

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

*CWP No.23110 of 2017
Date of Decision: 06.12.2017*

Ram Niwas

. . . . Petitioner

Vs.

State of Haryana and others

. . . . Respondents

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

Present: Mr. Shalender Mohan, Advocate,
for the petitioner.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioner has prayed for a writ in the nature of certiorari to challenge the order dated 25.7.2017 passed by respondent No.2 by which the revision petition filed by the petitioner has been dismissed allegedly against the provisions of Section 24 of the Haryana Canal and Drainage Act, 1974 [for short 'the Act'].

The brief history of this case is that respondent No.5 moved an application on 28.6.2012 for restoration of the watercourse. The said application was dismissed by the Sub Divisional Canal Officer, Water Services Sub-Division, Barwala [hereinafter referred to as 'the SDCO'] vide his order dated 9.8.2012. Respondent No.5 challenged the said order by way of an appeal before the Divisional Canal Officer, Water Services Division, Hisar [hereinafter referred to as 'the DCO']. The appellate authority allowed the appeal and set aside the order of the SDCO dated 9.8.2012 with the following observations: -

"I have also inspected the site on 3.3.2013

and observed that respondent Sh. Ram

Niwas son of Sh. Ram Chander has made watercourse Ab deep and unfit for irrigation of appellant fields and violated provision 24 of Canal Act. So I order to Ram Niwas son of Sh. Ram Chander to restored the watercourse bed level as per F.S.I. appellate Hawa Singh son of Sohlu Ram field within fifteen days otherwise legal action will be taken against him as per law.”

The petitioner challenged the order of the appellate authority by way of a revision before the Superintending Canal Officer, Bhakra Water Services Circle-I, Hisar [hereinafter referred to as ‘the SCO’] which was dismissed for want of jurisdiction. The petitioner then approached this Court by way of CWP No.8708 of 2013 which was allowed and the matter was remanded back to the SDCO to hear the parties and decided again. The SDCO vide his order dated 18.11.2014 allowed the application by observing that *“as per warabandi this watercourse is running more than 20 years & comes under the definition of permanent watercourse AB is very deep and not able to irrigate the area Sh. Hawa Singh and Sh. Ram Niwas violated the provision of U/S. 24 of the Haryana Canal & Drainage Act, 1974. So it is ordered to Sh. Ram Niwas S/o Sh. Ram Chander to restore the water-course permanently and maintained its bed level as per N.S.L. of area. If Sh. Hawa Singh s/o Sh. Sohlu Ram within 15 days otherwise legal again will be taken against Sh. Ram Niwas as per law of the Haryana Canal & Drainage Act, 1974.”*

The petitioner thereafter filed the appeal against the said order before the DCO but his appeal was dismissed on 18.9.2015 with the following order: -

“It is evident from the perusal of decision dated 18.11.2014 passed by the SDCO Barwala that the watercourse ‘AB’ is running more than twenty years and warabandi of Hawa Singh s/o Sh. Sohlu etc. respondents was also fixed on this watercourse (AB). Hence the watercourse comes under the definition of permanent watercourse U/s 2(15). Being a permanent watercourse the undersigned is of the considered opinion that the bed level of the watercourse be maintained as per N.S.L’s of area.”

The petitioner then filed revision which was dismissed by the SCO again on 18.3.2016 on the ground of jurisdiction. Thereafter the petitioner filed CWP No.26191 of 2016 before this Court which was allowed on 17.1.2017 and the matter was remitted back to the SCO for deciding the issue involved. The SCO now has again passed the impugned order on 20.7.2017 in favour of respondent No.5 and against the petitioner observing that *“it is evident from the scrutiny of the record/revenue missal that the watercourse ‘AB’ is an old running alignment as per warabandi decided by the deputy Collector vide his order dated 07.11.1987 as well as 07.05.2012 wherein taking point of the respondent ahs been fixed on the same point of*

dismantled, yet it has been altered/deepened by the petitioner as admitted by him at his own". Thereafter the finding has been recorded that the alteration made by the petitioner, at his own, has to be restored by him and the revision petition was dismissed.

Learned counsel for the petitioner has vehemently argued that the impugned order is patently erroneous, illegal and unsustainable. According to him the watercourse is still in existence and has not been dismantled as the finding recorded by the SCO is that even when respondent No.5 has an alternate watercourse but still he would be entitled for the restoration of the watercourse.

I have heard learned counsel for the petitioner and after examining the record, am of the considered opinion that there is no merit in the present case because there is a violation of Section 24 of the Act which is reproduced hereunder:-

24. (1) If a person demolishes, alters, enlarges or obstructs a watercourse or a temporary watercourse or causes any damage thereto, any person affected thereby may apply to the Sub-Divisional Canal Officer for directing the restoration of the same to its original condition.

(2) On receiving an application under sub-section (1) the Sub-Divisional Canal Officer may, after making such enquiry as he may deem fit, enquiry, by a notice in writing served on the person found to be responsible for so demolishing, altering, enlarging,

obstructing or causing damage, to restore, at his own cost, the watercourse or temporary watercourse to its original condition within such period not exceeding twenty - one days, as may be specified in the notice:

Provided that in case of a temporary watercourse its restoration shall not be for a period exceeding one year.

(3) If such person fails to the satisfaction of the Sub-Divisional Canal Officer, to restore the watercourse or temporary watercourse to its original condition within the period specified in the notice served on him under sub-section (2) the Sub Divisional Canal Officer may cause the watercourse or temporary water course to be restored to its original condition and recover the cost incurred in respect of such restoration from the defaulting person. The Sub-Divisional Canal Officer may order recovery of a sum not exceeding Rs. 500 from the defaulting person by way of penalty. Out of this sum so recovered the Sub-Divisional Canal officer may order any amount to be paid to the aggrieved person for the damage caused to him. In case the penalty is not paid the same

shall be recoverable as arrears of land revenue.

(4) Any person aggrieved by the order of the Sub-Divisional Canal Officer. May prefer an appeal within fifteen days of the passing of such order to the Divisional Canal Officer, whose decision on such appeal shall be final.

(5) Any sum which remains unpaid within a period to be specified for this purpose by the Divisional Canal Officer may be recovered as arrears of land revenue.”

According to Section 24(1) of the Act, if a person demolishes, alter, enlarges or obstruct a watercourse or causes any damage then any person, who is affected may seek a direction for restoration of the same to its original condition.

In the present case also though the watercourse has not been dismantled but it has been altered at the instance of the petitioner as recorded by the SCO in his order that the petitioner himself has admitted that he had deepened the watercourse and as a result thereof, the irrigation to the land of respondent No.5 has been adversely affected. The very fact that the petitioner has deepened the existing watercourse without seeking permission of the canal authorities, comes within the definition of Section 24(1) of the Act, in which besides demolition, enlargement and obstruction, the legislature has used the word ‘alter’ which means that the exiting position has been changed. The petitioner has no jurisdiction to change the existing position much less to the detriment of the interest of respondent No.5 who is

Consequently, I do not find any ambiguity or irregularity in the impugned order by which the petitioner has been directed to restore the watercourse much less to maintain the bed level so that both the parties can irrigate their land.

With these observations, I do not find any merit in the present petition and the same is hereby dismissed.

06.12.2017
Vivek

(RAKESH KUMAR JAIN)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>