

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

121

Civil Writ Petition No.22130 of 2019

Date of Decision: August 27th, 2019

Balbir Singh alias Kulvir Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Jasinder Singh Thind, Advocate
for the petitioner.

Mr. Naresh Kumar Kalia, Advocate
for caveator-respondent No.5.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Challenge in this writ petition is to the order dated 24.06.2019 (Annexure P-7) passed by the Chief Canal Officer, Bhakra Water Services Unit, Haryana Irrigation & W.R. Department, Panchkula, whereby application of Jagdev Singh son of Bhagwant Singh-respondent No.5 for providing a culvert of the revenue estate of village boundary of Neelanwali and Panniwala Ruldu, which is owned by the said respondent on both sides of watercourse at point 86/85/1 min. i.e. 8 *karam* (South) from the common *kill*a line of Rectangle of Killa No.86//16-25, has been allowed.

2. It is the contention of learned counsel for the petitioner that the canal authorities do not have jurisdiction to provide culvert over the watercourse when it is between two different estates. It is contended by him that the application preferred by respondent No.5 was dismissed by the Divisional Canal Officer, Sirsa, vide order dated 02.04.2012 on the ground that the path in the revenue estate of Village Neelanwali has been left in consolidation proceedings to reach up to the land holding of respondent No.5 and another path in the revenue estate of

available and, therefore, no need to construct culvert over the watercourse so as to reach both the land holdings in the ownership of respondent No.5 is made out. Appeal of respondent No.5 before the Superintending Canal Officer, Bhakra Water Services Circle, Sirsa, was dismissed on 05.02.2013 (Annexure P-4). His further appeal before the Chief Canal Officer, Bhakra Water Services, Irrigation and Water Services Department, Haryana, was dismissed by the said authority on 28.11.2013 (Annexure P-5). Thereafter he had approached this Court by filing CWP No.10290 of 2014 titled as Jagdev Singh Versus Chief Canal Officer and others which was disposed of by this Court by observing that the order dated 28.11.2013 passed by the Chief Canal Officer, Panchkula, was a non-speaking order and, therefore, not sustainable. The said order was set aside and the matter remitted back to the same authority for decision afresh after hearing the parties. Counsel submits that it is after the remand that the Chief Canal Officer, Panchkula, had proceeded to allow the application of respondent No.5 and direction for construction of culvert on the lined watercourse was accorded subject to all expenditure to be incurred by the appellant (respondent No.5 herein) in construction of culvert at the suitable place in Rectangle/Killa No.86//25 Village Neelanwali according to the satisfaction of the officers of the department without using the land of the petitioner. He, thus, contends that the order dated 24.06.2019 (Annexure P-7) passed by the Chief Canal Officer is not sustainable in the light of the fact that there is no provision under Section 17 of the Haryana Canal and Drainage Act to prepare the scheme regarding construction of culvert on the watercourse. He contends that respondent No.5 has already got proper access to his field as two separate

paths in consolidation have been left out for providing approach to respondent No.5 to his fields. He, thus, contends that the impugned order cannot sustain and deserves to be set aside.

3. I have considered the submissions made by the counsel for the petitioner and with his assistance, have gone through the orders passed by the authorities as well as the impugned order dated 24.06.2019 passed by the Chief Canal Officer, BWS Unit, Haryana Irrigation and Water Resources Department, Panchkula, but do not find myself in agreement with the contention of the counsel for the petitioner.

4. A well reasoned and speaking order has been passed by the Chief Canal Officer which is based upon proper appreciation of the factual position as it exists at the site. The direction which had been issued by this Court in CWP No.10290 of 2014 was limited to the extent of rehearing the parties and passing a speaking order. It is in pursuance thereto that the Chief Canal Officer proceeded to rehear the matter. It has been held as follows:-

“That in light of the directions issued by the Hon'ble High Court, the present appeal case was reheard on 31.05.2019 at Canal Rest House, Sirsa by giving due opportunity of hearing to all the concerned. The briefly facts of this case are to the effect that the area of the petitioner is situated in two different villages i.e. in village Neelanwali and Panniwala Ruldu. The area of these two villages is situated on the village boundary of village Panniwala Ruldu and Neelanwali. However, the area is divided at site by the lined water course on account of which the petitioner when working in the area of village Neelanwali cannot carry Tractor and Trolley in the area of village Panniwala Ruldu due to non available of culvert on the lined water course. The petitioner will have to cover a distance of Seven Kilo Meters to approach the area of village Panniwala Ruldu and in case

a culvert is allowed to be constructed in the middle of Rectangle/Killa No. 86//25, the petitioner will be able to reach their area of village Panniwala Ruldu easily. That all the contentions explained by the respondent in his statement have been considered. The respondent failed to explain the reason how his interest would be affected after construction of culvert over the lined water course. The land of the respondent shall not be used for the construction of culvert on the lined water course and therefore the objection of the respondent against the construction of culvert on the land (sic.-lined) water course is totally baseless. The petitioner also entitled to use the field path of village Panniwala Ruldu being the landowner of the village Panniwala Ruldu. I do not agree with the finding of the courts below. Hence the appeal of the appellant is hereby allowed and the permission for construction of culvert on the lined water course is hereby accorded subject to the condition that all the expenditure to be incurred in construction of culvert shall be borne by the respondent (sic.-appellant) and further the culvert shall be constructed at the suitable place in Rectangle/Killa No. 86//25 (village Neelanwali) according to the satisfaction of the officers of the department without using the land of the respondent. The decision be conveyed to all concerned accordingly.”

5. This Court does not find any ground to interfere with the order passed by the Chief Canal Officer, especially in the light of the fact that despite the counsel having been called upon on various occasions to point out one prejudice which has been caused to the petitioner because of providing of the culvert on the lined watercourse, he has not been able to respond except for stating that the culvert which is being constructed, would be adjacent to the land of the petitioner. This would make no difference as the culvert runs from the path which has been demarcated as provided under the consolidation for the two villages i.e. Panniwala Ruldu and Neelanwali.

It has further been mentioned clearly that the land of the petitioner would not be used for the construction of the culvert and the expenditure would be borne by respondent No.5.

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

August 27th, 2019
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	No