

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

Civil Writ Petition No.8426 of 2013

Date of decision:12.1.2017

Ram Kumar

....Petitioner

versus

Superintending Canal Officer, Bhakra Water Services Circle-I, Hisar &
others

....Respondents

Present: Mr.R.A.Sheoran, Advocate
for the petitioner.

Mr.Pawan Kumar Jhanda, AAG, Haryana,
for the State.

Mr.Ajit Sihag, Advocate,
for respondent No.4.

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

AMIT RAWAL J.

The petitioner has approached this Court for quashing of the orders dated 15.6.2012 (Annexure P-2), 27.8.2012 (Annexure P-3) and 26.3.2013 (Annexure P-4), whereby the watercourse has been ordered to be restored in favour of respondent No.4.

Mr.R.A.Sheoran, learned counsel for the petitioner has submitted that respondent No.4 moved an application for restoration of the watercourse from the land of the petitioner in the northern side of Killa No.321//8 before the Sub Divisional Canal Officer, Water Services Sub Division, Adampur, District Hisar (hereinafter called as "SDCO"). Respondent No.3 obtained the report through the Patwari and Zileadar and with the connivance of respondent No.4 without giving any opportunity of

hearing, prepared the report by holding that the watercourse allegedly demolished by the petitioner was in existence. In fact, the petitioner is illiterate and, therefore, by virtue of faith appended his thumb impression. The findings of the authorities regarding the existence of the watercourse were wholly erroneous as none of the ingredients as per Section 2(15) of the Haryana Canal and Drainage Act, 1974 (for short “1974 Act”) have been proved, i.e., sanctioned water course, in existence and under agreement or by prescription and, thus, the orders under challenge are liable to be set-aside on the following grounds:-

- a) The authorities below had erroneously relied upon the report of the Zildar which was biased and prepared in the office. In fact, there was no spot inspection;
- b) The petitioner and his sons are irrigating their land from the lined watercourse and there was no watercourse in the land of the petitioner;
- c) Nowhere in the jamabandi or the revenue record, it has been mentioned that the watercourse is on the northern side of Killa No.321//8 in possession of the petitioner and, thus, the findings are totally erroneous;
- d) The petitioner made a request for spot inspection, but the same was declined. The Warabandi (time for supplying of water through water channel) was prepared in the year 2009 and respondent No.4 and his sons are irrigating their land from the lined watercourse shown in the site plan dated 27.8.1998, thus, respondent No.4 cannot get the land irrigated through two different watercourses;

e) No turn has been allocated from the alleged watercourse.

Respondent No.4 is taking turn of his water from the lined watercourse, which passes through his own field, thus, the watercourse through the field of the petitioner is wholly erroneous and it has taken a valuable right of the petitioner.

Per contra, Mr.Ajit Sihag, learned counsel for respondent No.4 has drawn the attention of this Court to Annexure R-4, the site plan whereby the watercourse from A to B in khasra No.321//8 has been demolished, whereas from previous point it was in existence. The demolition of the watercourse is reflected in the site plan shown in red colour, whereas the land belonging to the respondent is in blue colour. The spot inspection was done. The petitioner is blowing hot and cold and cannot be permitted to abrogate and reprobate as he had suffered a statement regarding the demolition of the watercourse, therefore, cannot take the aid of the provisions relied upon, i.e., the watercourse in agreement, by agreement or by prescription and, thus, urges this Court for dismissal of the writ petition.

I have heard the learned counsel for the parties, duly considered their arguments, seen the paper book and the annexures attached thereto and of the view that there is no substance and merit in the submissions of the learned counsel for the petitioner.

Ziledar had clearly mentioned in his report that he visited the spot on 21.4.2012 and found the dismantled watercourse in question. Even the SDO, W/S Sub Division, Adampur reiterated the aforementioned fact after the site inspection. It is settled law that the watercourse running more than twenty years and dismantled, then the same can always be restored.

The Warabandi record and sketch plan dated 31.7.1971 noticed

by the authorities clearly depicted that the watercourse in question was in existence, therefore, was covered under the provisions of Section 2 (15) of 1974 Act. Both the parties have suffered a statement before the Zileadar, which has been extracted in the written statement. The same reads thus:-

“Statement before the Zileadar appearing on page 9 of the case file from 3rd line “..This application has been wrongly given. I have dismantled this water course because his water course on the other side lined water course is touching his fields. This water course was running in front of my Dhani (i.e. Residential area) and every day used to abuse us that is why we have dismantled it. The other water course touches him and he can irrigate through it.”

Statement before S.D.C.O., i.e., respondent No.3 appearing at page 18 of case file. “the water course which was along the road is not of deduction (i.e. Reserved in consolidation) so we have demolished it. Bhoop is having water course on the other side.

The water course which we have demolished, won't allow.”

Contents of para 4 of the grounds of appeal filed before the D.C.O. (respondent No.3)”.....That the statement made by appellant before the officer below were as per site and were correct and he has erred in not relying/considering the same.”

All these factors have been taken into consideration by the authorities. In my view, the petitioner was estopped to challenge the impugned orders by filing the appeal and the revision in view of the statement, noticed above. It is sheer waste of time and the process of the

non-quasi authority and as well as of this Court.

For the foregoing reasons, I find no illegality and perversity in the impugned orders. The same are upheld. Writ petition stands dismissed.

(AMIT RAWAL)
JUDGE

January 12, 2017
ramesh

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