

207 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-10450-2024 (O/M)

Date of decision : 06.08.2024

Mahinder Singh alias Mohinder Singh and others Petitioners

Versus

Chief Canal Officer (BWS Unit), Irrigation and W.R. Department, Haryana
and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Sandeep Berwal, Advocate
for petitioner.

Mr. Randhir Singh, Additional A.G. Haryana.

Ms. Sonia Sharma, Advocate (Legal Aid Counsel)
for respondent No. 3.

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HARSH BUNGER, J.

1. Petitioners (Mahinder Singh alias Mohinder Singh and others) have filed the instant civil writ petition under Articles 226/227 of Constitution of India, seeking a writ in the nature of certiorari for setting aside the order dated 24.12.2021 (Annexure P-4), passed by Superintending Canal Officer, Kaithal and order dated 20.04.2022 (Annexure P-5), passed by learned Chief Canal Officer, Haryana.

2. Briefly, Ishwar Singh (father of respondent No. 3-Mahavir Singh) submitted an application before the Deputy Collector, Pundri, W.S. Division, Kaithal, seeking amendment of warabandi, whereupon a draft of amendment of warabandi was prepared and presented by Zildar, Habari, and thereafter, notice was issued to the concerned co-sharers. The

statements of the co-sharers, who came present before the authority, were recorded, wherein it was stated that the outlet proposed by the Zileadar for the applicant-Ishwar Singh (father of respondent No. 3) was correct and agreeable to all and the same be allowed, however, some of the co-sharers of outlet No. 56200-R-H.S.B, who were residents of village Rasina, stated that Ishwar Singh was a resident of village Bastali and his land is also situated in village Bastali, which was being irrigated from Bastali watercourse, however, on account of dispute in his brotherhood, the watercourse was closed. Accordingly, they did not express their consent to the proposed Nakka from the watercourse by citing the reason that the land of Ishwar Singh was slightly higher than their land and in rainy season, the watercourse would drain to their land and their crops would be destroyed, which may further lead to disputes.

2.1 Considering the facts and circumstances, the Deputy Collector, Pundri WS Division, Kaithal, after inspecting the spot, rejected the demand of Ishwar Singh, vide order dated 26.04.2018 (Annexure P-1), by observing as under :-

“ After inspecting the spot it was found that the demand of the applicant is not valid because the land of the applicant is higher and the level of the water course is down. There is a passage measuring six Karam between the water course and the land of the applicant and any syphon is also not there. Demand of the applicant is also not technically correct so the demand of the applicant is rejected.

At the spot warabandi will be executed as per rules.”

2.2 It transpires that the aforesaid Ishwar Singh challenged the order dated 26.04.2018 (Annexure P-1), passed by Deputy Collector, Pundri

WS Division, Kaithal, by filing a petition under Section 55 (4) of Haryana Canal and Drainage Act, 1974 (in short '1974 Act'), which came to be decided by the Divisional Canal Officer, Pundri W/S Division, Kaithal, vide order dated 28.09.2018 (Annexure P-2), whereby Nakka was sanctioned on the pucca watercourse at Rect./Killa No. 10//6 for Ishwar Singh (predecessor of respondent No. 3), by observing as under :-

“..... It has been observed that the canal irrigation is not being to the area of the appellant because the naka of the appellant is not sanctioned on the running watercourse path whereas a lined watercourse is running near the holding of the appellant. In case the naka of the appellant is sanctioned on this pakka watercourse at rectangle/killla No. 10//6, the canal supply will get start to the fields of the appellant. Before installation of naka, the appellant will be constructed the siphon/pipe/culvert on the consolidation path so the other shareholders/landowners did not face the problem to and fro.

In view of the facts as explained above the appeal of the appellant is hereby allowed and the decision dated 24.04.2018 passed by Deputy Collector Pundri W.S. Division Kaithal is set aside.

Decision be conveyed to all concerned shareholders under rules.”

