

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-215-2023

Date of decision : 09.01.2023

Naveen and another

... Petitioners

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR.JUSTICE VIKAS BAHL

Present: Mr.Jitender K.Sehrawat, Advocate
for the petitioners.

Ms.Upasana Dhawan, AAG, Haryana
for respondents no.1 to 5.

VIKAS BAHL, J.(ORAL)

This is a civil writ petition under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing the impugned order dated 26.07.2021 passed by the Sub Divisional Canal Officer, Hisar, W.S. Sub Division II, i.e. respondent no.5 and order dated 27.10.2021 passed by the Divisional Canal Officer, Hansi i.e., respondent no.4 and order dated 18.08.2022 passed by the Superintending Canal Officer, Hisar i.e., respondent no.3.

Brief facts of the present case are that respondent no.6 Dholu had moved an application under Section 24(3) of the Haryana Canal and Drainage Act (29 of 1974) regarding restoration of dismantled water course through rect. no.101/17-24/1 western side in the chack of 13770-R-Depal sub minor village Umra, Tehsil Hansi, District Hisar. The Sub Divisional

conclusion that the dismantled water course was running through rect./killa no.101/17-24/1 western side, had ordered the restoration of the same as per the previous running location for a period of one year or two crops. The Sub Divisional Canal Officer, Hisar before passing the said order had inspected the spot and had found that the water course was dismantled at the site and the soil of the land had also been lifted at the site and had also taken into consideration the statement made by the petitioner himself that led to an admission to the effect that the water course was in existence through his land which was given to respondent no.6 Dholu etc. on account of brotherhood (bhaichara). The statement of respondent no.6 to the effect that the water course was running there since several years and that the present petitioner had dismantled the same was also taken into consideration. It was also recorded that even the Zilledar had inspected the site and recommended the case for restoration of the dismantled water course through the abovesaid rectangle number. Appeal filed by the petitioner under Section 24 (4) of the Act was dismissed by the Divisional Canal Officer, Hansi vide order dated 27.10.2021. In the said order it was specifically observed that the record, khaka plan had been seen and it was found that the water course had been dismantled at the site. It was further observed that the petitioner herein had himself admitted that the water course through his land was given to said Dholu on account of brotherhood (bhaichara). The revision filed by the petitioner was dismissed by the Superintending Canal Officer, Bhakra Water Services Circle no.1, Hisar vide order dated 18.08.2022 and in the said order it was observed that since the petitioner himself admitted that he had given the water course in question to the respondent on the basis of brotherhood (bhaichara) but now, is not ready to provide the watercourse

to him, thus, the orders of the courts below were upheld. The present petition has been filed after a period of more than 4 months from the passing of the impugned order dated 18.08.2022.

The sole argument raised by learned counsel for the petitioner is to the effect that there is another permanent water course at point 'C' in the map (Annexure P-4) and through the said permanent water course, the land of respondents no.6 and 7 can be irrigated. It is stated that the land of respondents no.6 and 7 is shown in green colour and since respondents no.6 and 7 have an alternate water course, thus, the water course which was given to respondents no.6 and 7 on brotherhood basis cannot be ordered to be restored.

This Court has heard learned counsel for the petitioner and has perused the paper book.

The application filed by the private respondents was under Section 24(3) of the Haryana Canal and Drainage Act (29 of 1974). The Sub Divisional Canal Officer, Hisar had concurrently found that a water course was running through rect no.101/17-24/1 western side and the same had been dismantled at site. The said finding was based on an inspection done by the Sub Divisional Canal Officer, Hisar. The existence of the water course was also proved from the statement of the petitioner himself which had been made before the Sub Divisional Canal Officer, Hisar to the effect that he had given the said water course through his land to run through the land of the private respondents on account of brotherhood (bhaichara). The Divisional Canal Officer reiterated the said finding. Learned counsel for the petitioner has not been able to dispute the said finding of fact and thus, it has been proved on record that there was a water course which was running

through rect./killa no.101/17-24/1 western side and the same had been dismantled.

