 and 506 IPC and held them guilty under Section 323 IPC vide judgment dated 06.12.2011 and convicted and sentenced them to undergo rigorous imprisonment for a period of six months each and to pay a fine of Rs. 500/- each but in appeal filed against the said judgment of conviction and order of sentence the Sessions Judge, Sirsa reduced the sentence to a period of 15

days each but sentence qua fine was maintained. The impugned orders are not sustainable in the eyes of law as there is no actual necessity of sanctioning the watercourse A B cutting across the holdings of the petitioners as the holding of the private respondent is getting very good irrigation through the watercourse D E F running through Rectangle No. 97, Killa Nos. 5-6-15-16-25. The authorities below have not appreciated the fact that the relations between the petitioners and private respondent were highly strained and such an arrangement would not be successful in future. The matter had been remanded back on two occasions, the Divisional Canal Officer had rejected the plan but the reasoning assigned for sanctioning watercourse on the basis of compensation despite holding that the bifurcation of the holding of the petitioners does not stand on the touch stone of reasonability or justification, thus, the orders are liable to be set aside. Mr.Verma further submits that the watercourse at D E F is going through the land of the brother of the private respondent and there is already an existing watercourse. There was no need of sanctioning the watercourse A B. There is another watercourse G H I and it is hardly of any longer distance. Therefore, there was no occasion for the authorities to sanction the same. It is on this premise the application of the private respondent had been dismissed on two occasions.

Per contra, Mr.P.S.Jammu, learned counsel appearing for the respondent No. 4 submits that the answering respondent does not have any good relations with his brother and the distance as suggested by the petitioner i.e. GHI much less DEF is a longer one than the sanctioned one, and therefore no prejudice would be caused to the petitioners. The strained relationship between the petitioners and the private respondent are

inconsequential with regard to the sanctioning of the watercourse and prayed for dismissal of the writ petition.

I have heard learned counsel for the parties, perused the paper book and am of the view that there is force and merit in the submissions made by Mr. Verma for, as per site plan there is already a watercourse at the point G H I much less D E F. The Divisional Canal Officer on two occasions had been very significant and specific in rejecting the scheme of sanctioning of the watercourse in the killa number on the premise that the land holding of the petitioners is very minimal and by providing and sanctioning of the watercourse AB the holding would be bifurcated into two parts. The Superintending Canal Officer vide order dated 25.6.2008 (Annexure P-4) had remanded the matter back to the Divisional Canal Officer for exploring the possibility of suitable and shortest watercourse but the said order has not been kept in mind on remand by the DCO yet sanctioned the watercourse AB in Rect.No 96, Killa Nos. 3-4-5. Once the watercourse is already in existence at two points D E F and G H I the strained relations between the brothers cannot be pressed into service by Mr Jammu during the course of the hearing, as that is the best possible route for providing the watercourse to the land of respondent No.4. The watercourse A B prima facie bifurcates the holding of the petitioners. The site plan Annexure P-1 has not been disputed in the written statement much less the existence of the watercourse as indicated above i.e. G H I and D E F. The authorities should have objectively and pragmatically seen all these pleas and thus sanctioning of the watercourse was not in accordance with the law and could not have been granted/sanctioned.

The impugned orders are thus not sustainable and suffer from

the vice of unreasonableness muchless non-examination of the pervious orders and the factual aspect at the spot. Resultantly these orders are set aside and the writ petition stands allowed.

(AMIT RAWAL)
JUDGE

March 17, 2017
sunita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No