3. Being aggrieved against the aforesaid order dated 28.09.2018 (Annexure P-2), the present petitioners preferred an appeal under Section 55 (6) of 1974 Act, which came to be decided by the Superintending Canal Officer, Bhakra Water Services Circle, Kaithal, vide order dated 23.04.2019 (Annexure P-3), whereby the Nakka (taking point)

was provided to Ishwar Singh at point 'A' (11//1, village Bastali), by observing as under :-

“ It has been observed that the watercourse AB runs through the land of village Rasina and a field path is leading alongwith this watercourse. But no syphon/culvert exists at site beneath this path. Furthermore, an another village path is also leading through the land of respondent but no syphon/culvert also exists at site beneath this village path. The demand of the respondent to fix his Naka on this watercourse at point B (alongwith field Path) is not justified as in case the naka of the respondent is fixed at point B the canal supply can not receive to the land of respondent without syphon/culvert under these paths. Moreover, most of the shareholders of this outlet of village Rasina are against for sanction the naka of the respondent on watercourse which exclusively runs for irrigation to the area of their village. Therefore, the taking point of sequence of wari of respondent is hereby fixed at point A (11//1, village Bastali) alongwith path and bharai and Jharai is allowed as per site.

In view of the facts as explained, the decision dated 28.09.2018 passed by Divisional Canal Officer, Pundri Water Services Division, Kaithal is hereby modified accordingly.

All concerned shareholders be informed accordingly under rules.”

3.1 It appears that the aforesaid order dated 23.04.2019 (Annexure P-3) was not challenged any further either by Ishwar Singh or by respondent No. 3 herein.

3.2 It transpires that respondent No. 3 submits another application before the Superintending Canal Officer, Kaithal, with a request to construct

a pucca nakka in the lined watercourse, which was allowed by the Superintending Canal Officer, Kaithal, vide order dated 24.12.2021 (Annexure P-4), by observing as under :-

“..... The demand of the applicant to construct a pucca naka in the lined water course at common line of rectangle//killa 10//6x15 is considered as genuine. Moreover, due to construction of naka at common line of rectangle//killa no. 10//6x15 the wari of other shareholders would not be disturbed. Hence, the pucca naka at common line of rectangle//killa no. 10//6x15 is hereby allowed subject to the condition that the cost of construction of pucca naka in the lined water course and siphon/pipes under the consolidation path shall be borne by the applicant. Executive Engineer Pundri W.S Division Kaithal will ensure administratively that the work of construction of naka/siphon shall be carried out under the supervision of SDO concerned and no hindrance be allowed to be created by other shareholders opposing the proposal. The cost of machinery, material and men power shall be borne by the applicant.

The order be conveyed to the applicant accordingly.”

4. Being aggrieved against the aforesaid order dated 24.12.2021 (Annexure P-4), the present petitioners filed an appeal under Section 20 (3) of 1974 Act before the Chief Canal Officer, Haryana, however, the same was dismissed, vide order dated 20.04.2022 (Annexure P-5), passed by Chief Canal Officer, Haryana, by holding that the appeal was not maintainable.

5. In the aforementioned circumstances, the petitioners have filed the instant civil writ petition before this Court, for the relief(s), as noticed above.

6. Learned counsel for the petitioners submits that the application for construction of new outlet and warabandi in the chak of outlet at RD No. 56200-R Habari Sub Branch was submitted by predecessor of respondent No. 3 i.e. Ishwar Singh and his claim was rejected, however, the outlet and wari of respondent No. 3 was fixed from point 'A' (11//1, village Bastali) and the said order has attained finality. It is submitted that the fresh application submitted by respondent No. 3 for the same relief before the Superintending Canal Officer directly would be barred by principle of estoppel and, therefore, the impugned order dated 24.12.2021 (Annexure P-4), passed by Superintending Canal Officer, Kaithal as well as order dated 20.04.2022 (Annexure P-5), passed by learned Chief Canal Officer, Haryana, are liable to be set aside. It is further submitted that even otherwise, the execution of the aforesaid orders would not be possible in view of the fact that the land of respondent No. 3 falls on higher level than the watercourse, from which the wari is sought. It is next submitted that even if the Nakka is given to respondent No. 3 from the watercourse then the water will not go upto the fields because of height of his fields, which is higher than the watercourse, therefore, leading to overflow of water, resulting in wastage thereof. Accordingly, it is prayed that the impugned orders be set aside.