The argument of learned counsel for the petitioner to the effect that there is a sanctioned lined water course does not further the case of the petitioner in view of the following factors:-

- i) The application in the present case had been moved by the private respondents under Section 24 of the Haryana Canal and Drainage Act 1974. Section 24 of the said Act is reproduced hereinbelow:-

“24. Restoration of demolished or altered etc.

watercourses.-(1) *If a person demolishes, alters, enlarges or obstructs a watercourse or a temporary watercourse or causes any damage thereto, any person affected thereby may apply to the Sub-Divisional Canal Officer for directing the restoration of the same to its original condition.*

(2) On receiving an application under sub-section (1) the Sub Divisional Canal Officer may, after making such enquiry as he may deem fit, enquiry, by a notice in writing served on the person found to be responsible for so demolishing, altering, enlarging, obstructing or causing damage, to restore, at his own cost, the watercourse or temporary watercourse to its original condition within such period not exceeding twenty-one days, as may be specified in the notice:

Provided that in case of a temporary watercourse its restoration shall not be for a period exceeding one year.

(3) If such person fails to the satisfaction of the Sub-Divisional Canal Officer, to restore the watercourse or temporary watercourse to its original condition within the period specified in the notice served on him under sub-section (2) the Sub Divisional Canal Officer may cause the watercourse or temporary watercourse to be restored to its original condition and recover the cost incurred in respect of such restoration from the defaulting person. The Sub-Divisional Canal Officer may order recovery of a sum not

exceeding Rs. 500 from the defaulting person by way of penalty. Out of this sum so recovered the Sub-Divisional Canal officer may order any amount to be paid to the aggrieved person for the damage caused to him. In case the penalty is not paid the same shall be recoverable as arrears of land revenue.

(4) Any person aggrieved by the order of the Sub-Divisional Canal Officer. May prefer an appeal within fifteen days of the passing of such order to the Divisional Canal Officer, whose decision on such appeal shall be final.

(5) Any sum which remains unpaid within a period to be specified for this purpose by the Divisional Canal Officer may be recovered as arrears of land revenue.”

A perusal of the said section would show that it specifically provides that in case a person demolishes, alters, enlarges or obstructs a watercourse including a temporary watercourse or causes any damage thereto, any person affected thereby may apply to the Sub-Divisional Canal Officer for directing the restoration of the same. On receipt of the said application, the Sub Divisional Canal Officer after making enquiry and after serving notice to the person who was found to be responsible for demolishing, order the restoration of the same, at his own cost. It is provided that where the water course is a temporary water course, its restoration shall not be for a period exceeding one year. Sub section 3 further provides that in case, such a person fails to the satisfaction of the Sub-Divisional Canal Officer, to restore the watercourse which includes the temporary watercourse to its original condition within the period specified in the notice served to him, then the Sub-Divisional Canal Officer can order the same to be restored to its original condition and recover the cost incurred in respect of such restoration from the defaulting person.

case of the private respondents squarely falls within the four corners of Section 24 and all the necessary ingredients required for invoking the said provision and for passing of the order under the said provision were duly met. Once the authorities had come to the conclusion that there was a temporary water course and the same had been obstructed / stopped then it was incumbent upon the authorities to order restoration of the same as per the provisions of Section 24. The same having been done, the impugned orders cannot be faltered with. Learned counsel for the petitioner has not referred to any provision of law or any judgment which would show that in case, there was another water course then, despite the existence of the first water course and its demolition, restoration ought not to be ordered. Thus, even in case, the argument of the learned counsel for the petitioner to the effect that there was another water course available is taken on face value then also, there is no occasion to interfere in the orders passed by the authorities.

ii) Even to substantiate the fact that there was an alternate water course, reliance has been placed solely upon a map (Annexure P-4 at page 30 of the paper book). Learned counsel for the petitioner has not been able to pointedly state that the said map was presented before the authorities and was referred to by the petitioner before the authorities. Be that as it may, even from the said map, it is not clear as to how the land of respondents no.6 and 7 shown in green colour on both sides would be irrigated even in case the water course from point 'C'

to 'A' is stated to be in existence. Learned counsel for the petitioner, on a pointed query, has stated that the temporary water course which has been stated to have been demolished by the petitioner, as per the plea of the respondents no.6 and 7 is shown in plan (Annexure P-4) from point 'A' to 'B' and even from the perusal of the said map, it is apparent that the said water course 'A' to 'B' is necessary for irrigating the fields of respondents no.6 and 7 which is shown in green colour just below point 'B'.

Keeping in view the above said facts and circumstances, this Court finds that the petition is sans merit and thus, deserves to be dismissed. Accordingly, the present petition is dismissed.

(VIKAS BAHL)
JUDGE

January 09, 2023
Davinder Kumar

Whether speaking / reasoned	Yes/No
Whether reportable	Yes/No