

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

CWP No.8186 of 2014 (O&M)

Date of decision : 17.01.2017

Paramjit Singh

...Petitioner

Versus

Superintending Canal Officer and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Ravish Bansal, Advocate for the petitioner.

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

Mr. Vivek Chauhan, Advocate for respondent No.3.

AMIT RAWAL, J. (Oral)

CM No.366-CWP of 2017

For the reasons stated in the application, which is duly supported by an affidavit, application is allowed.

Objections against the report dated 27.04.2016 submitted by the Local Commissioner and Annexures P-5 and P-6, is taken on record, subject to all just exceptions.

Main Case

Challenge in the present writ petition is to the order dated 22.10.2013 (Annexure P-3) of respondent No.2-DCO and order dated 19.02.2014 (Annexure P-4) of respondent No.1-SCO, whereby application of the respondent No.3-Gurjeet Singh for restoration of the water course shown in the site plan Annexure R-3/1 at point A to B, has been allowed.

Mr. Ravish Bansal, learned counsel appearing on behalf of

petitioner submits that khasra Nos.5/2, 8/2 and 9/2 as per *Aks Shajra* Annexure P-6, having a width of 1 karam and length of 120 karam mutated in favour of Gurjeet Singh-respondent No.3. This area was kept on the basis of the partition for the purpose of water course. Aforementioned *Aks Shajra* is commensurating with the site plan Annexure R-3/1. Mutation Nos.3291 and 3292 Annexure P-5 (colly) shows the mutation of the khasra number i.e. 8/2 measuring 3 marlas, 9/2 measuring 4 marlas and 5/2 measuring 6 marlas. The authorities did not give any reasoning with regard to the existence of water course either:-

1. by way of sanction of any authorities after preparation of the scheme.
2. by prescription or by way of arrangement.

It was incumbent upon the respondent No.3 to establish the existence of water course before moving of the application. Even no proof of *jamabandi*, *khasra girdawari* or *barabandi* (i.e. turn of water) has been placed on record before the authorities. Thus, orders are most atrocious, fallacious, much less, cryptic. This Court for adjudication of the lis, appointed an Advocate of this Court as Local Commissioner to inspect the spot for determination of existence of water course. As per the site plan LC-1, it has been found that portion marked as X to X does not show any water flow but in area previous to that shows the existence of water course but the site plan does not show the existence of the water course as indicated in the site plan Annexures R-3/1 and R-1. Thus, the orders of the authorities are totally alien to the settled canons of law, much less, existence of the water course at the spot. It is nothing but an Act of Browbeating and arm twisting.

The petitioner has been constrained to file objections to the report of Local Commissioner on the premise that factual aspect was correct but in the penultimate paragraph of the report, it has been mentioned that site plan Annexure R-3/1 is correct as per the spot. However, on comparison of site plan LC-1 and Annexures R-3/1 and R-1, there is no existence of water course shown as A to B, thus, orders are liable to be set aside.

Mr. Vivek Chauhan, learned counsel appearing on behalf of respondent No.3 submits that orders under challenge are based upon appreciation of the facts and law, much less, spot inspection. The authorities found that water course are in existence and accordingly restored from point A to B. Report of Local Commissioner is only confined to the point X to X, therefore, report read in entirety does not vitiate the site plan Annexure R-3/1 i.e. existence of water course from point A to B.

The aforementioned arguments have been also adopted by Mr. Yatinder Sharma, Addl. A.G. Punjab. Mr. Yatinder Sharma, Addl. A.G. Punjab has also submits that water course ordered to be restored was already in existence and therefore rightly has been ordered to be restored.

Before I give my finding, I called upon counsel for respondent No.3 and as well as State to apprise as to what is the basis of the site plan Annexure R-3/1 i.e. whether existence of water course is reflected in any of the *khasra girdawri*, *jamabandi* or *barabandi*, answer is in negative.

Yet the Officer at the helm of the affairs, had been audacious enough to reiterate the findings rendered by authorities below by attaching site plan (Annexure R-1). It is being signed by an Officer of having rank of Executive Engineer, Harike Canal Division, C.C. Ferozepur, though

prepared by Sub Divisional Officer, Sirhind Feeder, Sub Division, Guru Canal House, Ferozepur and Zileadar Kasubegu Harikey Division, Ferozepur.

I have heard learned counsel for the parties and appraised the paper book and report of Local Commissioner. For the sake of brevity, report of the Local Commissioner reads as under:-

“That on dated 16.02.2016 this Hon'ble Court appointed me as Local Commissioner to inspect the site in dispute and following order was passed:-

CWP No.8186 of 2014

Paramjit Singh V/s SCO and others

Present:- Shri Ravish Bansal, Advocate for the petitioner.

