

107

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

CWP No.14362 of 2018

Date of Decision: 06.12.2023

Sonu

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

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

Ms. Upasna Dhawan, AAG, Haryana.

Mr. Vijay Pal, Advocate
for respondents No.5 and 6.

RAJESH BHARDWAJ, J.

Present writ petition has been filed for quashing the impugned order dated 30.03.2018 (Annexure P-5) passed by respondent No.2 against the petitioner, illegally and without appreciating the facts on record and upheld the order dated 15.11.2017 passed by respondent No.3. Further prayer has been made for staying the impugned order dated 30.03.2018 (Annexure P-5).

The present case has emanated from the order passed by the learned Superintending Canal Officer dated 30.03.2018 (Annexure P-5) whereby he has set aside the order passed by the learned Sub Divisional Canal Officer dated 27.01.2017 and the learned Divisional Canal Officer dated 15.11.2017. The petitioner had filed the petition under Section 24(1)

of the Haryana Canal and Drainage Act, 1974 (hereinafter referred to 'the Act') for restoring the water course in the area No.96/5-6-15 Middle Edge which was from South to North on Outlet RD-11535-TL Prabhuwala Minor, Village Prabhuwala. The petition filed by the petitioner was accepted by the learned Sub Divisional Canal Officer vide his order dated 27.01.2017. Aggrieved by the same, respondents No.5 and 6 filed an appeal under Section 24(4) of the Act before the learned Divisional Canal Officer. On hearing both the sides, the learned Divisional Canal Officer finding no merit in the same, rejected the appeal vide his order dated 15.11.2017, thus, affirming the order passed by the learned Sub Divisional Canal Officer dated 27.01.2017. Again aggrieved by the same, respondent No.5 filed the revision petition before the learned Superintending Canal Officer, which was accepted by modifying the orders passed by the learned Sub Divisional Canal Officer and the Divisional Canal Officer vide impugned order dated 30.03.2018. Thus, being aggrieved the petitioner has approached this Court by way of filing the present petition.

Learned counsel for the petitioner has vehemently contended that one Ram Narayan, son of Guraya Ram had given the water course before the Court of Deputy Collector, Hisar on 26.08.1998 by recording his consent with regard to the water course in the area No.96/5/1,6/2 to the petitioner. He has submitted that the Deputy Collector had admitted the statement of Ram Narayan vide his order dated 11.03.1999 and thus, the water course was dug up at the site and the naka of the petitioner was fixed at Sr. No.39 in Padat Warabandi dated 11.03.1999. Thereafter, Ram

Narayan sold his land to Harkesh, son of Ram Saran i.e. respondent No.5 on 21.08.2000. However, the water course given to the petitioner continued at the site and the petitioner was irrigating his fields through this water course. He submits that respondent No.5 illegally erected the pillars along with barbed wire in the water course and thus, obstructed the water course from which the petitioner was irrigating his fields. Being aggrieved the petitioner filed an application to the Sub Divisional Canal Officer, Barwala i.e. respondent No.4 on 05.05.2016 for removal of the pillars along with barbed wire erected by respondent No.5 in the water course. He has submitted that the site was inspected by the Sub Divisional Canal Officer and he found the action of respondent No.5 in erecting the pillars along with barbed wire to be in violation of the statutory provisions of the Act. Thus, the learned Sub Divisional Canal Officer accepted the petition filed by the petitioner vide his order dated 27.01.2017 by directing respondent No.5 to remove the pillars from the site within a week. However, respondent No.5 filed an appeal against the same before the Divisional Canal Officer, who rejected the same vide his order dated 15.11.2017. He has submitted that respondent No.5 further assailed the same by way of filing the revision before the Superintending Canal Officer. He submits that the learned Superintending Canal Officer without appreciating the facts and circumstances of the case and the statutory provisions, set aside both the well reasoned orders passed by the Sub Divisional Canal Officer and the Divisional Canal Officer and illegally modified the orders by directing the petitioner to file a petition under

