

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

116

Civil Writ Petition No.16178 of 2019

Date of Decision: July 1st, 2019

Om Parkash and another

...Petitioners

Versus

Superintending Canal Officer, Bhakra Water Services Circle, Fatehabad
and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Sanjay Mittal, Advocate
for the petitioners.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioners have approached this Court challenging the order dated 25.04.2019 (Annexure P-4) passed by the Superintending Canal Officer, Bhakra Water Services Circle, Fatehabad, wherein the revision petition preferred by the petitioners was dismissed as well as the order dated 05.07.2018 (Annexure P-3) passed by Divisional Canal Officer, Water Services Division, Fatehabad, Tehsil and District Fatehabad-respondent No.2 and the order dated 16.05.2018 (Annexure P-2) passed by the Sub Divisional Canal Officer, Bhattu Water Services Sub Division, Bhattu, allowing the application of private respondents under Section 24 of the Haryana Canal and Drainage Act, 1974, whereby directions have been issued to the respondents to restore the watercourse which has been dismantled by them.

2. It is the contention of learned counsel for the petitioners that as a matter of fact there was no watercourse at the site and the respondents have been irrigating their land through another watercourse, which aspect has not been taken into consideration by the authorities. His further contention is that the authorities below have proceeded to decide the

application on the basis of the report dated 01.05.2018 of the Zileadar, Fatehabad, without taking into consideration the other evidence which was available. He contends that the findings as recorded by the authorities below cannot sustain as they are not based upon proper appreciation of the position at the site. Assertion has also been made by him that 10 feet of the land of the petitioners would be rendered useless as the watercourse is 10 feet inside the boarder line of the land of the petitioners. He, thus, contends that the order passed by the respondents cannot sustain.

3. I have considered the submissions made by learned counsel for the petitioners and with his assistance, have gone through the records available on the file as well as the impugned orders.

4. Perusal of the impugned orders and the records would indicate that it is not even the stand of the petitioners before the authorities below that the private respondents were irrigating their land from a different watercourse, rather the stand of the petitioners was limited to the extent that there was no watercourse which was claimed by the private respondents. The said plea, therefore, cannot be permitted to be raised at this stage, especially when before the three authorities, no such plea has been taken. As regards the contention of learned counsel for the petitioners that merely the report of the Zileadar has been taken into consideration for coming to a conclusion that the watercourse was in existence which has been demolished, the said contention also cannot be accepted in the light of the documentary evidence which has been referred to, to be available on the record in the order dated 25.04.2019 passed by the Superintending Canal Officer-respondent No.1. The decision of the Superintending Canal Officer reads as follows:-

“Decision:-

I have examined the record including the revenue missal thoroughly and the parties have been heard at length.

The contention of the petitioners that there was no such running water course at site in square/killla no.106//12-13 as it was proved from the demarcation/measurement done by the revenue authorities, is not supported by the any documentary evidence. Even the petitioner failed in producing concrete proof in this regard. Report of the Zileadar, Fatehabad dated 01.05.2018, located at CP 16 of the revenue missal, states that signs of the demolished water course were found at site during his inspection dated 01.05.2018. The Zileadar has further mentioned in the report that a pucca nakka (field opening) in the lined water course on the alignment of the water course in question, as well as a culvert under the field path exist at site.

In addition to it, the water course on downstream side in square/killla no. 106//14-15 (along northern line) is intact at site. Moreover, in parat warabandi of dated 18.05.1998 at Sr. No. 66 & 67 taking/delivery points have also been found fixed on the said alignment. Besides it, the area of the respondents was fixed on the said watercourse at Sr. No. 56 of the parat warabandi of dated 16.07.1975. Thus, it is clear that the claim of the respondents has been found based on documentary evidences.

On the basis of aforementioned facts, the undersigned reaches at a conclusion that this water course remained in running condition for the last more than 20 years. Resultantly, it falls in the category of a permanent water course u/s 2(15) of Haryana Canal & Drainage Act-29 of 1974. The revision petition, having not based on convincing and sustainable grounds, is hereby rejected and the decision of the Divisional Canal Officer, Water Services Division, Fatehabad dated 05.07.2018 is maintained.

Decision taken on 25.04.2019 and be conveyed to all concerned.”

5. This Court is satisfied that the authorities below have rightly taken into consideration the evidence which has been placed on record and especially the evidence already available on record. There is no illegality in the order which has been passed by the authorities below which would call for interference by this Court.

6. The contention of learned counsel for the petitioners that 10 feet of their land would be rendered useless as the watercourse runs inside their land, suffice it to say that the petitioners may approach the authorities as well as the respondents, if there is such a grievance.

7. The writ petition, therefore, stands dismissed with above observations.

July 1st, 2019
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No