

**IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
209**

CWP-17810-2015

Date of decision: 02.07.2019

JASVIR SINGH

...PETITIONER

VS.

SUPERINTENDING CANAL OFFICER AND ORS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Jasmail Singh Brar, Advocate,
for the petitioner.

Mr. Charanpreet Singh, AAG, Punjab,
for the State.

Mr. B.S.Sidhu, Advocate,
for respondents No. 3 to 5.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court challenging the order dated 06.08.2015 (Annexure P-9) passed by the Superintending Canal Officer, Ferozepur Canal Circle, Ferozepur-respondent No. 1, whereby the order dated 26.12.2014 (Annexure P-8) passed by the Divisional Canal Officer, Abohar Canal Division Abohar, District Fazilka-respondent No. 2 has been set aside consequently dismissing the application moved by the petitioner for restoration of a *Pacca khal*, which is alleged to have been filled up by the private respondents and thereafter, laid down a *kacha khal*. Prayer was made for removal of the earth which was filled in *pacca khal* and restoration thereof.

It is the contention of the learned counsel for the petitioner that

a well-reasoned order passed by the Divisional Canal Officer, Abohar Canal Division Abohar, District Fazilka-respondent No. 2 dated 26.12.2014 (Annexure P-8), which was on the basis of the site inspection not only carried out by the Canal Authorities but the Divisional Canal Officer himself, had been set aside by the Superintending Canal Officer, Ferozepur Canal Circle, Ferozepur-respondent No. 1 vide order dated 06.08.2015 (Annexure P-9) on the basis of conjectures and surmises without taking into consideration the ground reality of the site. Referring to the said order, he asserts that the factum of a *pacca* water course being filled up with earth has also been acknowledged by the Superintending Canal Officer in his order but has proceeded to rely upon a report which does not lead to any conclusion carried out by the revenue authorities, which is appended as Annexure P-6. He, therefore, contends that the impugned order cannot sustain and deserves to be set aside.

During the pendency of the present writ petition, when the case was considered by this Court on 23.04.2016, following order was passed:-

“ Learned counsel for respondents No.3 to 5 states that watercourse has been shifted towards the passage provided for the parties to this writ petition and others. It is further submitted that the passage (pahi) was left at the time of consolidation.

In these circumstances, to ascertain the situation at the spot, this Court deems it fit that Tehsildar Doda, District Sri Muktsar Sahib should inspect the site and demarcate the area of khasra No.1370, which is mentioned as passage and khasra No.1371, which is mentioned as watercourse, situated at

Village Doda, Tehsil Doda, District Sri Muktsar Sahib. Any encroachment by any person over these khasra numbers shall be mentioned specifically in the report. This Court has no doubt that demarcation shall be carried out as per the instructions issued by the Financial Commissioner from time to time. Sub Divisional Canal Officer shall also be present on the spot at the time of inspection. The demarcation shall be carried out on 05.05.2016 at 10.00 a.m. Parties will be at liberty to be present at the time of demarcation.

Copy of this order be sent to Tehsildar Doda, District Sri Muktsar Sahib. Parties may also produce certified copy of this order before Tehsildar Doda.

Adjourned to 23.5.2016.”

In pursuance to the said order passed by this Court, the Naib Tehsildar-cum-Circle Revenue Officer Doda, District Sri Muktsar Sahib, had filed an affidavit dated 23.11.2016. Along with the said affidavit was appended the demarcation report along with the Site Plan dated 05.05.2016 (Annexure R-1). A perusal of the said report would leave no manner of doubt that there has been no encroachment on the *khal* by the private respondents rather what has been found is that the petitioner-Jasvir Singh has encroached upon the *khal* by constructing a *kotha* measuring 5-1/2 ft.x7 ft.

If that be the position on site inspection, the findings, as recorded by the Superintending Canal Officer, Ferozepur Canal Circle, Ferozepur-respondent No. 1 cannot be faulted with.

In view of the above, the present writ petition is dismissed

with a direction to the respondents to construct/restore the *pacca* water course as per the demarcation report within a period of three months from today.

July 02, 2019
pj

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No