

(1)

CWP-12893-2016 &
CWP-19439-2016

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision: 8th August, 2019

CWP-12893-2016

Hazari Lal

...Petitioner

Versus

Superintending Canal Officer, Bhakra Water Services, Sirsa & others

...Respondents

(2)

CWP-19439-2016

Shishpal

...Petitioner

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. P.K.Ganga, Advocate,
for the petitioner in CWP-12893-2016.

Mr. Rajesh Sethi, Advocate
for the petitioner in CWP-19439-2016 &
for respondent No.3 in CWP-12893-2016.

Mr. Manish Dadwal, AAG, Haryana.

Mr. Ashok Verma, Advocate
for respondent No.4 in CWP-19439-2016.

AUGUSTINE GEORGE MASIH, J. (ORAL)

By this order, I propose to decide two writ petitions i.e. CWP-12893-2016, titled as 'Hazari Lal Vs. Superintending Canal Officer, Bhakra Water Services, Sirsa & others' and CWP-19439-2016, titled as 'Shishpal Vs. State of Haryana & others', wherein, challenge is to the order dated 09.06.2016 passed by the Superintending Canal Officer, Bhakra Water Services Circle, Sirsa (hereinafter referred to as 'SCO'), whereby, order

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dated 13.07.2015 passed by the Divisional Canal Officer, Ellenabad Water Services Sub Division Ellenabad, District Sirsa (hereinafter referred to as 'DCO') has been set aside, wherein, the dismantled watercourse in Rectangle No.147//25/1 along western side stood restored permanently on the ground that the said watercourse falls within the provisions of Section 2 (15) of the Haryana Canal and Drainage Act, 1974, by ordering restoration of the *khal* for one year, upholding the order passed by the Sub Divisional Canal Officer, Ellenabad Water Services Division, Ellenabad (hereinafter referred to as 'SDCO'), dated 13.12.2013 with an addendum and corrigendum dated 20.12.2013. Both the parties are aggrieved and therefore, two writ petitions have been filed by them.

2. Briefly, the facts are that an application dated 11.04.2011 was moved by Shri Gobind Ram son of Ganesha Ram, predecessor-in-interest of Shishpal (petitioner in CWP-19439-2016) before the SDCO for restoration of the dismantled watercourse in Rectangle No.147//25/1, which was alleged to have been forcibly dismantled by Hazari Lal (petitioner in CWP-12893-2016). The SDCO, after investigation, directed permanent restoration of the dismantled watercourse vide order dated 12.07.2012. This order was challenged by Hazari Lal by filing an appeal before the DCO, who vide order dated 11.09.2012 remanded the case to the SDCO for passing a fresh order. In compliance of that order, the SDCO, after hearing the parties and on consideration of the facts and circumstances, proceeded to pass an order dated 13.12.2013 allowing the application of Gobind Ram, predecessor-in-interest of Shishpal by holding that the watercourse has been dismantled by Hazari Lal, which was being used for irrigating the fields by the applicant

for many years, for a period of one year. This order was followed by an addendum and corrigendum dated 20.12.2013 where a typographical error in the order was corrected.

3. Appeal against the order of SDCO was preferred by both the parties before the DCO, who, on 26.05.2014 ordered the appeals to be kept pending during the pendency of the Civil Court proceedings. Shishpal preferred a revision before the SCO challenging this order, who remanded the case to the DCO to decide the appeals on merit within a period of two months vide order dated 22.05.2015. The DCO, thereafter, decided the appeals on 13.07.2015 allowing the appeal of Shishpal and dismissing the appeal of Hazari Lal by concluding that the watercourse in question was running since long time, which was dismantled, as a result of this, irrigation of Shishpal was adversely affected. It was further mentioned that there was no further alternative watercourse at site ordering its restoration permanently by observing that the same came under Section 2 (15) of the Haryana Canal and Drainage Act, 1974.

4. Revision was preferred by Hazari Lal against this order before the SCO, who proceeded to partly allow the revision vide order dated 09.06.2016 setting aside the order passed by the DCO to the extent of restoration of the watercourse permanently but restoring it for a period of one year by upholding the order of the SDCO, dated 13.12.2013 and 20.12.2013 leading to the filing of these two writ petitions by the parties as both of them are unsatisfied by the order passed by the SCO.

5. The contention of the learned counsel for petitioner - Hazari Lal is that there was no watercourse at all at the site and therefore, there was

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no question of dismantling of the same by the petitioner, whereas, the stand of petitioner – Shishpal is that there was a watercourse which was running for a long time i.e. more than 20 years and therefore, it should have been restored permanently. What he asserts in substance is that the order passed by the DCO was correct and should have been upheld by the SCO, rather than interfering with the same.

6. I have considered the submissions made by the learned counsel for the parties and with their assistance have gone through the impugned orders and the pleadings.

7. The records in the present case was summoned by this Court vide order dated 22.11.2018 which has also been perused with the assistance of the counsel and on consideration of the statements of the parties as also the other evidence on record, this Court is satisfied that the impugned order dated 09.06.2016 passed by the SCO is correct in law and based upon proper appreciation of facts and therefore, does not call for any interference.

8. The facts as recorded above do not call for any further elaboration. The factum of there being a watercourse at the spot cannot be disputed in the light of the statements of the parties as also the records available. It is also established that there was no sanctioned watercourse running at the spot but on consideration of the evidence available on record, it is apparent that a watercourse had been running for the last about ten years and this is the specific stand of the official respondents in their reply to CWP-12893-2016. Therefore, this watercourse cannot be a permanent watercourse and at best, would be a temporary watercourse.

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9. The reasoning as assigned by the SCO in the impugned order dated 09.06.2016 is fully justified and based upon proper appreciation of the records, especially the records pertaining to *parat warabandi* dated 19.04.1995 showing the wari of Ganesha son of Khiraj, predecessor-in-interest of Shishpal, at Sr. No.10 for total 221 kanal and 16 marla area with taking point 206 X 212 with bharai of 5 minutes. This wari was for the entire area on watercourse running between Rectangle/Killa No.206/25 and 211/5, which is apparent from the Khaka plan of year 1995 attached with the records. As per the *warabandi* dated 04.10.2006, again predecessor-in-interest of petitioner – Shishpal is shown at Sr. No.15 for total 221 kanal and 16 marla with taking point 147/25 X 206/4.

10. The consideration with regard to the Civil Court decision by the SCO also cannot be faulted with despite the matter being pending before this Court in Regular Second Appeal No.981 of 2016, where *status quo* has been ordered to be maintained as the same would not be of any help to the parties.

11. In view of the above, both these writ petitions being devoid of merit are dismissed.

12. Records which were summoned by this Court vide order dated 22.11.2018 be returned back to the quarter concerned forthwith.

(AUGUSTINE GEORGE MASIH)
JUDGE

8th August, 2019
Harish

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No