

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

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Civil Writ Petition No.24465 of 2017 (O&M)
Date of Decision: July 9th, 2019

Lachman Singh and others

...Petitioners

Versus

Superintending Canal Officer, Circle Patiala and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Gopal Singh Nahel, Advocate
for the petitioners.

Mr. Charanpreet Singh, Assistant Advocate General, Punjab,
for respondents No.1 and 2.

Mr. H.S. Deol, Advocate
for respondent No.3.

AUGUSTINE GEORGE MASIH, J.

Challenge in this writ petition is to the order dated 24.08.2016 (Annexure P-2) passed by the Divisional Canal Officer, Sangrur-respondent No.2, whereby application filed by respondent No.3-Jit Singh for restoration of a demolished *khal* regarding outlet No.RD 77670 Left Distributory Longowal, Village Longowal, as demolished by the predecessor-in-interest of the petitioner Parwana Singh, from whom the petitioners had purchased the land, stands allowed, appeal against which preferred by the petitioners has been dismissed by the Superintending Canal Officer, Circle Patiala-respondent No.1 vide order dated 18.09.2017 (Annexure-P-4) being illegal and contrary to record.

2. It is the contention of learned counsel for the petitioners that there was no *khal* in existence as claimed by respondent No.3. Referring to the site plan, he asserts that as a matter of fact, the *khal* was upto point 'E'

indicate that such a *khal* had been in existence. He asserts that as per the *warabandi*, the claim as made by the private respondent No.3 could not have been accepted. In the alternative, it has been pleaded that the petitioners are ready and willing to provide an alternative *khal* as 'AGF' in the site plan (Annexure P-1). Assertion has also been made by the counsel for the petitioners that the observations made by the Divisional Canal Officer in his order dated 24.08.2016 that petitioner No.1-Lachman Singh got recorded his statement that he is ready to give the watercourse as per the records of Canal Department is not correct. He asserts that there is no iota of evidence that any watercourse was in existence at point 'ABC' and the authorities have wrongly come to the conclusion that the watercourse in question was a running watercourse.

3. On the other hand, learned counsel for the State as well as the private respondent have asserted that Lachman Singh son of Dalip Singh, petitioner No.1, suffered a statement on 24.08.2016 before the Divisional Canal Officer, Sangrur Division, I.B., Sangrur, that he is ready to give the watercourse. It is asserted that as per the records of the Punjab State Tubewell Corporation, had lined the watercourse, the details with regard to the watercourse being in existence, stands established.

4. On considering the submissions of the counsel for the parties and the pleadings, it came out that the site was inspected by the Zildar, who had conducted an inquiry and submitted his report dated 20.04.2016 according to the *warabandi*, whereby the *khal* at point 'AGF' leading to the land of the applicant was shown but on spot, the *khal* in existence was from point 'ABCD'. This *khal* has been constructed by the Punjab State Tubewell Corporation which is *pucca* and from point 'D' to 'E', it is a *kacha khal* but

from point 'E' to 'F', the *khal* is not available on the spot. It has also been stated in his report that looking at the site, it is clear that the *khal* at point 'E' to 'F' was in working condition during the last sowing season. It has further been stated that along the *khal* 'ABCDE' and 'F', there is a path one *karam* wide (*whatt*) on the western small boundary on khasra bandobast 37//16-15. The Sub Divisional Officer, Ladda, inspected the site on 28.04.2016, accepted the report of the Zileदार, Longowal and recommended restoration of the *khal* 'EF' on the western small boundary of khasra No.37//16-15 to the Divisional Canal Officer, Sangrur. Upon notice having been issued by the Divisional Canal Officer, Sangrur, parties appeared before the said authority.

5. Applicant-respondent No.3 appeared before Divisional Canal Officer and stated that the *khal* 'EF' was in running condition and in the last sowing season, it was dismantled by Parwana Singh son of Jawala Singh, who sold this area to Lachman Singh son of Dalip Singh and this demolished *khal* be restored. The factum of purchase has been accepted and it is stated that at the time of purchase of the land, there was no *khal* at the spot on the date of the hearing i.e. 15.06.2016. *Naksha* of the disputed *khal* prepared by the Punjab State Tubewell Corporation was called for and the sketch was produced by the Divisional Engineer, Lining Division No.6 vide letter dated 08.08.2016. On 24.08.2016, statements of the parties were recorded when the applicant-respondent No.3 and petitioner No.1 herein made a statement that *khal* which is given in the Tubewell Corporation Rampura Phul is acceptable to them and they have seen it and he is ready to give the *khal*. On the basis of the above facts and the reports which have been produced on record, the Divisional Canal Officer, Sangrur Division,

Irrigation Branch, Sangrur-respondent No.2 proceeded to accept the application of respondent No.3 and restoration of *khal* at point 'E' to 'F' on western small boundary as the existence of the *khal* was proved on the basis of the records, was ordered. Appeal preferred before the Superintending Canal Officer has been dismissed, where again the records available have been taken into consideration in detail.

6. This Court is satisfied on the basis of the record and the inspection which has been carried out at the spot that the petitioners/their predecessors have demolished the *khal* 'EF' which was in existence and, therefore, the restoration thereof is fully justified, especially in the light of the fact that it is established that a *pucca* watercourse has been lined by the Punjab State Tubewell Corporation is in existence from 'ABCD' and from point 'D' to 'E', it is *kacha*, which is further fortified in the light of the fact that there is a public path along with the watercourse till point 'F'. The intention of the petitioners is clear on perusal of the site plan (Annexure R-3/2) that after the purchase of the land from Parwana Singh son of Jawala Singh, petitioners have become owners of the land on both sides of the *khal*. The watercourse which has been dismantled by them was along the boundary wall and with the demolition of the same with an intention was to have a continuous running land but if the said watercourse exists, it would bifurcate their land. It is with this intention that the land be in continuity that they have demolished the watercourse.

7. It may further be added here that while issuing notice of motion on 27.10.2017, the contention of the counsel for the petitioners as recorded, is as follows:-

“This petition is filed against the order of the Canal Authorities, by which the dismantled watercourse, shown in

the site plan with alphabets 'E' & 'F', has been ordered to be restored.

Counsel for the petitioners submits that instead of restoration of the said watercourse, the petitioners are ready and willing to provide watercourse marked with alphabets 'A', 'G' and 'F'. It is further submitted that proposed watercourse 'A-G-F' would again go through the land of the petitioners but it would cause less harm as the watercourse 'E-F' is bifurcating their land falling in khasra nos.7 and 14 as well.

Notice of motion for 06.12.2017.

In the meantime, the parties are directed to maintain status quo as it exists today.”

8. Today the counsel for the petitioners, instead of sticking to the statement which he had given to the Court, submitted that more land of the petitioners will be wasted for the purpose of *khal* and they be provided compensation for the *khal* which he proposed i.e. ‘AGF’. This clearly shows that the petitioners have not approached this Court with clean hands and his intentions are not *bona fide*. Petitioners, who are not truthful to the Court, cannot expect an equitable relief from the Court.

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

10. In the light of the dismissal of the writ petition, the application for vacation of interim order dated 27.10.2017 i.e. CM No.16628 of 2017 stands disposed of as infructuous.

July 9th, 2019
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No