

116 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-15434-2024 (O/M)

Date of decision : 05.09.2024

Kaka Singh and others

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Pushipinder Pal Singh, Advocate
for the petitioners.

Ms. Upasana Dhawan, AAG Haryana.

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HARSH BUNGER, J. (ORAL)

1. Petitioners (Kaka Singh and others) have filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for setting aside the order dated 08.07.2022 (Annexure P-2); order dated 08.06.2023 (Annexure P-3) and order dated 15.03.2024 (Annexure P-4).

2. Briefly, the petitioners are owners in possession of the land measuring 33 kanal-16 marlas, comprised in khasra No. 96//18, 19, 20, 25; 97//16/1, situated in village Salam Khera, Tehsil Kalanwali, District Sirsa. Similarly, respondents No. 5 and 6 are owners in possession of land comprised in khasra No. 96//11, 12, 13, 14, 15, 16, 17. Concededly, the land of the petitioners as well as of respondents No. 5 and 6 is being irrigated from outlet RD-101825-R Kaluana Distributory at village Salam Khera.

2.1 It appears that respondents No. 5 and 6 filed an application before the Sub Divisional Canal Officer, Odhan, District Sirsa under Section 24 (1) of Haryana Canal and Drainage Act, 1974 (in short '1974 Act') wherein they alleged that the petitioners had dismantled their water course and the irrigation to their fields has been stopped.

2.2 The petitioners opposed the aforesaid stand of respondents No. 5 and 6 by submitting that no such water course was in existence nor it was sanctioned by the canal department. It was also stated by the petitioners that a katcha khal was there for irrigating khasra No. 25 belonging to the petitioners.

2.3 It appears that the Sub Divisional Canal Officer, vide his order dated 08.07.2022 (Annexure P-2), ordered permanent restoration of the said khal (water course).

2.4 Feeling aggrieved against the aforesaid order dated 08.07.2022 (Annexure P-2), the petitioners preferred an appeal before the learned Divisional Canal Officer, Sirsa, which was dismissed, vide order dated 08.06.2023 (Annexure P-3). A further revision petition preferred by the petitioners before the learned Superintending Canal Officer, Sirsa; was also dismissed, vide order dated 15.03.2024 (Annexure P-4).

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

4. Learned counsel for petitioners submits that the canal authorities below have erred in law and fact in passing the impugned orders without considering the fact that the water course regarding which the restoration has been ordered, is not a sanctioned water course, rather

that the restoration of the alleged water course has been wrongly ordered by placing reliance upon the warabandi, which is not permissible. It is further submitted that the canal authorities below have not visited the site in question and has thus, failed to impart justice to the parties. It is next submitted that the entire exercise has been carried out by the canal authorities while sitting in their office and there is no finding that the water course was ever demolished. Accordingly, it was prayed that the impugned orders be set aside.

5. Per contra, learned State counsel has appeared in pursuance to the writ petition having been served upon the State. Learned State counsel has opposed the submissions made on behalf of the petitioners by submitting that the canal authorities have duly considered the matter in hand and a clearing finding has been returned that the dismantled water course comes under the category of permanent drain under Section 2 (15) of 1974 Act, accordingly, restoration of the dismantled water course was ordered. It is submitted that there is no illegality or perversity in the impugned orders and no interference is required to be made by this Court. Accordingly, prayer for dismissal of the instant civil writ petition has been made.

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

7. In the present case, respondents No. 5 and 6 had approached the canal authorities with the plea that their water course had been dismantled by the petitioners, whereupon the matter was inquired into and the spot was inspected. During spot inspection, the marks of closed drain was found. Further, from the warabandi it was found that the turn

demand of respondents No. 5 and 6 to be justified and after recording a finding that the dismantled water course comes under the category of permanent drain under Section 2 (15) of 1974 Act, Sub Divisional Canal Officer, Odhan, vide its order dated 08.07.2022 (Annexure P-2), ordered restoration of the water course on the north to south eastern direction of killa No. 96//25 of the disputed khal 'AB'. The said order (Annexure P-2) was further upheld by Divisional Canal Officer, vide his order dated 08.06.2022 (Annexure P-3) and further revision petition preferred by the petitioners by dismissed by the Superintending Canal Officer, vide order dated 15.03.2024 (Annexure P-4).

7.1 The only argument raised by learned counsel for the petitioners is that the restoration of the water course has been ordered while relying upon the warabandi, which is not permissible; however, I do not find any merit in the said submission. It is well settled that warabandi is the best document to infer that water course was existing at a point of time. Learned counsel for petitioners has failed to controvert the finding returned by the canal authorities below that the warabandi of respondents No. 5 and 6 was fixed on the disputed drain. It has not been shown that at any stage, any objection had been taken by the petitioners to the said warabandi. In view of the said fact, either by implication the water course would be taken as a sanctioned water course or in any case, it would be taken that the petitioners had agreed to the use of said water course by respondents No. 5 and 6 and that is why, no objection has been raised by the petitioners when the department sanctioned warabandi on the said water course. That apart, the canal authorities below upon inspecting the spot found that the raw drain was lying closed and the marks of closed drain was also found, which was depicted on the site plan

as 'AB'. Therefore, the warabandi record and the site plan noticed by the canal authorities clearly depicted that the water course in question was in existence. The aforesaid view of mine is supported by the judgments rendered by this Court in ***Brij Lal Versus State of Punajb***, 1985 Recent Revenue Reports 76 and ***Ram Kumar Versus Superintending Canal Officer, Bhakra***, 2017 (1), Law Herald, 292.

8. Keeping in view the above discussion, I do not find any merit in the instant civil writ petition and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

05.09.2024
sjks

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