Section 55(2) of the Act. He has submitted that on the petition filed by the petitioner, the inquiry was conducted and the blatant illegalities committed by respondents No.5 and 6 were substantiated. Resultantly, both the authorities i.e. respondents No.3 and 4 accepted the petition filed by the petitioner and emphatically directed respondents No.5 and 6 to remove the pillars along with the barbed wires which were illegally erected in the water course. However, he submits that the learned Superintending Canal Officer without appreciating the inquiry conducted and the well reasoned orders passed by the Sub Divisional Canal Officer and Divisional Canal Officer, committed a blatant illegality in accepting the revision filed by respondent No.5 and illegally modified the order passed by the Sub Divisional Canal Officer and Divisional Canal Officer by directing the petitioner to avail his remedies in accordance with the provisions of Section 55(2) of the Act. He has submitted that from the bare perusal of the provision of Section 55 of the Act, it is apparent that the same is not attracted in the facts and circumstances of the present case. He has submitted that the case of petitioner is not regarding the maintenance of the water course as the same was obstructed by respondents No.5 and 6 by erecting the pillars along with barbed wire. He submits that controversy in the present case is beyond the jurisdiction of Section 55(2) of the Act and thus, the impugned order passed by the learned Superintending Canal Officer is totally illegal and arbitrary.

The petitioner is also present in person in Court today. He has apprised the Court that respondents No.5 and 6 have not only erected the

pillars along with the barbed wire in the water course but they have now totally demolished the water course by ploughing the area with the tractor and thus, as on date, they have totally levelled the land by demolishing this water course. He has submitted that the high handedness caused by respondents No.5 and 6 was brought to the notice of the respondents authorities time and again but no action has been taken by the respondents authorities for the redressal of his grievance. He submits that he has also lodged an FIR against respondents No.5 and 6 but the respondents authorities have totally acted hand in gloves with respondents No.5 and 6 by not taking any action against respondents No.5 and 6. He has submitted that he has left with no source of water and thus, the impugned order deserves to be set aside by restoring the water course.

Learned counsel for respondents No.5 and 6 however has opposed the submissions made by learned counsel for the petitioner. He has submitted that respondent No.5 had purchased the land from Ram Narayan. He submits that the water course was not a sanctioned water course and the same was running in the land of respondent No.5. He has submitted that the water course in dispute was running in Bhai Chara and thus, the petitioner has no right whatsoever on the same. He submits that if the petitioner wants the water course to be continued, then, respondent No.5 has a right for grant of compensation as this water course was in his private land. Thus, he submits that respondent No.5 has committed no illegality by erecting the pillars along with barbed wire as the same have been erected in his own land.

This Court summoned the Superintending Canal Officer i.e. respondent No.2 in the Court and Mr. Vimal Kumar, SCO, Hisar is present in person in Court today.

Learned State counsel has submitted that the respondents authorities passed the orders in the quasi judicial capacity after verifying the facts and circumstances of the case and the statutory provisions. She has submitted that the water course was not closed. However, it was found that respondents No.5 and 6 have erected the pillars along with barbed wire in the water course and thus, the Superintending Canal Officer has rightly set aside the order passed by the Sub Divisional Canal Officer and Divisional Canal Officer by modifying the order with liberty to the petitioner to avail his remedy in accordance with the provisions of Section 55(2) of the Act.

The Court has interacted with the Officer, who is present in the Court today. He has fairly submitted before this Court that the water course was in existence from the last more than 20 years and thus, as on date, it has attained the status of sanctioned water course. He has also conceded to the fact that the learned Sub Divisional Canal Officer had inspected the site and found the grievances raised by the petitioner to be genuine wherein the pillars along with the barbed wire were erected by respondents No.5 and 6 in the middle of the water course. He has also conceded before this Court that the Divisional Canal Officer had affirmed the order passed by the Sub Divisional Canal Officer by directing respondents No.5 and 6 to remove the pillars but the same were not

removed. He has submitted that the Superintending Canal Officer however passed the impugned order by ignoring the inquiry reports wherein the high handedness committed by respondents No.5 and 6 was confirmed.

I have heard learned counsel for the parties and perused the material on record.

After hearing learned counsel for the parties and perusing the record, it is apparent that the water course was given to the petitioner by the vendor of respondent No.5 in 1998. Thus, the water course was in existence for the last about 20 years. There is a record of warabandi as well. The Officer present in Court has fairly admitted that the water course as on date has attained the status of a sanctioned water course and thus, amenable to the provisions of the Act. However respondents No.5 and 6 purchased the land from Ram Narayan. The controversy has arisen after respondents No.5 and 6 had purchased the land from Ram Narayan and thereafter they erected the pillars along with barbed wire in the middle of this water course. There is no gainsaying that the action of respondents No.5 and 6 in erecting the pillars in the middle of water course is nothing but an act done for obstructing the water course with impunity. The petitioner had rightly invoked his remedy under Section 24(1) of the Act which was duly inquired into. On conducting the inquiry, the petition was found to be genuine and the learned Sub Divisional Canal Officer had rightly accepted the same by directing the respondents to remove the obstruction created by erecting the pillars. The appeal filed by respondents No.5 and 6 was also dismissed by the learned Divisional Canal Officer

finding no merit in the same. However this Court does not agree with the view taken by the learned Superintending Canal Officer whereby he totally ignored the inquiry conducted and modified the well reasoned orders passed by both the Sub Divisional Canal Officer and Divisional Canal Officer. For resolving the controversy, the appreciation of Sections 24 and 55 is relevant and the Sections are reproduced as under:

