

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

CWP No.4713 of 2016 (O&M)  
Date of decision : 30<sup>th</sup> March, 2017

Satyanand Bhagat and another

...Petitioners

Versus

The Superintending Canal Officer and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.**

Present: Mr. C.M. Munjal, Advocate and  
Mr. Sandeep Jasuja, Advocate for the petitioners.

Mr. Sandeep Khunger, Advocate for respondent Nos.3 and 4.

Mr. Yatinder Sharma, Addl. A.G. Punjab.

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**AMIT RAWAL, J.**

The petitioners have approached this Court seeking issuance of writ in the nature of certiorari quashing of order dated 23.01.2013 (Annexure P-8) passed by the Divisional Canal Officer-respondent No.2 and 12.01.2016 (Annexure P-16) of the Superintending Canal Officer, Ferozepur on the premise that petitioner No.1 is owner in possession of the land measuring 9 kanals 8 marlas comprised in Rectangle No.18, Killa No.17, whereas petitioner No.2 has inherited the land being legal heirs of Surinder Mohan Bhagat.

Mr. C.M. Munjal and Mr. Sandeep Jasuja, learned counsels appearing on behalf of petitioners submits that respondent Nos.3 and 4 are

the owner of the land comprised in Rectangle No.17, Killa No.10/1 (2-10), Rectangle No.18, Killa no.6 (8-0), Killa No.7/1 (4-6) in Village Kabarwala and have been cultivating their land from the water course running from the land i.e. Rectangle No.17, Killa No.2, 3, 8 adjoining to their land, which fact is evident from site plan (Annexure P-2). In order to harass the petitioners, moved a frivolous application dated 19.11.2012 (Annexure P-3) before respondent No.2 alleging therein that respondent No.5, Anil Bhagat and one Moti Ram in the night of 12.11.2012, demolished the water course passing through their land which was irrigated for the last 18 years. Inquiry was marked to the Zileदार, who inspected the spot and found that there is crop existing to the tune of four finger length at the alleged spot of water course ABC, no warabandi/turn of the water was existing at the spot and there was about 4 ½ inch pucca brick wall existing in Killa No.10 from point A to B and allegedly formed his opinion on conjectures and surmises by holding that there is a water course at point A, B, C. In fact, no water course from any side is/was in existence. Zileदार also relied upon the photocopy of one site plan of Punjab State Tubewell Corporation (hereinafter called PSTC). The site plan (Annexure P-5) of PSTC has been prepared in pursuance to the order dated 28.10.1998 (Annexure P-6). The Sub Divisional Officer, Abohar Canal Sub Division on the basis of the report of Zileदार dated 26.12.2012 (Annexure P-4) recommended for restoration of the water course allegedly demolished vide letter dated 31.12.2012 (Annexure P-7). The respondent No.2 on receipt of the file, initiated the proceedings and issued notice to the persons named in the application and without considering the fact, ordered for restoration of the

alleged demolition of the water course ABC while exercising the power under Section 30 FF of the Northern India Canal and Drainage Act 8 of 1873 vide order dated 23.01.2013 (Annexure P-8) and appeal was preferred against the aforementioned order. The matter was contested. However, Superintending Canal Officer, Ferozepur Canal Circle, Canal Colony, Ferozepur passed order dated 27.09.2013 (Annexure P-9) and remanded back the matter to respondent No.2.