7. Per contra, learned counsel for respondent No. 3 has opposed the submissions made on behalf of the petitioners. It is submitted that the Superintending Canal Officer, vide impugned order dated 24.12.2021

(Annexure P-4), had permitted pucca Nakka at common line of Rect./Killa No. 10//6-15 and no prejudice has been caused to the petitioners. It is further submitted that the outlet and the wari of Ishwar Singh, which was fixed at point 'A' (11//1, village Bastali), was not executable and for that reason, respondent No. 3 had submitted an application before the Superintending Canal Officer, Kaithal, which was allowed, vide order dated 24.12.2021 (Annexure P-4). Accordingly, prayer for dismissal of the instant civil writ petition has been made.

8. I have heard learned counsel for the parties and have perused the paperbook with their able assistance.

9. It is not disputed that on an earlier occasion, the application filed by father of respondent No. 3, namely, Ishwar Singh, under Section 55 of 1974 Act, seeking amendment of warabandi, was dismissed by the Deputy Collector, Kaithal, vide order dated 26.04.2018 (Annexure P-1) on the ground that the land of Ishwar Singh (father of respondent No. 3) was on higher level than the level of watercourse and also that there was a passage, measuring 6 karams between the watercourse and the land of Ishwar Singh and there was no siphon at the said place. Although, the aforesaid order dated 26.04.2018 (Annexure P-1), passed by Deputy Collector, Kaithal, was challenged by Ishwar Singh under Section 55 (4) of 1974 Act, which was allowed by the Divisional Canal Officer, Kaithal, vide order dated 28.09.2018 (Annexure P-2) by sanctioning a Nakka at Rect./Killa No. 10//6, however, on a further appeal filed by the petitioners under Section 55 (6) of 1974 Act, the order dated 28.09.2018 (Annexure P-2), passed by Divisional Canal Officer, Kaithal, was modified by the Superintending Canal Officer, Kaithal, vide order dated 23.04.2019

(Annexure P-3), whereby the Nakka (taking point) for Ishwar Singh (father of respondent No. 3) was fixed at point 'A' (11//1, village Bastali) along with the path and bharai and jharai was allowed as per site.

10. Concededly, the aforesaid order dated 23.04.2019 (Annexure P-3), passed by Superintending Canal Officer, Kaithal, is not being challenged any further, therefore, the said order has attained finality. It appears that on another application being filed by respondent No. 3 (Mahavir Singh son of Ishwar Singh) directly before the Superintending Canal Officer, Kaithal, a pucca Nakka at rectangle//killa 10//6x15 has been allowed. It is not indicated as to under which provisions of law, the said application filed by respondent No. 3, was entertained by the Superintending Canal Officer, Kaithal directly.

11. Be that as it may, once the matter regarding provisioning of Nakka to the land of respondent No. 3 and/or Iswhar Singh (father of respondent No. 3) was considered and decided by the Superintending Canal Officer, Kaithal, vide order dated 23.04.2019 (Annexure P-3), whereby providing taking point (Nakka) to the land of Ishwar Singh (father of respondent No. 3) at point 'A' (11//1, village Bastali) and the said order having attained finality, it would be just and expedient not to permit the same issue being agitated again. The Superintending Canal Officer, Kaithal by directly entertaining application of respondent No. 3 and by passing the impugned order dated 24.12.2021 (Annexure P-4), has unsettled the settled position as regards the provisioning of Nakka (taking point) to the land of Ishwar Singh (father of respondent No. 3), which has not only prevented the finality of decision that has been reached at, vide order dated 23.04.2019 (Annexure P-3), but has conveyed a wrong message that a litigant may go

on filing applications for a relief claimed and even if the same is denied, it could be granted at some subsequent stage. This is clearly against public policy and administration of justice. Similar view was taken by this Court in the case of ***Bharat Singh and others Versus Divisional Canal Officer and others***, 2011 (3) RCR (Civil) 421. Resultantly, the instant civil writ petition is allowed and the impugned order dated 24.12.2021 (Annexure P-4), passed by Superintending Canal Officer, Kaithal and order dated 20.04.2022 (Annexure P-5), passed by learned Chief Canal Officer, Haryana are set aside.

12. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

06.08.2024
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No