

***IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
111***

**CM-10091-CWP-2019 &
CWP-17583-2019**

Date of decision: 19.07.2019

AMAN KUMAR

...PETITIONER

V/S

**SUPERINTENDING CANAL OFFICER, BHAKRA WATER
SERVICES, FATEHABAD AND OTHERS**

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Subhash Rana, Advocate,
for the petitioner.

Mr. R.K.Singla, AAG, Haryana,
for the State.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-10091-CWP-2019

Prayer in this application is for preponement of the hearing of the main writ petition which stands adjourned for 13.08.2019.

Prayer made in the application is accepted. The hearing of the main writ petition is postponed from 13.08.2019 and the same is taken on Board.

CWP-17583-2019

Challenge in this writ petition is to the order dated 14.08.2012 (Annexure P-6) passed by the Sub-Divisional Canal Officer, Dhamtan Water Services Sub-Division Narwana, District Jind, whereby the application for restoration of the watercourse filed by respondents No. 4 to 8, which, according to them, has been dismantled by the petitioner, was allowed, against which appeal preferred by the petitioner was dismissed by

the Divisional Canal Officer, Tohana Water Services Division, Tohana, District Fatehabad-respondent No. 2 vide order dated 14.06.2018 (Annexure P-7) and the revision thereafter preferred by the petitioner has also been dismissed by the Superintending Canal Officer, Bhakra Water Services Circle, Fatehabad, District Fatehabad-respondent No. 1 vide order dated 29.05.2019 (Annexure P-8).

It is the contention of the learned counsel for the petitioner that there was and there is no *khal* which is alleged to have been dismantled by the petitioner. He contends that as a matter of fact, the *khal*, which was provided for during the consolidation proceedings, has been encroached upon by the private respondents, against which the proceedings were initiated by the Gram Panchayat, wherein it was concluded that because of dismantling of the watercourse, which was lying as per the consolidation, the land of the Gram Panchayat was being deprived of irrigation. His further contention is that the authorities have failed to consider the fact that in the absence of a watercourse, there is no question of dismantling of the same by the petitioner. Reference has been made by the learned counsel for the petitioner to the order dated 14.06.2018 (Annexure P-7) passed by the Divisional Canal Officer, Tohana Water Services Division, Tohana, District Fatehabad-respondent No. 2, wherein it has been stated that there is an admission that some of the share holders, on whose demand the watercourse in dispute was ordered to be restored at the site, are supplying water through their fields to another lined watercourse whereas the Panchayat land is being deprived of the water. He, thus, contends that the impugned orders cannot sustain and deserve to be set aside.

I have considered the submissions made by the learned counsel

for the petitioner and with his assistance, have gone through the records of the case.

An application for restoration of the watercourse was moved by the private respondents on the plea that the petitioner had dismantled the watercourse, because of which, they would be deprived of proper irrigation at the site. The said application, after due consideration, was allowed by the Sub-Divisional Canal Officer and while taking a decision, he had stated that while inspecting the spot on 11.08.2012 and on perusal of the record produced by Zildar Kharal and Halqa Patwari, the watercourse at point AB has been found to be dismantled on the spot and found lined watercourse in the middle of Murba No. 54 killa No. 17-18 and Murba No. 55 killa No. 25. It was further observed that the irrigation to the land of the applicants was stopped due to dismantling of watercourse in the middle of killa No. 19-20 and 21-22. Reference has also been made to the scheme of lining the watercourse at Murba No. 54// Killa No. 17-18-19-20/24-23-22-21 and Murba No. 54 Killa No. 20/ Murba No. 55 Killa No. 16 and Murba No. 55 Killa No. 16 due to running of the watercourse. Warabandi details have also been mentioned. This is the report based upon the site inspection and records.

Challenge to the order, which has been passed by the Sub-Divisional Canal Officer, was raised by way of an appeal by the petitioner, which appeal has been dismissed by the Divisional Canal Officer on 14.06.2018 (Annexure P-7). The observations, on which reliance has been placed by the counsel for the petitioner, read as follows:-

“ Furthermore, it is also admitted that some of the shareholders on whose demand, the water course in dispute was

ordered to be restored at site are applying water through to their fields through another lined water course. However, the area of village Panchayat which was receiving irrigation through the water course in dispute is being deprived of getting irrigation at site, since the water course in dispute was closed by the landowner/appellant. The representative of the Panchayat appeared before me at the time of hearing and apprised the court that the Panchayat is carrying water through underground pipeline from the village Pond of village Kharadwal, The water of the village pond is dirty water of village sewerage and the same is not fit to grow the crops and thus the village Panchayat is bearing irreparable economic loss without the link of watercourse to the area of village Panchayat and they had also made demand to bring the demolished water course to its original condition, so that the area of village Panchayat may start receiving canal water at site and further as far as existence of reserved water course is concerned, the same never remained in use since the outlet was fixed at site and therefore, the restoration of such water course which never remain in existence would not be in the interest of better irrigation and moreover, the canal department is bound to pass order to bring the demolished water course to its original condition U/S 24 of Haryana Canal & Drainage Act, 1974. The present water course in dispute falls within the ambit of Section 2(15) of Haryana Canal & Drainage Act, 1974.” (emphasis applied)

A perusal of the above would indicate that it is in fact the

petitioner who had closed that water course. The order of the Superintending Canal Officer deals in detail with regard to the factum of dismantling of the water course and the reasons, which have been assigned, are that the water course of chak of O/L RD 160635-R Dhamtan Distributory was initially lined by approving the alignments of the different branches of the chak including the watercourse 'AB' in question vide order dated 05.06.1987 by the Divisional Canal Officer, Tohana Lining Division No. 1, HSMITC Tohana. This very watercourse was ordered to remain the same on the spot during the process of remodelling of the watercourse vide order dated 15.09.2011 passed by the Divisional Canal Officer, CAD Division, Kaithal, which decision has not been challenged by the petitioner and holds the field. It has been concluded by the said authorities that the watercourse in question was running for about 40 years and, therefore, this *khal* falls within the definition of permanent watercourse.

The findings, on facts and on the basis of the records, therefore, cannot be faulted with and there is no illegality in the said order which would call for interference by this Court in exercise of its extra-ordinary writ jurisdiction under Article 226 of the Constitution of India.

Finding no merit in the present writ petition, the same stands dismissed.

(AUGUSTINE GEORGE MASIH)
JUDGE

July 19, 2019

pj

WHETHER SPEAKING/REASONED: YES/NO

WHETHER REPORTABLE : YES/NO