The aforementioned order was assailed in this Court in CWP No.27613 of 2013 titled as Paramjit Singh and another Vs. Superintending Canal Officer and another. Writ petition of the respondent Nos.3 and 4 ultimately was disposed of on 31.03.2015 (Annexure P-13) whereas the matter was remanded back to respondent No.1 for re-examining the matter. LPA bearing No.819 of 2015 was preferred and same was also withdrawn with a liberty to take up all the pleas. Parties appeared before respondent No.1 and in the meantime, information under RTI Act from Punjab Agriculture University, Ludhiana was obtained and as per the said information, it has been informed that regarding the growth and length of wheat crop which is sown in the month of November in particular days, if the clouds are not over the crop, the sown wheat crop grew within a period of 8 to 10 days and if the climate remains normal, crop would be of length of 4 to 5 fingers long within a period of 15 to 18 days of sowing. Respondent No.1 vide order dated 12.01.2016 (Annexure P-16) dismissed the appeal of the petitioners, thus, orders are not sustainable in the eyes of law on the premise that both the respondent Nos.1 and 2 while passing order have not considered and appreciated that the petitioner No.1-Satya Nand

Bhagat was not heard by the respondent No.2 before passing the order dated 23.01.2013 (Annexure P-8). Admittedly, petitioner is owner of the land, on which alleged water course was demolished as per the story putforth by respondent Nos.3 and 4. The Canal Authorities have not considered that the respondent Nos.3 and 4 had mentioned in their application that water course was in existence in Killa No.7/2, 14, 13, of Rectangle No.18. Later on, termed it to be a typographical mistake which according to them had occurred inadvertently. In fact, it should have been read as Killa No.7/2, 14 and 17. In fact, the respondent Nos.3 and 4 have not been able to prove the existence of the water course i.e. either sanctioning or during consolidation by prescription or agreement. The site plan (Annexure P-11) so produced by the petitioners clearly depict that water course flowing along with Watt of Killa No.18 from point AB turns right towards the Killa Nos.23 and 24. SCO-respondent No.1 had not complied with the direction passed by the Division Bench of this Court in LPA. The falsity of respondent Nos.3 and 4 is that only water course had been demolished but there is no water course existing, and is proved from the site plan (Annexure P-2) and as well as khasra girdawri for Sowni for the year 2011 to Sowni for the year 2014 (Annexure P-17) and thus urges this Court for setting aside of the orders under challenge.

Per Contra, Mr. Sandeep Khunger, learned counsel appearing on behalf of contesting respondents submits that petitioners have not approached before this Court with clean hands as answering respondents are owner of small piece of land whereas petitioners and respondent No.5 are big landowners. The source of irrigation of land owned by answering

respondents was only Canal water. The pucca water course ABC was leading to the land of the respondents which had been demolished by the petitioners and respondent No.5. The demolished water course has been shown in the site plan as ABC and the water course prior to the demolished water course and even water course from point C to D is in existence at the spot which is evident from the site plan (Annexure R-3/1). Zileadar at the time of spot inspection recorded the statement of answering respondents and other shareholders which fact is evident from Annexure R-3/2 and statement of one Kashmir Singh, Member, Panchayat as Annexure R-3/3 and joint statement of other shareholders as Annexure R-3/4 who all in unisons stated that pucca water course leading to the land of answering respondents had been demolished by the petitioners. Report of Zileadar is Annexure R-3/5. Even after the submission of report, SDO himself inspected the spot on 31.12.2012 and found the water course ABC have been demolished and has recommended for restoration of water course vide report dated 31.12.2012 (Annexure R-3/6). Water course ABC falls in 4274 meters which were already brick-lined and shown in the site plan. Copy of the relevant portion of the site plan prepared by the PSTC in which water course ABC was marked and shown as P, P1, P2 is attached with paper book as Annexure R-3/7. He has also drawn the attention of this Court to photograph of dismantling of the water course (Annexure R-3/9) and thus urges this Court for dismissal of the present writ petition.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is no force and merit in the submission of Mr. C.M. Munjal and Mr. Sandeep Jasuja, for, the

recommendation of SDO is evident from Annexure R-3/6. It is evident that the site plan was prepared from Halqa Patwari and spot was inspected on 19.11.2012. It has been pointed out that water course ABC have been demolished and about four fingers length of wheat crop was standing at the spot and *Panchayati (Bhaichara) Warabandi* was in existence and there was also pucca small brick which opens in the field of the applicant after crossing the pucca road and on the basis of this, the Sub Divisional Officer, Abohar Canal, Sub Division, Canal Colony, Abohar had written letter dated 31.12.2012 (Annexure R-3/6), which reads as under:-

