

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

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Civil Writ Petition No.5917 of 2019

Date of Decision: March 5th, 2019

Bishna Ram

...Petitioner

Versus

The Sub-Divisional Canal Officer, Baruwali Water Services Sub-Division,
Sirsa and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ashok Verma, Advocate
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court praying for quashing of the order dated 09.07.2018 (Annexure P-2) passed by the Sub Divisional Canal Officer, Baruwali Water Services Sub-Division, Sirsa-respondent No.1, order dated 06.09.2018 (Annexure P-5) passed by the Divisional Canal Officer, rejecting the appeal of the petitioner and order dated 31.12.2018 (Annexure P-7) passed by the Superintending Canal Officer-respondent No.3 rejecting the revision petition of the petitioner.

2. It is the contention of learned counsel for the petitioner that the watercourse as alleged to have been dismantled by the petitioner is a mere fiction on the part of private respondent-Shishpal. He contends that the affidavit dated 02.09.1999 of the predecessor-in-interest of the petitioner is a forged and fabricated document and, therefore, cannot be made the basis for coming to a conclusion that it was a watercourse, which had come into existence because of the consent given by the predecessor-in-interest.

He contends that mere *warabandi* of the year 2002 cannot be made the basis

for coming to a conclusion that such a watercourse was in existence, which

is alleged to have been dismantled. He contends that there was as a matter of fact no watercourse running through the land of the petitioner and thus, the very basis of filing the application for restoration of the watercourse is unsustainable and the application deserves to be dismissed. Counsel has also asserted that the father of the petitioner namely Veer Singh has filed an affidavit dated 28.02.2019 that he had never executed any affidavit dated 02.09.1999 in favour of respondent No.4-Shishpal. Prayer has thus, been made for setting aside the order impugned and for dismissal of the application submitted by the private respondent for restoration of the khal.

3. I have considered the submissions made by learned counsel for the petitioner and with his assistance, have gone through the records of the case as well as the impugned orders.

4. The authorities below have come to a conclusion that the affidavit dated 02.09.1999 as executed by the father of the petitioner has not been proved to be a forged and fabricated document. The onus admittedly was on the petitioner to prove that such an affidavit was a forged and fabricated document. The Divisional Canal Officer had given full opportunity to the petitioner to prove the said document to be forged and fabricated one as it is so recorded in the order but the petitioner did not come up with any report of any expert or the competent authority dislodging the correctness of the affidavit. It is for the first time, in this writ petition that an affidavit has been submitted by the petitioner of his father that he had not executed such an affidavit in the year 1999. The same, therefore, is now a fabricated story at the behest of the petitioner. It establishes that an affidavit was duly executed by father of the petitioner on 02.09.1999 as attested by the Executive Magistrate, Bhattu Kalan. This would clearly

indicate that the watercourse was in operation since the year 1999 which has been further fortified with the *warabandi* of the year 2002. The site plan of the year 2002 also shows the existence of the *warabandi* at the spot. The finding, therefore, as recorded by the authorities below that there was in existence a watercourse from the year 1999, cannot be said to be not in accordance with the pleadings and the documents on record. The impugned orders being in accordance with law are hereby upheld.

5. The writ petition is devoid of any merit and, therefore, the same stands dismissed.

March 5th, 2019
Puneet

AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No