

CR-3400-2024
Date of decision : 06.11.2024

....Petitioners

DIVISIONAL CANAL OFFICER, ROHTAK AND ANR. ...Respondents

Mr. Ramesh Hooda, Advocate
for respondent No.2.

Present revision petition is directed against order dated 3rd of May, 2024 passed by Civil Judge (Junior Division), Rohtak whereby application filed by the defendants under Order VII, Rule 11 CPC read with Section 151 CPC seeking rejection of the plaint, stands dismissed.

2. For convenience, the parties hereinafter are referred to by their original position in the suit i.e. the petitioners as the defendants and respondent No.2 as the plaintiff.



3. Respondent/plaintiff filed suit seeking declaration to the effect that order passed by Divisional Canal Officer, Rohtak Water Services Division, Rohtak, dated 7th of March, 2017 sanctioning water course AB be declared illegal, null, and void. Further prayer was for decree in form of permanent injunction restraining the respondents from digging the water course.

4. Defendants filed application under Order VII Rule 11 CPC claiming that in terms of Section 25 of the Haryana Canal and Drainage Act, 1974 (hereinafter referred to as 'the Act'), the Civil Court has no jurisdiction to entertain or decide any question relating to matters falling under Section 17 to 24 of the Act and, thus, the jurisdiction of the Civil Court was barred. The application was resisted by the plaintiff claiming that the water course having been sanctioned in violation of the principle of natural justice without calling the plaintiff, the Civil Court has the jurisdiction *dehors* Section 25 of the Act.

5. Trial Court dismissed the application under Order VII Rule 11 CPC holding that wherever authority acts in violation of the procedure as prescribed under the statute and passes an order in violation of the principle of natural justice, the jurisdiction of the Civil Court will not be ousted. Reliance was placed upon the ratio of law laid down by this Court in the case of **State of Haryana vs. Makkhan Singh, 2002(2) RCR Civil 635**.

6. Counsel for the petitioners while assailing the impugned order has drawn attention of this Court to the prayer clause. He submits that from



bare perusal of the prayer clause, it is evident that challenge has been raised to order passed by Divisional Canal Officer, dated 7th of March, 2017 approving the water course. The power exercised by the Divisional Canal Officer is under Section 18 of the Act. He submits that under Section 25 of the Act there is a complete and explicit bar to the jurisdiction of the Civil Courts from entertaining or deciding any question relating to the matters falling under Sections 17 to 24 of the Act. He thus submits that the Trial Court erred in dismissing the application filed under Order VII Rule 11 CPC and assuming the jurisdiction even though the same was barred under the statute. He places reliance upon law laid down in the cases of **Bahadur and others vs. Partap and another, 2010(4) PLR 735, Om Parkash vs. State of Haryana, 2014(1) PLR 208, Kiranjit Singh Bawa vs. State Bank of India – RSA No.9835 of 2018 (O&M) decided on 5th of February, 2019, Resham Singh vs. Jaswant Singh – CR No.577 of 2023 (O&M) decided on 30th of January, 2023 and Gurinder Singh vs. Gobind Kaur, 2022 AIR CC 554.**

7. Mr. Hooda on the other hand submits that from the contents of the plaint, it is evident that the ground to challenge the order is w.r.t. forgery of signatures of the plaintiff on the proceedings leading to approval of the plan. He has been shown to be present despite not being there. He further submits that wherever the procedure is violated while exercising the statutory powers, Section 25 cannot be read to oust the jurisdiction of the Civil Court. He submits that as per settled law the authorities under Canal



and Drainage Act, 1974 are *quasi-judicial*. It is only the Civil Court who can conclude w.r.t. comparison of the signatures.

8. I have heard counsel for the parties and have gone through records of the case.

9. State of Haryana enacted 1974 Act to regulate irrigation and drainage in Haryana. Part III of the Act deals with construction and maintenance of works. Section 17 to Section 24 deal with draft scheme, publication of the scheme and the approval of the scheme of the water course. Section 20 provides remedy against the approval of the scheme in form of appeal as well as revision. The bare provisions of the law reads as under:

“17. Preparation of draft scheme. (1) Notwithstanding anything contained to the contrary in this Act but subject to the rules prescribed, Divisional Canal Officer may, on his own motion or on the application of a shareholder, prepare a draft scheme to provide for all or any of the matters namely:-

- (a) the construction, alteration, extension and alignment of any watercourse or realignment of any existing watercourse;
- (b) allotment of any new areas to a watercourse or an outlet or reallocation of areas served by one watercourse to another or from one outlet to another, or for exclusion of an area, from an outlet or a watercourse;
- (c) construction of a new outlet, shifting or modification of an existing outlet. Explanation:- Any change in the design or size or both of an outlet, whose design or size or both have been changed in an unauthorized



manner, for restoring the same to its authorized discharge shall not be deemed to be a modification;

- (d) the lining of any watercourse;
- (e) the occupation of land for the deposit of soil from watercourse clearances;
- (f) Any other matter which is necessary for the proper maintenance and distribution of supply of water from a watercourse or an outlet.