24. Restoration of demolished or altered etc. watercourse:

- (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, require 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.

Section 55: Power of Deputy Collector to order use or distribution of water and settlement of differences

- (1) The Deputy Collector may, if in his opinions it is necessary so to do, pass an order as to the use or distribution of water from a watercourse amongst persons in any estate or a group of estates or in any holding or group of holdings in such estate or estates:

Provided that no such order shall be passed by the Deputy Collector without making any inquiry into the matter and without giving a notice to all the persons interested that, on a day to be named in such notice, he shall proceed to inquire into the said matters.

- (2) Whenever a difference arises between two or more persons in regard to their mutual rights or liabilities in respect of the use, construction or maintenance of a watercourse, any such person may apply in writing to the Deputy Collector stating the matter in dispute.
- (3) On receipt of an application under sub-section (2) the Deputy Collector shall give notice to the other persons interested that, on a day to be named in such notice, he shall proceed to enquire into the said matter, and after the inquiry he shall pass an order thereon.
- (4) An order passed under sub-section (1) or sub-section (3) as to the use or distribution of water for any crop sown or growing at the time when such order is made or with regard to the construction or maintenance of a watercourse shall, subject to an order passed on appeal or revision under sub-sections (5) and (6), be final.
- (5) An appeal shall lie to the Divisional Canal Officer against an order referred to in sub-section (4) within a period of thirty days from the date of such order.

- (6) The Superintending Canal Officer within whose jurisdiction the water-course is situated, may suomotu or on an application made in this behalf by an aggrieved person, revise an order passed in appeal by a Divisional Canal Officer under subsection (5):

Provided that no such application shall lie unless it is made with in a period of thirty days from the date of such order.

- (7) No order passed under this section shall be liable to be called in question in any civil court.

From perusal of provision of Section 55 of the Act, it is apparent that in the facts and circumstances of the present case, Section 55 of the Act would not be applicable and thus, the view taken by the learned Superintending Canal Officer is not only illegal but arbitrary as well. The petitioner being an aggrieved person rightly invoked his remedy under Section 24(1) of the Act which was duly appreciated by the authorities below. However, the learned Superintending Canal Officer has totally turned a blind eye towards the same and thus, the view taken by him is totally misconceived. The petitioner has apprised this Court that despite his repeated representations to the respondents authorities, they have turned a deaf ear to the same and thus, are hand in gloves with respondents No.5 and 6.

This Court finds that the learned Superintending Canal Officer is one of the senior most authority under the Act, who is expected to discharge his duties with utmost care and caution. However the same is found to be absent in the present case. The erection of the pillars along with the barbed wires in the water course are not disputed by the State itself but despite that no remedial action has been taken by the respondents

authorities. The Court records its displeasure against respondent No.2 in discharging his duties in a totally casual manner.

Resultantly, this Court finds the impugned order to be totally unsustainable in the eyes of law and thus, the same is set aside. Respondent State Authorities are directed to restore the water course within a period of two weeks from the date of receipt of certified copy of this order. The Deputy Commissioner, Hisar is directed to ensure the restoration of the water course as abovesaid while removing the pillars along with barbed wire from the same and to provide the requisite police for the compliance of this order.

However, as submitted by learned counsel for respondents No.5 and 6 that they are entitled for the compensation for running of this water course in their land. Respondents No.5 and 6 are at liberty to invoke their appropriate remedy for claiming the compensation as submitted before this Court. In case, respondents No.5 and 6 files any such petition for grant of the compensation before the respondent authority, then the same would be decided by the concerned authority in accordance with law expeditiously.

The present petition is allowed in the above mentioned terms.

06.12.2023

rittu

Whether speaking/reasoned

Whether reportable

(RAJESH BHARDWAJ)

JUDGE

:

:

Yes/No

Yes/No