

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

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**CIVIL WRIT PETITION NO.29368 OF 2019
DATE OF DECISION: OCTOBER 14, 2019**

Sultan

.....Petitioner

VERSUS

State of Haryana and others

....Respondents

CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. P. K. Ganga, Advocate,
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court, challenging the orders dated 20.09.2019 (Annexure P-11) passed by the Superintending Canal Officer, Bhakra Water Services Circle, Sirsa; dated 28.06.2019 (Annexure P-9) passed by the Divisional Canal Officer, Sirsa-respondent No.3; order dated 20.02.2019 (Annexure P-4) passed by the Sub Divisional Canal Officer, Baruwali Water Service, Sirsa-respondent No.4 and the report of the Zildar dated 21.01.2019 (Annexure P-3) submitted to the Sub Divisional Canal Officer-respondent No.4.

2. It is the contention of learned counsel for the petitioner that the courts below have taken into consideration the report of the Zildar, which was without taking into confidence the parties who were likely to be effected. Even the petitioner was not associated in the said preliminary enquiry, which was conducted by the Zildar and prepared the site plan and

recorded the statements. He also contends that the Sub Divisional Canal Officer and the other authorities under the Haryana Canal and Drainage Act, 1974 have not appreciated the true facts and the situation as it exists at the site and have proceeded on the basis of old record. He contends that there is no record available after the year 1997 about warabandi and in support of this contention he places reliance upon the information which has been supplied to him under the Right to Information Act vide communication Annexure P-13. Assertion has also been made that because of the implementation of the impugned orders, the land of the petitioner would be bifurcated and he would have no objection if an underground pipe line is laid down instead of *kucha* water course running at the site. In support of this contention he has placed reliance upon the order dated 10.12.2018 passed by the Division Bench of this Court in Civil Writ Petition No.1618 of 2007 (Jagsir Singh Vs. Chief Canal Officer and others).

3. I have considered the submissions made by learned counsel for the petitioner and with his assistance have gone through the records of the case.

4. First contention of learned counsel for the petitioner that the preliminary report of the Zileadar has been relied upon to proceed and accept the application for restoration of the alleged dismantled water course at the site and further the petitioner and others were not taken into confidence who were likely to be effected because of the alleged restoration of the water course cannot be accepted in the light of the fact that not merely the report of the Zileadar has been taken into consideration but the Sub Divisional Canal Officer, Baruwali Water Service, Sirsa-respondent No.4 has himself visited the site and had found the report of the Zileadar to be

correct. Therefore, it cannot be said that the report of the Zileadar is the primary and sole report, on which reliance has been placed by the canal authorities to come to a conclusion that the water course was in existence which has been dismantled and demolished by the petitioner.

5. As regards the contention of learned counsel for the petitioner that there is no record since the year 1997 to establish that there was a water course running at the site, which has been ordered to be restored, suffice it to say that may be so, but as per the record available with the canal authorities on which reliance has been placed, site plan of the year 1983 and 2001 as well as parat warabandi dated 06.09.1983, 25.04.1996 and 08.04.1997 clearly establish running of a water course at the site, especially when no objection was ever raised by the petitioner or his predecessors. The said aspect could not be disputed by counsel for the petitioner. Non-existence of subsequent record would not obviate and delete the records which are already available and existing, unless an order contrary to the same is placed on record or established to have been passed by the competent authority. Reliance, therefore, by the canal authorities on the earlier records cannot be faulted with.

6. The question, which has been raised by counsel for the petitioner with regard to bifurcation of the land of the petitioner also would not cut ice in the present case, especially with reference to the order passed by the Division Bench in Jagsir Singh's case (supra) as the said case was with regard to extending of water course for better irrigation of the land of the petitioner whereas in the present case there was a water course already in existence, which has been dismantled by the petitioner as per the findings recorded by the canal authorities below. The said order, therefore, would not

be of any help to the petitioner or relevant for the purpose of present decision.

7. Learned counsel for the petitioner has raised another argument that there is an alternative water course in existence from where the private respondents can irrigate their land and are in fact getting the water. The said plea also cannot be accepted in the light of the established fact that the water course, which was in existence, has been demolished by the petitioner. Merely because an alternative water course is available to the party, does not give an authority or jurisdiction to the petitioner to take law in his hands and dismantle a water course which is in existence on the spot.

8. No illegality has been found in the orders, which have been passed by the canal authorities and under challenge, which would call for any interference by this Court in exercise of its extra ordinary writ jurisdiction.

9. The writ petition, being devoid of merit, therefore, stands dismissed.

October 14, 2019
khurmi

(AUGUSTINE GEORGE MASIH)
JUDGE

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