

CWP-30681-2018

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-30681-2018

Date of Decision: December 04, 2018

Malkiat Singh

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASI

Present: Ms. Sonia G. Singh, Advocate,
for the petitioner.

AUGUSTINE GEORGE MASI, J. (ORAL)

Challenge in this writ petition is to the order dated 24.08.2016 (Annexure P-5) passed by the Divisional Canal Officer, Faridkot Canal Division, Faridkot and order dated 20.11.2017 (Annexure P-6) passed by the Superintending Canal Officer, Sirhind Canal Circle, Ludhiana, on an appeal preferred by the petitioner, whereby, the application moved by the petitioner for restoration of the khal was dismissed.

2. It is the contention of the learned counsel for the petitioner, with reference to the report of Zildar, dated 05.05.2014, submitted to the Sub Divisional Officer, according to which, that there is a demolished canal. Reference has also been made to the latest demarcation report dated 09.04.2018 (Annexure P-7) carried out by the Revenue Authorities,

according to which, there is still encroachment upon the concerned public passage. Counsel, thus, contends that the order passed by this Court in CWP No.12355 of 2013 has not been complied with and the petitioner has been made the only scapegoat, as the canal has been demolished, which runs parallel to the land of the petitioner, whereas, no other encroachment on the passage has been removed. She, therefore, contends that the findings as recorded by the authorities below that there is no watercourse, cannot sustain and deserve to be set aside.

3. I have considered the submissions made by the learned counsel for the petitioner and with her assistance, have gone through the records of the case.

4. Perusal of the order dated 30.08.2013 passed in CWP No.12355 of 2013, titled as 'Malkit Singh Vs. State of Punjab & others', would show that there is a categorical affidavit filed by the Deputy Commissioner, Ferozepur, relevant part thereof has been reproduced in the said order, wherein, what has transpired is that as per the demarcation carried out on the spot on 16.08.2013, twenty persons including nine private respondents in the writ petition, were found to be unauthorized occupants on the land falling in the part of the passage. Those unauthorized occupants have given an undertaking in writing that they will clear the said encroachment after harvesting the crops. Even the counsel for the private respondents had made a statement that the private respondents would abide by the undertaking given by them to the Deputy Commissioner, Ferozepur and

hand over the vacant possession after harvesting the crops. The said writ petition was disposed of by directing the private respondents to comply with their undertaking and clear the passage within the stipulated time. It was further observed that the Deputy Commissioner, Ferozepur, would be at liberty to get the land cleared by using police force, if requires, in case the land is not vacated as per undertaking.

5. If that be so and there being still encroachment upon the land which falls in the passage, as is being sought to be projected in the report submitted by the Patwari vide rapat No.314 dated 9.04.2018 (Annexure P-7), the same would not confer any right upon the petitioner in any manner. Rather the Deputy Commissioner, Ferozepur, as per the order passed by this Court in CWP No.12355 of 2013, titled as 'Malkit Singh Vs. State of Punjab & others', was required to clear the encroachments. A direction in this regard has already been issued by this Court on 30.08.2013.

6. Let the Deputy Commissioner, Ferozepur, carry out the orders passed by this Court on 30.08.2013 in CWP No.12355 of 2013 within a period of 60 days from the date of receipt of certified copy of this order. The orders as passed by the authorities below which have been impugned herein cannot be faulted with in the light of the fact that the order passed by this Court in CWP No.12355 of 2013 does indicate that the khal is running on the land, which falls in the passage.

7. The writ petition of the petitioner, therefore, stands dismissed, however, with a direction to the Deputy Commissioner, Ferozepur, as

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referred to above.

8. Copy of this order be sent to the Deputy Commissioner, Ferozepur, for information and compliance forthwith. A Copy of this order be also given to the counsel for the State, Mr. Charanpreet Singh, Asstt. A.G., Punjab, **dasti** for conveying the same to the Deputy Commissioner, Ferozepur, for compliance.

9. Let the compliance report be filed in this Court on or before **30.03.2019** by the Deputy Commissioner, Ferozepur, failing which, the case be put up in motion hearing on **15.04.2019**.

(AUGUSTINE GEORGE MASIH)
JUDGE

December 04, 2018
Harish

Whether speaking/reasoned:	Yes
Whether Reportable:	No