

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

CWP No.191 of 2018

Date of decision : 10.01.2018

Gurmail Singh

.....Petitioner

Versus

**The Superintending Canal Officer, Bhakra Main Line Circle, Patiala
and others**

...Respondents

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Sandeep Khunger, Advocate for the petitioner.

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DAYA CHAUDHARY, J. (Oral)

The prayer in the present petition is for issuance of a writ in the nature of certiorari for quashing of impugned order dated 19.12.2017 (Annexure P-7) passed by respondent No.1 as well as order dated 10.08.2017 (Annexure P-5) passed by respondent No.2, whereby the respondents have ordered for restoration of water course C-D-E-F in exercise of powers under Section 30-FF of the Northern India Canal & Drainage Act, 1873 (here-in-after referred to as the Act) on the ground that during consolidation, the land was left for watercourse, whereas no such watercourse was in running condition at the spot.

Briefly, the facts of the case as made out by the petitioner are that he is owner of agricultural land situated in village Pamali and source of irrigation is through canal. An application was moved by respondent No.3 *i.e.* Karamjit Singh before canal authorities stating therein that the watercourse, which was leading to his area, had been demolished by the petitioner. Said application was marked by the Divisional Canal Officer to the concerned Zildar. Thereafter, statement of respondent No.3 was recorded. The Divisional Canal Officer vide order dated 27.01.2016 ordered for restoration of watercourse. Aggrieved by said order dated 27.01.2016 passed by the Divisional Canal Officer, an appeal was filed by the petitioner before the Superintending Canal Officer, who vide order dated 05.05.2017 remanded the case to the Divisional Canal Officer with a direction to pass a detailed speaking order. In pursuance of said direction, the Divisional Canal Officer again ordered for restoration of watercourse vide order dated 10.08.2017.

Learned counsel for the petitioner contends that the order of restoration of watercourse has been passed without giving any finding as to whether the alleged watercourse C-D-E-F was in existence or not. Learned counsel also submits that the appeal was also dismissed without taking into consideration the grounds of appeal. Learned counsel further submits that a 'temporary water course' is a watercourse which run at least for a period of six months prior to its demolition, as defined under Section 3(1-A) of the Act. Learned counsel also submits that the Divisional Canal Officer ordered for restoration of the watercourse, which was not running at the spot and no

turn of water was fixed for the land of respondent No.3 as per provisions of Section 68 of the Act. It was admitted in the reply filed by the Executive Engineer that respondent No.3 was using the tube-well for the irrigation of his land and he never irrigated his land through canal water. At the end, learned counsel for the petitioner submits that the provisions of Section 30-A and 30-B of the Act are to be taken into consideration. Impugned orders have been passed without recording any finding as to since when the watercourse in dispute was running and when it was demolished. In absence of such finding, the provisions of Section 30-FF could not have been invoked by the respondent-authorities.

Heard arguments of learned counsel for the petitioner and have also perused the impugned orders and other documents on the file.

On perusal of the order passed by Superintending Canal Officer, it shows that a specific finding has been given that according to consolidation of the year 1962, Khasra No.503 of 1 Kanal 1 Marka has been entered as ownership in Column No.4 and in columns No.5, 6 and 7, the area has been shown to be *Gairmumkin*. Meaning thereby, the area is not the ownership of any party. It has also been mentioned in the finding that land of watercourse was included by the petitioner-appellant in his land and the same was being used by him. As per report of the field staff which was submitted by Zileदार/Sub Divisional Officer, it was a reserved watercourse and it was sanctioned as ABCDEF. It was ordered to be restored by the Divisional Canal Officer. It has also been mentioned that the land in dispute was reserved for watercourse and the same was in the ownership of the

Government. Said land does not belong to the petitioner and he has no right to oppose the restoration of the watercourse. The order passed by the Divisional Canal Officer is detailed and well reasoned as it has specifically been mentioned that Khasra No.503 belongs to reserved watercourse and a canal watercourse was running. The respondent was also irrigating his fields through this watercourse. He installed an independent electric motor for irrigation but when underground water level had gone down, he submitted an application for restoration of reserved watercourse for use of canal water, which was demolished by petitioner Gurmail Singh and the land of the watercourse was included in his land. Finding the request of the respondent to be genuine, the watercourse was ordered to be restored in the public interest for better irrigation. Being the land *jumla malkan*, the petitioner has no right to oppose the restoration of the watercourse.

From the facts as mentioned above, admittedly the watercourse in dispute was left at the time of consolidation but subsequently it was demolished.

In view of the facts as mentioned above, there is no merit in the contentions raised by learned counsel for the petitioner and the petition being devoid of any merit, is hereby dismissed.

10.01.2018

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No