

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

**CWP-16716-2021
Decided on: 05.02.2024**

Raj Singh and another

..... Petitioners

Versus

Superintending Canal Officer and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr.Amarjeet Beniwal, Advocate for
Mr. Ravi Malik, Advocate, for the petitioners.
Ms. Upasana Dhawan, Assistant Advocate General, Haryana.
Mr.R.N. Lohan, Advocate, for respondent No.4.

Rajesh Bhardwaj, J.

Prayer in the present petition is for quashing the order dated 28.01.2021 (Annexure P-7) passed by respondent No.2, whereby, the appeal filed by respondents No.4 and 5, has been allowed and application for restoration of alleged watercourse filed by them was allowed and order dated 29.06.2021 (Annexure P-9) passed by respondent No.1, whereby revision filed by the petitioners have been partly allowed illegally, arbitrary and against the provisions of the Haryana Canal and Drainage Act, 1974 (for short, 'the Act'). Further prayer has been made to direct the respondents to grant compensation or land in exchange for the land of the petitioners used/acquired for construction of watercourse in Killa No.70//19-22, 87//2-3 alongwith Narwana to Hamirgarh Road in view of the provisions of the Act.

It has been contended by learned counsel for the petitioners that the petitioners and the private respondents were joint owners of the suit land prior to its partition, which was effected in the year 1979. It is submitted that the joint land of the petitioners as well as of the private respondents was partitioned by meets and bound by the Assistant Collector Ist Grade,

Narwana vide order dated 23.05.1979. It is submitted by him that there was neither existing/sanctioned or running watercourse in the land of the petitioners nor the private respondents ever demanded or claimed any watercourse at the time of partition of the joint land. He submits that the private respondents filed an application for restoration of the dismantled watercourse, as they wanted to carve out a new watercourse alleging that the watercourse at point ABC existed in the land of the petitioners, was dismantled by them. He submits that on issuance of the notice, the petitioners appeared and refuted the contentions raised by the private respondents. He submits that respondent No.3 i.e. Sub Divisional Canal Officer, Narwana himself inspected the spot and found that there was no existing/running or demolished watercourse at the spot and rejected the demand of the private respondents vide order dated 19.09.2019. He submits that aggrieved by the same, respondent No.4 and 5 filed an appeal before respondent No.2 i.e. Divisional Canal Officer, Narwana, however, the same was illegally accepted vide order dated 19.12.2019 by setting aside the order dated 19.09.2019. He submits that aggrieved by the same, the petitioners filed a revision petition before respondent No.1 i.e. Superintending Canal Officer, Bhakra Water Services Circle, Kaithal challenging the order dated 19.12.2019, which was set aside by respondent No.1 vide his order dated 22.09.2020 and remanded the matter back to respondent No.2 for decision afresh. He submits that thereafter, respondent No.2 without complying with the direction issued by respondent No.1 vide his order dated 22.09.2020, again ordered to restore the alleged dismantled watercourse permanently on the basis of the *warabandi* sanctioned in the year 1988 vide order dated 28.01.2021, which is against the settled

principles of law. He has submitted that no compensation was granted to the petitioners for restoring this *khaal* from their land. It is submitted by him that the petitioners have made statements that they are ready to give land abutting the road for construction of watercourse in case they are compensated by the private respondents by giving equal land to them but respondent No.1 wrongly and illegally rejected the same vide order dated 29.06.2021. He has submitted that the impugned order dated 28.01.2021 passed by respondent No.2, whereby the appeal was allowed and order dated 29.06.2021 passed by respondent No.1 being violative of Section 20(3) of the Act, deserve to be set aside.

However, learned counsel for respondent No.4 has vehemently opposed the submissions made by the petitioners. He has submitted that the petitioners have not approached the Court with clean hands. It is submitted by him that respondent No.1 passed the order dated 29.06.2021 on the asking the petitioners vide which they agreed to give watercourse from point A to D in lieu of the watercourse ABC and thus, after passing of this order now the petitioners have taken U turn and thus, retracted from their own statements, on the basis of which the impugned order dated 29.06.2021 was passed. He has fairly submitted that the respondents were ready to take the water to their fields from the watercourse ABC, however, it was on the offer made by the petitioners only, irrigation water to respondent No.5 was given from point A-D in lieu of watercourse ABC. He has further submitted that respondent No.5 was left with no other source of water due to protracted litigation carried on by the petitioners. He submits that in the overall facts and circumstances, the present petition deserves to be dismissed being devoid of any merit.

Heard.

After hearing learned counsel for the parties and perusing the record, it is apparent that on filing of the application for restoration of the dismantled watercourse, the site was inspected and the reports were sought by the authorities. The watercourse dismantled was found to be running at the site from last more than 30 years. The *warabandi* record, which was sanctioned in the year 1988 further substantiated the existence of the dismantled *khaal*. It was found that source of irrigation to the private respondents was from the watercourse in dispute ABC. Thus, the same having been found dismantled was restored by the learned Divisional Canal Officer. In the appeal filed by the petitioners, it has been specifically observed by the Appellate Authority that the petitioners stated that they have no objections, if the private respondents dig the watercourse for irrigation alongwith *Pucca* road Narwana to village Hamirgarh in their land. The respondents agreed to the same and thus, the learned Superintending Canal Officer on this offer made by the petitioners, allowed the appeal wherein it was directed that the petitioners would provide the land for digging the watercourse from point A to D. The private respondents pleaded no objections to the same. Thus, the contentions raised by counsel for the petitioners are totally misconceived and unacceptable as they have retracted from their earlier statement made before respondent No.1. The Court does not find any infirmity in the impugned orders passed. The private respondents are left with no other source of water for irrigation.

Resultantly, the present petition being devoid of any merits is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

05.02.2024
sharmila

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No