

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.20954 of 2017

Date of Decision: November 07, 2017

Beant Singh

. . . . Petitioner

Vs.

State of Punjab and others

. . . . Respondents

CORAM: - HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr.Ajay Pal Singh Rehan, Advocate, for the petitioner.

RAKESH KUMAR JAIN, J.

The petitioner is aggrieved against the orders dated 18.05.2015 passed by the Divisional Canal Officer, Majitha Division, Upper Bari Doab Canal, Circle Amritsar [DCO] and 10.8.2017 passed by the Superintending Canal Officer, Upper Bari Doab Canal, Circle Amritsar [SCO].

Respondent No.4 filed an application before respondent No.3/DCO for creation of a khal/water-course marked as ABF from Moga Burji No.6920/Left Gagowali Minor. The application was dismissed by the DCO on 03.04.2012. Respondent No.5 filed appeal against the said order before respondent No.2/SCO which was dismissed on 24.7.2012 on the ground that he was not the party and hence had no right to file appeal. Respondent No.5 challenged that order by way of CWP No.20906 of 2012, which was allowed on 6.3.2014 and direction was given to respondent No.2/SCO to pass a speaking order. Respondent No.2, instead of deciding himself, remanded the case back to respondent No.3 for further orders, who vide his order dated 18.5.2015 allowed the application filed by respondent No.4. The said order was challenged by the petitioner in appeal before respondent No.2 which was dismissed on 10.8.2017. It is submitted that

both the Courts below have not appreciated that the land of respondent No.4 is properly being irrigated through watercourse ABCDE and thus there was no requirement of watercourse of ABF. It is also submitted that water-course ABCDE came into being more than 40/50 years back and starts from Moga point 6920/left Gagowali Minor and runs parallel to the Gagowali Minor and the Courts below have ignored the fact that the water-course ABF has stopped running from the last 40/50 years.

I have heard learned counsel for the petitioner and perused the record.

The DCO passed the order dated 18.5.2015 with the following observations: -

“All the co sharers present were heard carefully and the site map along with other documents on file were perused. Reports of SDO Aliwal were also perused SCO, UBDC Amritsar has vide order dated 27.10.2014 remanded this case to this Court to decide again as per fact and the said order was also perused. Sh. MP Singh Pahwa, Ld. Counsel for Daljit Singh s/o Surat Singh and Satnam Singh s/o Sarwan Singh argued that Khal at point ABF has been flowing since the consolidation which has been destroyed by opposite party Beant Singh s/o Chuhan Singh and merge with his own land. The documentary proof also showed existence of this Khal the restoration which my clients

are demanding. This khal exist in Chunk of Moga Burji 6920/Left Gagowal Minor. The reports of SDO Aliwal and Naib Tehsildar Kalanour also shows the existence of this Khal as per the revenue record Khasra No.32 has been shown as gairmumkin Scheme Khal and as per Jamabandi for the year 2007-2008 Panchayat is the owner of this Khal/Land. The earlier DCO Majitha Division as wrongly decided the case on 03.04.2012 because instead of ordering the Khal demanding by my client a Khal has been ordered through the land of Satnam Singh. As per the report of SDO Aliwal it will be appreciate to restore the Khal at Point ABF instead point ABCDE. SCO Amritsar has also discussed in his decision dated 27.10.2014 that report of SDO Aliwal and Naib Tehsildar Kalanour shows the existence of Khal at Point ABF. The case Daljit Singh v/s Beant Singh regarding Khal was pending in Court but your goodself has instead of the restoring the Khal in dispute ordered a Khal through the land of Satnam Singh s/o Sarwan Singh when there was no dispute regarding that consequently the case was remanded to your Court to decide a

fresh. Sr. No.3 Sh. Beant Singh s/o Chuhar Singh stated that from Moga Burji 6920/Left, a Khal runs parallel to Gagowal Minor from which land of Daljit Singh s/o Surat Singh was irrigated and the Khal which is a demanding never exists at the spot. The decision 03.04.2012 pass by your Court may be confirmed.

The argument raised by opposite party is baseless and is not appropriate because SDO Aliwal and Naib Tehsildar have submitted the report that this is a scheme Khal of Moga Burji 6920/Left Gagowal Minor. As per revenue department Jamabandi Khasra NO.32 which is 2 Kanals 10 Marla is gairmumkin Khal owned by Panchayat and in the revenue department map this has been shown as a Khal. When the opposite party was asked about this Khal in the court he admitted that the same is a scheme Khal. The SDO Aliwal vide his letter No.100 dated 27.04.2015 has reported that it is a spot visit alongwith Ziledar and Halka Patwari was made on 30.03.2015 and finding report was made that irrigation from Moga Burji 6920/Left Gagowal Minor can be made in a better they from Khal Point

ABF but the above area is of gram Panchayat and the same has been amalgamated by Beant Singh with his own land.

On the basis of above stated facts and keeping in view the betterment of canal irrigation portion shown as ABF of Moga Burji 6920/Left Gagowal Minor in the site plan out of which portion BF which has been demolished by opposite party Beant Singh son of Chuhar Singh and amalgamated with his own land and which is owned by the Panchayat. It is ordered, under Section 30 F.F. (2) of the Northern Indian Canal and Drainage Act, 1873 which has been amended from time to time, that portion BF of sanctioned Khal shown at point ABF on the site plan be restored on the northern boundary of Killa No.1 of Rect. No.14 and Killa No.4-5 of Rect. No.15.”

Similarly, the SCO had also passed a well considered order which is reproduced as under: -

“On 19.04.2017 both the parties came present in the Court and after hearing both the parties and the legal advisers the case was adjourned to 10.05.2017. The undersigned vide letter number 1

Special/59/D/P dated 20.04.2017 directed the Sub Divisional Officer, Aliwal to conduct the spot inspection and submitted report on 10.05.2017. On 10.05.2017 case was adjourned to 12.07.2017 due to non receipt of report of Sub Divisional Officer, Aliwal. On 12.07.2017 the hearing was adjourned to 19.07.2017 due to certain official works. On 19.07.2017 both the parties came present along with their legal advisers. Legal advisers of both the parties submitted their respective arguments. After hearing both the parties and their legal advisers and perusing the report submitted by Sub Divisional Officer, Aliwal and record fo the case, order was reserved. It is found that Scheme water course leading to the fields of Daljeet Singh has been demolished and merged into his own fields by Beant Singh son of Chur Singh. The water course which is running parallel to Rajbaha (Canal) does not touch the fields of Daljjeet Singh. As per the jamabandi of Revenue Department for the year 2007-08 Khasra number 32 measuring 2 kanals 10 marla is gair mumkin Khal and has been demolished by Beant Singh. On the basis of

above facts and to ensure better irrigation of fields and while agreeing with the order dated 18.5.2015 passed by Divisional Canal Officer, Majitha Division, UBDC it is ordered, under Section 30 F.F. (4) of North India Canal and Drainage Act, 1873 (Act 8 of 1873), to restore B to F Part of the Canal Scheme water course ABF which have been shown in the site plan of Moga Burji 6920/Left Gagowal Minor annexed with the file which ownership of Gram Panchayat but has been demolished by both the parties and merged with their own lands. Appeal filed by the appellant is dismissed.”

After going through the aforesaid two orders and considering the arguments raised by learned counsel for the petitioner, I do not find any error in impugned orders for the purpose of interference, hence, the present petition is found to be without any merit and as such the same is hereby dismissed.

November 07, 2017

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No