

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

CWP No.28005 of 2017
Date of Decision: 19.12.2017

Devi Lal

. . . . Petitioner

Vs.

State of Haryana and others

. . . . Respondents

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

Present: Mr.Ajit Sihag, Advocate,
for the petitioner.

RAKESH KUMAR JAIN, J. (ORAL)

The petitioner has challenged the validity of the order dated 30.5.2016 passed by the Superintending Canal Officer, Bhakra Water Services Circle, Sirsa [for short 'the SCO'] and the letter dated 03.10.2016 by which the matter has been sent back by the Divisional Canal Officer, Nehrana Water Services Division, Canal Colony, Sirsa [for short 'the DCO'] to the Sub Divisional Canal Officer, Baruwali Water Service Sub-Division, Canal Colony, Sirsa [for short 'the SDCO'] for restoration of the dismantled water-course on the middle line of Rect. No.82//2-3. The SDCO passed the order of restoration of the watercourse permanently vide his order dated 23.8.2013. The said order was challenged by Mohar Singh by way of an appeal before the DCO. The appeal was dismissed and the order of the SDCO was affirmed vide order dated 22.11.2013. Mohar Singh then filed revision before the SCO, who also upheld the order of the SDCO and DCO by dismissing the revision petition on 27.1.2014. Mohar Singh then filed

CWP No.4624 of 2014 in this Court, which was disposed of on 27.1.2015 with the following order: -

“Limited plea of the petitioner is that in case water course in question has to be restored, adequate compensation is required to be paid to petitioner under Section 17 of the Haryana Canal and Drainage Act, 1974. However, this issue has not at all been considered by the authority. According to him, the order needs to be set aside and matter be remitted to the same authority for a decision afresh.

Prayer is not opposed by learned counsel representing private respondents.

In view of the above, orders, Annexure P-6 to P-8 are hereby set aside and matter is remitted to the Divisional Canal Officer, Nehrana-respondent No.2, for decision afresh after hearing the parties.

Allowed in these terms.”

Apropos, an application was filed by the petitioner to the DCO on 3.4.2015 for a fresh decision. The DCO remanded the matter back to the SDCO vide his order dated 30.4.2015. The SDCO passed the order of restoration of dismantled water-course on permanent basis in favour of the petitioner on 29.5.2015. The order of the SDCO was challenged by Mohar

Singh before the DCO by way of appeal. His appeal was dismissed vide order dated 30.9.2015. Thereafter, he filed the revision before the SCO, which has been allowed vide order dated 31.5.2016 with the following observations: -

“The record was called to see the illegality and impropriety U/s 20(3) of the Canal Act. After careful consideration of the arguments put forth by the learned counsel of both the parties, going through the case file order of both the lower courts as well as orders of the Hon’ble Punjab & Haryana High Court Chandigarh given in CWP No.4624 of 2014. From perusal of orders of the Hon’ble Punjab & Haryana High Court given on this issue in CWP No.4624 of 2014 titled as Mohar Singh s/o Surja Ram Versus Sub Divisional Canal Officer, Baruwali Sub Division, Sirsa and other is crystal clear as the learned counsel of Sh. Devi Lal s/o Bagrawat has also not opposed the issue of compensation. Thus the decision of the Divisional Canal Officer, Nehrana W/S Division, Sirsa is not according to order of Hon’ble High Court.

Under the circumstances, the case is remanded to Divisional Canal Officer, Nehrana W/S Division, Sirsa to take up the matter as per directions of the Hon'ble Punjab & Haryana High court given in CWP No.4624 of 2014. The Revision petition is disposed of accordingly.”

The DCO, after remand, wrote a letter to the SDCO dated 30.10.2016 and asked him to prepare a fresh scheme of watercourse on compensation basis.

Learned counsel for the petitioner has submitted that it is not a case of new watercourse for which compensation has to be paid rather it is a case of restoration of dismantled watercourse. It is thus submitted that there is no question of paying any compensation.

I have heard learned counsel for the petitioner and after examining the record, am of the considered opinion that there is no merit in his arguments insofar as the facts and circumstances of the present case is concerned. The petitioner was a party in CWP No.4624 of 2014 which was disposed of by this Court in the presence of his counsel. At that time, this Court, while setting aside the previous orders passed by the SDCO dated 23.8.2016, DCO dated 22.11.2013 and SCO dated 27.1.2014 remanded the case back to the canal authorities on a limited plea of the petitioner that in case watercourse in question has to be restored then adequate compensation is required to be paid. At that time, the petitioner, who was arrayed as respondent No.4, did not oppose as it is specifically observed in the order of

the High Court dated 27.1.2015 that *“prayer is not opposed by learned counsel representing private respondents”*.

Consequently, the matter was remanded back and when the SDCO and DCO did not pass the order in regard to compensation, the SCO passed the order of compensation on the basis of the statement suffered by the petitioner which is so recorded in his order that *“learned counsel of Sh. Devi Lal s/o Bagrawat has also not opposed the issue of compensation”*. Though, learned counsel for the petitioner has submitted that it pertains to the proceedings of the writ petition but there is nothing on record to show that it pertains to the proceedings of the writ petition rather the observation made by the SCO shows that the said statement was made by counsel for the petitioner during the course of hearing. Had it not been so, the petitioner would have filed an application forthwith for recalling of the order.

Thus, in view of the aforesaid facts and circumstances, peculiar to this case, there is hardly any merit in this petition for the purpose of inference.

Dismissed.

19.12.2017

Vivek

(RAKESH KUMAR JAIN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No