(2) Every scheme prepared under sub-section (1) shall, amongst other matters, set out the estimated cost thereof, the alignment of proposed watercourse or realignment of the existing watercourse, as the case may be, the site of the outlet, the particulars of the share-holders to be benefited and a sketch plan of the area proposed to be covered by the scheme.

18. Publication of scheme. (1) Every scheme shall, as soon as may be after its preparation, be published in such form and manner as may be prescribed for inviting objections and suggestions in respect thereof within twenty-one days of its publication.

(2) After considering such objections and suggestions, if any, the Divisional Canal Officer shall approve, modify or reject the scheme within thirty days of the time for the receipt of such objections and suggestions, unless this period is extended by the Superintending Canal Officer for good and sufficient reasons:

Provided that in the following cases, the prior approval of the Chief Canal Officer shall be obtained for allowing-

- (a) a new outlet on a main canal or branch canal;
- (b) an outlet with discharge of less than 0.75 cusec.

19. Publication of scheme after approval. (1) The Divisional Canal Officer shall, as soon as may be, publish the fact of the rejection of scheme or the particulars of the scheme approved or modified by him under sub-section (2) of section 18 in the prescribed manner and call upon the shareholders to implement it at their own cost within the period to be specified by him and if



the shareholders fail to implement the same, he shall undertake the construction or implementation of the scheme himself, and recover the cost thereof from the shareholder s in the manner and period to be specified by him. Any sum which remains unpaid, within the specified period for this purpose, may be recovered by the Collector from the defaulting person as arrears of land revenue.

(2) An officer, not below the rank of Sub Divisional Canal Officer shall check the implementation of scheme at site.

20. Appeal and revision. (1) An appeal against the decision of the Divisional Canal Officer under sub-section (2) of section 18 shall lie to the Superintending Canal Officer within thirty days of the publication of the scheme under section 19.

(2) An appeal shall lie against the decision of the Superintending Canal Officer passed under sub-section (1) in regard to any of the matters covered under clauses (a), (b) and (c) of subsection (1) of section 17, to the Chief Canal Officer within thirty days of the date of such decision.

(3) The Chief Canal Officer or the Superintending Canal Officer may suo motu, call for the record of any case pending before, or disposed of by any subordinate authority, for the purpose of satisfying himself as to the legality or propriety of any proceedings or of any order made therein and may pass such order in relation thereto as he may think fit:

Provided that no such order shall be made without affording the person affected an opportunity of being heard.

25. Bar Jurisdiction of civil court. Notwithstanding anything contained in this Act or any other law for the time being in force, no civil court shall have jurisdiction to entertain or decide any question relating to matters falling under section 17 to 24.



10. From the afore-reproduced provisions, it is evident that wherever a party is aggrieved of the approval of the scheme of the water course, the statute itself provides for a remedy in form of appeal as well as revision. Section 25 provides for an explicit embargo on the jurisdiction of the Civil Court to entertain or decide any question relating to matters falling under Section 17 to 24 of the Act.

11. Counsel for the plaintiff/respondent is not in a position to deny that so far as the impugned order for which declaration has been sought in this plaint, passed by the Divisional Canal Officer, dated 7th of March, 2017, indeed is relatable to Sections 17 and 18. Thus, the only conclusion is that the jurisdiction of the Civil Court is ousted under Section 25 of the Act. The Civil Court has no jurisdiction to decide any question raised in suit which relates to matters falling under Section 17 and 18. Reliance can be placed upon law laid down by this Court in the case of **Bahadar and others vs. Partap and another (supra)** wherein this Court held as under:

“8. The bare perusal of the record would reveal that the trial Court appointed the Local Commissioner to visit the spot. Taking into consideration the report dated 6.12.2005 of Local Commissioner, the trial Court acknowledged that there is nothing on record to show that any watercourse, as claimed by the plaintiffs, was in existence even at the time of institution of the suit. Therefore, the Civil Court lacks jurisdiction and dismissed their suit, being not maintainable. The main grounds, which appear to have been weighed with the first appellate Court in remanding the case are that (i) question of maintainability and jurisdiction of Civil Court is the mixed question of law and facts; (ii) it is



essential to reach the conclusion whether the watercourse was in existence and (iii) whether the turn (warabandi) for irrigating the land of the plaintiffs was fixed or not?”

11. Similar is the view of another Co-ordinate Bench in **Om Parkash’s** case (supra) wherein the Court observed as under :

“7. Learned counsel for the plaintiff/appellant has not been able to dispute that under Section 25 of the Act, jurisdiction of the Civil Court is expressly barred from entertaining or deciding any question relating to matters falling under Sections 17 to 24. It is further not disputed that restoration of khal in question was ordered by the Divisional Canal Officer under Section 24 of the Act.”

12. In view of above, the present revision petition is allowed. Impugned order dated 3rd of May, 2024 is hereby set aside. Application filed by the petitioner defendant under Order VII Rule 11 is allowed. Plaint filed in Civil Suit No.936 of 2023 is ordered to be rejected.

November 06, 2024		(Pankaj Jain)
Dpr		Judge
Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No