

CWP-30617-2019

2023:PHHC:108532-DB

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

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CWP-30617-2019

Date of Decision : August 17, 2023

SUKHRAJ SINGH

.....Petitioner

VERSUS

STATE OF PUNJAB AND OTHERS

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present : Ms. Manu Sangwan, Advocate and
Ms. Alisha Chauhan, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

KULDEEP TIWARI. J.

1. The petitioner has approached this Court seeking mandamus upon the respondent(s) concerned, to acquire the petition land(s) in accordance with the provisions of the Land Acquisition Act as the same is being used for the purpose of drainage of waste water and also to pay adequate compensation alongwith other statutory benefits as prescribed under the relevant Acquisition Act. Further the petitioner has sought damages on account of utilization of the petition land, which continues to be utilized long back by the respondent concerned, and till date no compensation has been paid.

2. The petitioner set up his claim that he is the owner in possession of the petition land detailed in para No.2 of the instant writ

petition and in his land, there is a *choe* (water channel), namely, as “*Sirhind Choe*” which is being used for drainage of waste water. As per the petitioner, this *choe* was constructed about 30-40 years ago by the State Government for the purpose of management and discharge of waste water of the cities i.e. Sirhind, Fatehgarh Sahib, Bassi Pathana and other adjoining villages falling within the territory of District Fatehgarh Sahib. The *choe* passes through the petitioner land. However, no acquisition proceedings were initiated. The petition land is being used without paying any compensation to the petitioner, therefore, he is compelled to knock the doors of this Court through the instant petition for issuance of appropriate mandamus upon the respondent concerned. To further strengthen his arguments, he has referred to Annexures P-3 to P-5 which are the copies of award(s) of compensation passed by the competent authority concerned. According to the petitioner, the land of other adjoining villages, namely, Mullanpur, Wazir Nagar, Sudhewal etc. were acquired and compensation was paid for the same purpose. These awards were purportedly passed by the competent authority concerned, in the years 1986 and 1990 respectively.

3. A perusal of the above awards depict that these awards were passed for the construction of “*Sirhind Choe*” and the land was acquired at public expenses. As per the revenue record, in *jamabandi* for the year 2013-14 the petitioner's land is recorded as “*gair mumkin choe*”.

4. On the other hand, the State has filed a detailed reply by way of affidavit of Dr.Himanshu Gupta, PCS, Land Acquisition Collector-

cum-Sub Divisional Magistrate, Fatehgarh Sahib, wherein, he has stated that the petition land, is infact a natural drainage of rain water and is recorded as “*Sirhind Choe*” which is running since the time immemorial and these details have also been reflected in the respective revenue record of the respective village. As per the record, there is a drain known as “*Sirhind Choe*” (Drain), which is duly notified drain in the official gazette vide its No.SO 63/CA8/1873/Ss 5 & 55/73 dated 17.5.1973. The drain in dispute is at Serial No.177 in the name of “*Sirhind Choe*” (R.D.20-420000). The above action was taken by the State Government through its Drainage Circle, Patiala under the provisions of Part-VII of the Northern India Canal and Drainage Act, 1873 (hereinafter referred to as '**the Act of 1873**'). As per the provisions of Sections 55, 57, 57-A, 30 FF and Section 30 G of the *ibid* Act, there is no requirement of acquisition of land of land owners where the natural *choe* is passing or the rain water is passing through that channel. Rather a notification was published by the State Government under Section 55 of the Act of 1873 notifying that no one can obstruct the flow of the water passing through the natural drain and besides this no one is authorized to raise any construction over these natural channel. Since the petition land is duly notified under the above Act, being a natural *choe*. Therefore, there is no requirement to acquire the land. For ready reference Section 55 of the Act of 1873 reads as under:-

“55. Power to prohibit obstructions or order their removal.- Whenever it appears to the State Government that injury to any land or the public health or public

convenience has arisen or may arise from the obstruction of any river, stream or drainage- channel, such Government may, by notification published in the Official Gazette, prohibit, within limits to be defined in such notification, the formation of any obstruction, or may, within such limits, order the removal or other modification of such obstruction. Thereupon so much of the said river, stream or drainage- channel as is comprised within such limits shall be held to be a drainage- work as defined in section 3.”