*“On receipt of the case, it was perused. The spot was inspected by the undersigned on 31.12.2012 alongwith Shri Paramjit Singh A.R.C. and from spot inspection it was found that the pucca watercourse at Point ABC reported by the applicant to have been demolished, has been demolished at the spot. The sanctioned Nakka at point A, closing the nakka at the spot with bricks, existence of 2' both sides walls of the pucca watercourse at Point A and existence of one side wall of the pucca watercourse at the ground level at Point A B and existence of small bridge meant to cross the road to reach the area of the applicant at Point C, all these facts establish the demolition of pucca watercourse. In addition to this, the production of site plan by the applicant which has been sanctioned by the Tubewell Corporation regarding this pucca watercourse also proves the demolition of this sanctioned pucca watercourse. In addition to the above, the statements of the residents of the Village and member of the Village Panchayat available on the case file also establish the demolition of this watercourse. The accused have demolished this pucca watercourse at Point ABC by taking law in their hands and after demolishing the watercourse at*

*Point AB wheat crop has been shown and Safeda trees have been planted in the wheat crop and by demolishing pucca watercourse at point BC wheat crop has been sown there. The katcha watercourse at Point CD is still in existence. On the one hand, the accused by demolishing the pucca watercourse at Point ABC, have stopped the irrigation of the applicant and on the other hand by demolishing the pucca watercourse have caused loss to the Government property. No watercourse from any other side is in existence for the area of the applicant. Therefore, by considering the demand of the applicant as genuine, it is recommended that the pucca watercourse of the applicant at Point ABC be got restored at the place where pucca watercourse was already in existence under Section 30-FF of the Act and it is also recommended that legal action be taken against the accused and case is sent to you further necessary action.”*

Mr. Khunger, Advocate, during the course of arguments has also pointed out that his client is left with no other supply of water canal, had to spend money for purchasing diesel for the purpose of running a generator set for supply of water and also installed the tubewell, which fact is evident from the bill dated 04.07.2014 (Annexure R-3/12).

Superintending Canal Officer, in my view, has rightly held that water course had been demolished and this fact was affirmed from the record of the Department of Punjab State Tubewell Corporation and site plan in which pucca water course had been shown and proved, thus, in my view, there is no force in the submission of Mr. Munjal, regarding of not proving the existence of water course. The land of the petitioners in the site plan (Annexure P-5) placed on record by the petitioners shows that point O and N1 is the land adjacent to the land of the private respondents and which

attached with site plan of PSTC as Annexure R-3/7 i.e. at point P1 and P2. The statements of the co-sharers as indicated above are Annexures R-3/2, R-3/3 and R-3/4 leaves no manner of doubt that the existence of the water course leading to the land of the private respondent which is according to them has been demolished, had not been rebutted in the replication. The factum of the correction of Killa No.17 instead of 13 has also been noticed by this Court being a typographical mistake and had attained finality as in view of the withdrawal of LPA. As per the certificate (Annexure R-3/8) issued from the office of Punjab State Corporation, Branch OP-P1-P2 was brick-lined by the Department of PSTC adjoining to the road from Village Kabarwala to Kabarwala Station from Killa No.23 of rectangle No.13 passing through Killa No.3, 7, 14 and 16 and turned watercourse from Killa Nos.16, 17, 18 of Rectangle No.18. This fact leaves no manner of doubt that water course was in existence and had been demolished.

Order under challenge are perfectly legal and justified and do not call for interference.

No ground for interference is made out.

Writ petition stands dismissed.

**30<sup>th</sup> March, 2017**  
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**(AMIT RAWAL)**  
**JUDGE**

**Whether speaking/reasoned:-** **Yes/No**

**Whether reportable:-** **Yes/No**