

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
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CWP-12397-2019

Date of decision: 10.05.2019

GURSAHIB SINGH AND OTHERS

...PETITIONERS

VS.

***SUB DIVISIONAL CANAL OFFICER, MAMAR KHERA WATER
SUPPLY SUB DIVISION AND OTHERS***

..RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Divyadeep Walia, Advocate,
for the petitioners.

AUGUSTINE GEORGE MASIH, J.

Petitioners have challenged the order dated 17.10.2018 (Annexure P-2) passed by the Sub-Divisional Canal Officer, Mamarkhera Water Supply Sub-Division, Sirsa-respondent No. 1, whereby application dated 27.06.2018 filed by private respondents No. 4 to 13 for restoration of the water course A.B., which was alleged to have been dismantled by the petitioners, has been allowed, order dated 11.12.2018 (Annexure P-3) passed by the Divisional Canal Officer, Sirsa Water Supply Division, Sirsa-respondent No. 2 dismissing the appeal preferred by the petitioners and the order dated 20.03.2019 (Anneuxre P-4) passed by the Superintending Canal Officer, Bhakra Water Service Circle, Sirsa-respondent No. 3 dismissing the revision of the petitioners.

It is the contention of the learned counsel for the petitioners

that the authorities below have proceeded to restore the water course which is alleged to have been dismantled by the petitioners when there was no water course in existence. He contends that merely on the basis of there being some *warabandi* shown cannot be a ground for restoration of the water course as it is not a proof of existence of water course. In support of this contention, he has placed reliance upon the various judgments, which have been passed by this Court, such as **Sube Singh and another vs. R.S.Bamel, Sub Divisional Canal Officer, Hisar Water Services Division and others**, 2003 (2) PLJ 236, **Sukhdev Singh and another vs. Sub Divisional Canal Officer Bani W.S.Sub Divn. Sirsa and others**, 2001 (2) PLJ 457, **Joginder Singh vs. The Sub Divisional Canal Officer, Ghaggar Water Services Sub Division, Tohana and others**, 2003 (2) RCR (Civil) 768, **Gram Panchayat lakho Wali, Tehsil Jalalabad, District Ferozepur and others vs. Superintending Canal Officer, Ferozepur Canal Circle, Ferozepur and others**, 2013 (3) RCR (Civil) 31.

It is the further contention of the counsel for the petitioners that in case the water course is restored at the site A.B., the land of the petitioners would be bifurcated which would lead to difficulty in cultivating the land. His contention is that the findings recorded by the authorities below being based upon conjectures and surmises cannot sustain. Prayer has, thus, been made for setting aside the impugned orders and for dismissal of the application filed by the private respondents under Section 24 of the Haryana Canal and Drainage Act, 1974.

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

There can be no dispute with regard to the assertion of the counsel for the petitioners that as per the judgments passed by this Court in the cases, on which reliance has been placed by the counsel for the petitioners, i.e. Sube Singh and another (supra), Sukhdev Singh and another (supra), Joginder Singh (supra), Gram Panchayat lakho Wali, Tehsil Jalalabad, District Ferozepur and others (supra), merely because the water outlet/*Naka* is in existence, cannot be made the basis for coming to the conclusion that a water course has been dismantled. But that does not mean that the records pertaining to *warabandi* (water turn), especially those which were old, do not have any value or persuasive effect or that they do not give an indication as to the existence of a water course. It is a different aspect that this alone cannot be said to be enough for holding that there was, in fact, a water course in existence. These records give indication and if the same are supported by other evidence with regard to there being an existence of a water course, the same can be taken into consideration for coming to a conclusion with regard to there being a water course at the site, which is alleged to have been dismantled.

In the present case, the Site Plan for the *warabandi*, which was prepared as per the decision of the Deputy Collector dated 02.07.1969, shows the *waris* fixed for the petitioners as well as the respondents and the water course is shown running at the site. Similar is a position in the Site Plan prepared as per the decision of the Divisional Canal officer dated 19.04.2004, wherein land of the predecessors-in-interest of the petitioners is shown in yellow colour at Sr. No. 2 and that of the predecessors-in-interest of the private respondents shown in the green colour at Sr. No. 3 and the water course has also been shown running at the site. *Parat Warabandi*

dated 30.09.1996 also shows the land of the petitioners fixed at Sr. No. 2 with taking point at Head Moga and delivery point Rect./Kila No. 75//5x7 with bharai of 16 minutes for four kila length of katcha water course from Head Moga to point 75//5x7 to starting point of holding of respondents and 0-14 minutes Jhara (Residue) from starting point of holding of respondent to Head Moga for 7 Kilas length of katcha water course. The bharai time is fixed @ 4 minutes and Jhara @ 2 minutes per kila length on katcha water course in warabandi of this outlet. Similar position exists in *Parat Warabandi* dated 14.01.2004.

There is nothing on record which would indicate that any objections were made by the petitioners for fixation of *wari* and *Naka* on the water course since 1969 or for the use of the water course A.B. for irrigation of land of the respondents. *Khasra Girdawari* indicates the land of the respondents to be *nehri*. Although authorities, after considering the submissions and the statements of the parties as well as the site visit by the Sub-Divisional Canal Officer, have concluded that the water course A.B. was in existence at the site with a verbal consent of the predecessors-in-interest of the petitioners since 1969 and it being in existence for more than 20 years falls under the category of 'sanctioned water course' and accordingly, it was permanently restored.

It may be added here that the judgments, on which reliance has been placed by the counsel for the petitioners, were those where no specific finding has been given by the competent authority with regard to the nature of the water course which was in existence prior to it being dismantled.

A perusal of the impugned orders would show that the authorities under the Haryana Canal and Drainage Act, 1974, have taken all

aspects into consideration and passed well-reasoned and speaking orders which do not call for any interference by this Court in exercise of its extraordinary writ jurisdiction.

In view of the above, finding no merit in the present writ petition, the same stands dismissed.

May 10, 2019

pj

**(AUGUSTINE GEORGE MASIH)
JUDGE**

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No