Shri Anant Kataria, DAG Punjab.

Shri Vivek Chauhan, Advocate for respondent No.3.

The petitioner relies on the site plan Annexure P-1, while respondent No.3 relies upon the site plan Annexure R-3/1. A perusal of these two site plans would reveal that they are at variance with each other. In annexure P-1, a water course has been depicted at point marked as X to X encircled in red colour, whereas in Annexure R-3/1, no water course is visible. The petitioner states that this water course also exist. To ascertain the factual position, let a Local Commissioner be appointed at the expense of the petitioner who will visit the site and prepare a rough site plan comparing Annexures P-1 and R-3/1 and thereafter submit his own comments. Ms. Sharmila Sharma, Advocate is appointed as Local Commissioner and her fee is assessed as Rs.30,000/-.

List for further proceedings on 3.5.2016.

A copy of the petition along with site plans as on Court file be given to the Local Commissioner.

Sd/- (Mahesh Grover)

Judge

February 16, 2016

In compliance of the above said order, I informed all the concerned parties through speed post, Sh. Paramjit Singh son of Balwant Singh and Manjit Kaur wife of Balwant Singh were informed through registered letter duly received by them. Copy of postal receipt dated 23.04.2016 attached herewith Annexed as LC-1.

On 27.04.2016, I visited disputed site situated in Village Bhagthalakalan, Tehsil and District Faridkot, On my reaching 10:30 AM, I found petitioner and respondents along with field staff including SDO Irrigation Department present on the spot.

On the spot, I visited the water course as per site plan depicted as X to X as encircled in red colour accompanied by both parties and concerned Patwari who identified killa numbers wherein water course in dispute was to be inspected. I found that in half of the water course X to X water was running whereas half of the water course was not in existence on the spot.

On having the comparison of Annexure P-1 and Annexure R-3/1, it was found that Annexure R3/1 has demonstrated the factual position on the spot. From X to X half of the water course is in existence and in half of the water course there is no visibility of water course. Moreover, there was no other water course existing on the spot.

The parties to the lis, official/officer of the Irrigation Department along with other respectables of the village were present at the site and their signatures as token of

their presence were taken on presence sheet dated 27.04.2016 Annexed LC-2.

While inspecting the site, both the parties to the lis and Irrigation Department officials were given full time to explain the factual position. They presented their version orally.

As per my report on comparison of Annexure P-1 and R-3/1 it was found that Annexure R-3/1 has depicted the correct position. From mark X to X, half of the water course is in existence and half of the water course is not visible on the spot. Rough site plan dated 27.4.2016 Annexed as LC-3.”

Before I could give further opinion, I noticed person standing behind Mr. Yatinder Sharma, Addl, A.G. Punjab and asked him about his particulars, answer was that he was present Zileadar, Mr. Narpinder Singh.

The present Zileadar who is posted in Kasubegu Harikey Division, Ferozepur is present in Court and was called upon to explain regarding the contents of site plan Annexure R-1. He was asked whether the site plan prepared is backed by any following document or revenue record:-

1. Khasra Girdawri.
2. Jamabandi or Barabandi.

The answer was in negative.

It is strange that Officer at the helm of affairs i.e. DCO and SCO who at the drop of the hat, like if any body, moves an application, orders for restoration. It is strange that even reply filed by the State does not give the particulars of any spot inspection. Findings passed by DCO and SCO are nothing but figment of imagination. The site plan attached of the Local Commissioner does not show the existence of water course from point

A to B. It only shows that from point X to X, there was no water flowing through, though there was water course previous to that and this is what has been shown in Annexure P-1 and as well as mutation Annexure P-5. It is prerogative of the respondent No.3 to get the water course restored, in case, it has been demolished though no evidence, prima facie, establishes that the same was existing at point X to X. Once the water course was already in existence, the respondent No.3 could have only requested the DCO and SCO to restore the water course but providing a new water course which is not backed by any revenue record. Authorities accepted the request by treating it same as sermon.

All these factors have not been noticed by SDO and, therefore, orders in my view are arbitrary, illegal and does not stand to the touchstone of the reasonability, much less, legality and accordingly, are hereby set aside. Water course already in existence from point X to X in site plan of the Local Commissioner is ordered to be restored. In case there is impediment being caused by the petitioner, the respondent-State will provide police assistance to respondent No.3 for restoration of the water course for which there is already mutation as per Annexure P-6.

Writ petition stands disposed of in aforementioned terms.

17.01.2017

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No