

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

Sr. No.203

CWP No.9614 of 2015

DATE OF DECISION: February 14, 2020

DARSHAN SINGH

..PETITIONER

VERSUS

**THE SUPERINTENDING CANAL OFFICER, SIRHIND CANAL
CIRCLE, LUDHIANA AND OTHERS**

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Baltej Singh Sidhu, Advocate,
for the petitioner.

Mr. Vikas Mohan Gupta, Addl. A.G., Punjab,
for respondents No.1 & 2.

Mr. Jagdev Singh Sidhu, Advocate,
for respondents No.3 & 4.

SUDHIR MITTAL, J. (ORAL)

The dispute in the present writ petition is regarding restoration of a watercourse allegedly demolished by the petitioner. The private respondents moved an application for change of warabandi in the year 2010 and vide order dated 10.02.2010, the learned Deputy Collector allowed the same. Aggrieved by that order, the petitioner approached the Divisional Canal Officer by way of an appeal, which was allowed vide order dated 28.03.2012 (Annexure P-5). The Divisional Canal Officer returned a finding that there was no *Khal* in existence and thus, change of warabandi could not be permitted. The private respondents challenged this order before

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the Superintending Canal Officer who, vide order dated 17.05.2012, remanded the case for a fresh decision. On remand, the Divisional Canal Officer, vide his order dated 19.07.2012 sought a report from the Deputy Collector. The Deputy Collector submitted a report dated 22.02.2013 finding that no watercourse was in existence.

2. Meanwhile, respondent No.4 filed an application dated 13.02.2013 (Annexure P-2) for restoration of a demolished watercourse. This application was allowed vide order dated 02.07.2014 (Annexure P-3) passed by the Divisional Canal Officer and appeal of the petitioner was dismissed vide order dated 29.01.2015 (Annexure P-4). Hence, the present writ petition has been filed.

3. Learned counsel for the petitioner submits that the report dated 22.02.2013 of the Deputy Collector in the proceedings for change of warabandi clearly finds that no watercourse was in existence on the spot. This finding has become final and thus, the authorities below were in error in allowing the restoration application. It is further submitted that the warabandi on which reliance has been placed by the authorities below was 40 years old and thus, no reliance could have been placed thereupon.

4. Learned counsel for the private respondents submits that in the change of warabandi proceedings, the Superintending Canal Officer had remanded the case vide his order dated 17.05.2012 with a direction to determine the existence/otherwise of a watercourse on the basis of old warabandis. The old warabandi was not perused after remand and an erroneous report dated 22.02.2013 regarding non-existence of the watercourse was given by the Deputy Collector. However, in the same

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report, he had stated that an application under Section 30-FF of the Northern India Canal and Drainage Act, 1873 (hereinafter referred to as the Act) be filed for restoration of the watercourse, whereupon, the present application was filed. The learned Divisional Canal Officer perused the old warabandis and allowed the application vide his order dated 02.07.2014. Old warabandis are the best evidence of existence/otherwise of watercourses. He places reliance upon *Ajit Singh and another vs. Superintending Canal Officer and others, 2017(1) RCR (Civil) 279*.

5. Learned State counsel submits that during the course of hearing on 22.01.2019, a direction had been given to the State to file a specific affidavit regarding the existence/otherwise of a watercourse with reference to the findings of the Deputy Collector in order dated 10.02.2010. Accordingly, an affidavit dated 12.02.2019 of the Divisional Canal Officer has been filed and therein it has been specifically mentioned that a watercourse was in existence and that the same has been demolished. Thus, the writ petition deserves dismissal.

6. From the sequence of events, it is evident that the private respondents demanded a change of warabandi on the ground that their land comprised in Khata No.92 was not getting adequate irrigation. The filing of an application under Section 30-FF of the Act was necessitated on account of the observations of the Deputy Collector made in order dated 22.02.2013. While deciding this application, the Divisional Canal Officer has seen the old warabandi and has come to a conclusion that a watercourse was in existence. This finding is supported by affidavit dated 12.02.2019 filed by the Divisional Canal Officer pursuant to direction issued by this

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Court. In *Ajit Singh (supra)* it has been held that record of warabandi is the best evidence of existence/otherwise of a watercourse. I respectfully agree with the ratio of the said judgment. In view of the material on record, the finding that a watercourse was in existence is inescapable.

7. Thus, the writ petition has no merit and is dismissed.

February 14, 2020

Ankur

(SUDHIR MITTAL)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

Yes