

CWP-23881-2019

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-23881-2019

Date of Decision: 2nd September, 2019

Harmander Singh

...Petitioner

Versus

Superintending Canal Officer, Ferozepur Canal Circle, Ferozepur & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

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

AUGUSTINE GEORGE MASIH, J.

Challenge in this writ petition is to the order dated 09.03.2018 (Annexure P-4) passed by the Divisional Canal Officer, Abohar Canal Division, Abohar – respondent No.2, whereby, application moved by respondents No.3 to 5 before the said authority for restoration of watercourse on the common boundary line of Killa No.11/1 and 2, 20 of Mustil 95, which is alleged to have been demolished over one acre of land by the petitioners, has been ordered to be restored under Section 30 FF of the Northern India Canal and Drainage Act, 1873, appeal against which preferred by the petitioners stands dismissed by the Superintending Canal officer, Ferozepur Canal Circle, Ferozepur – respondent no.1, vide order dated 26.06.2019 (Annexure P-5).

2. It is the contention of the learned counsel for the petitioner that the authorities below have failed to return the finding with regard to the

existence and running of the watercourse at the site. The nature of the watercourse has also not been determined and in the absence of the same, the watercourse could not have been ordered to be sanctioned. It is asserted by him that the private respondents had taken a specific plea that the kachcha sanctioned watercourse during the consolidation has been demolished, whereas, no such evidence has been brought on record nor is there any finding returned by the authorities to this effect.

3. Assertion has also been made that there is nothing on record which would indicate that there was any *warabandi* fixed for the irrigation purpose of the land of private respondents through the said khal and therefore, it could, at best, be said to be a brotherhood turn of water, which would not establish the point of taking and giving water nor would it prove that there was a watercourse AB running at the spot. Submission has been made that the area of the petitioners falls in Chak of outlet burjee No.25370 Malout Rajbaha, whereas, the area of the private respondents/applicants falls in outlet burjee No.24199-L Malout Rajbaha and therefore, there is no question of private respondents getting water from the allegedly demolished watercourse. He, therefore, contends that the impugned orders cannot sustain and deserve to be set aside.

4. I have considered the submissions made by the learned counsel for the petitioner and with his assistance have gone through the impugned orders available on record.

5. The fact that the brotherhood turn of water being in operation is not in dispute. If that be so, there is a point on the watercourse through

which such turn would have been given to the private respondents by the petitioners. The watercourse obviously would be on the basis of an agreement between the parties. That apart, firstly the Zileadar had inspected the spot on 27.12.2017, where he found kachcha watercourse demolished on the spot from common boundary line on Killa No.11/1 and 2, 20 of Mustil 95 and a nakka had been constructed in main pakka watercourse. It was also found that because of demolition of the kachcha watercourse, irrigation of the area of the private respondents/applicants had stopped. On this basis, he had recommended the restoration of demolished watercourse. Even the Sub-Divisional Canal Officer, Feeder Sub-Division Gidderbaha, had inspected the spot on 27.12.2017 and the report given by the Zileadar Malout is found to be correct and has also recommended restoration of the demolished watercourse AB. This leaves no manner of doubt that the kachcha watercourse was in existence and running on the common boundary line, which had a brotherhood turn of water and had been demolished. The Divisional Canal Officer had, therefore, ordered restoration of the said watercourse AB. The Superintending Canal Officer had also upheld the said order.

6. The contention of the counsel for the petitioner that the watercourse has not been established to be the one sanctioned under consolidation, as was claimed by the private respondents, cannot by itself be a ground for declining their claim merely because they have not been able to establish the same while on the spot inspection, it has been found that there has been demolition of a watercourse, which was in existence and the

CWP-23881-2019

factum of brotherhood turn of water having been admitted would further substantiate the running watercourse on the spot.

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

2nd September, 2019
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

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