5. We have examined the entire record placed before us as well as the notification dated 17.5.1973.

6. The State Government in exercise of powers conferred under Sections 5 and 55 of the Act of 1873, had made a declaration of the drains wherethrough the natural water is flowing and the present drain is shown to be listed at Serial No.177 being the natural *choe*, therefore, there is no requirement to acquire the land as the same has been notified by the State Government under the Act of 1873. All rivers, natural *choe*, natural springs are *res communes*, therefore, are a common heritage of mankind. The term *res communis* finds defined respectively in Black's Law Dictionary and in the Law Lexicon, respectively as “things common to all; things that cannot be owned or appropriated, such as light, air, and the sea” and as “common things; things common to all by the law of nature.” The concept is that the State Government is the trustee of communal natural resources and the same cannot be claimed by any private person. The State Government manages these natural resources for the benefit of mankind. The State Government has no obligation to

acquire these natural water channels. Therefore, “*Sirhind Choe*” was rightly notified under the Act of 1873 and need not to be put to acquisition.

7. Further, the next submission as made by the learned counsel for the petitioner qua the awards (Annexures P-4 and P-5) which became purportedly passed by the State Government for the other land for the same purpose of the adjoining villages is concerned, the State Government has denied the same by filing a detailed reply, rather it has been mentioned in the reply that in the year 1950-54, the Bhakra Main Line (BML) Canal was constructed which crosses this *choe* near village Wazirabad. During this crossing, for the purpose of smooth flow of rain water and to avoid any damages due to rain water of surrounding catchment area, the cross-drainage work (Syphon) was constructed. After this construction, the channelization of “*Sirhind Choe*” was taken by the Govt. of Punjab in the downstream portion from the syphon (i.e. RD 518952) & the land of this portion was acquired by the Govt. of Punjab & thereafter, *choe* was channelized. Suffice it is admitted that at the time of said channelization of downstream portion, the L-Section (L- Section contains all the details of drain like data of total discharge of water, bed width, full supply depth, velocity etc.) of this downstream portion of drain (RD 419130 to RD 518952) was approved in the year 1979. However no L-section was approved at that time of upstream portion of drain (RD 518952 to RD 547000) and till date the said portion is still in natural form and there is no obstruction of rain water in this portion. It is

further mentioned in the reply that the land of the petitioner falls under this upstream portion of natural drain whereas the other award (Annexure P-3) has been passed qua downstream/channelized portion of "*Sirhind Choe*".

8. The above stated position makes it crystal clear that no land which falls under the upstream natural channel of "*Sirhind Choe*" was ever acquired by the State Government, therefore, the reliance of the petitioner on Annexures P-2 and P-3 is highly misplaced. The drainage "*Sirhind Choe*" which is a natural drainage of a rain water and is running since the time immemorial is not required to be acquired by the State Government, rather the same is aptly and rightly notified under the Act of 1873. Therefore, the mandamus as asked for by the petitioner cannot be granted upon the respondent concerned, and the same is, hereby, declined.

9. Finally, the learned counsel for the petitioner has prayed for issuance of directions to the respondent concerned, to make permanent arrangements for controlling the drainage of waste water which accumulates in surrounding fields and in the land of the petitioner and further directing the respondent concerned, to immediately make arrangements to prevent the overflow level of the *choe* which is passing through the land of the petitioner as the same is damaging the crop/land of the petitioner.

10. We find that the prayer, as made by the learned counsel for the petitioner is justified, therefore, a mandamus is issued upon the

competent authority i.e. respondent No.5 to look into the grievances of the petitioner and ensure that all such measures be taken to prevent the overflow of the *choe*, so that the drainage water may not destroy the crop/land of the petitioner as this may have ill affect upon the livelihood of the petitioner.

11. Disposed of in the above terms.

(SURESHWAR THAKUR)

JUDGE

August 17, 2023

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(KULDEEP TIWARI)

JUDGE

Whether speaking/reasoned. : Yes/No

Whether Reportable. : Yes/No