

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

**CWP-15624-2017 (O&M)
Date of decision: 25.04.2024**

Ami Lal

.....Petitioner

versus

Deputy Collector and others

..... Respondents

**CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Ashok Kumar Verma, Advocate
for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana.

Mr. P.K. Ganga, Advocate
for respondent No.4.

RAJESH BHARDWAJ, J.

CM-6722-CWP-2024

The present application has been filed for placing on record the affidavit of petitioner dated 18.04.2024.

Learned counsel for the petitioner has stated that due to the miscommunication with the petitioner, he stated in the Court on 02.04.2024 that the watercourse is a kachha one whereas it is a lined at the spot and is a pucca khal. He has further stated that the petitioner has tendered his unqualified apology for the statement suffered by his counsel on his instructions wherein due to miscommunication, he referred to the watercourse as a kachha one.

Heard. Affidavit of the petitioner is taken on file and unqualified apology tendered by him is accepted. Application stands disposed of accordingly.

Main case

Prayer in the present petition is for quashing the orders dated 03.07.2017 (Annexure P-6) passed by learned Superintending Canal Officer, respondent No.3.

2. The present case pertains to the Amendment of Warabandi of Outlet No.112075-R, Mammer Khera Disty. of Village Nuhianwali, Tehsil Dabwali, District Sirsa. A petition under Section 55 of the Haryana Canal & Drainage Act, 1974 (for short 'the Act') was filed by respondent No.4. On receipt of the application, notice was issued to the other side and the case was investigated by Zileadar. Thereafter on hearing both the sides, learned Collector rejected the same vide his order dated 16.11.2016. Being aggrieved, respondent No.4 filed an appeal under Section 55(5) of the Haryana Canal and Drainage Act before the learned Divisional Canal Officer, Sirsa who on hearing both the sides, rejected the appeal vide his order dated 27.01.2017. Still aggrieved, respondent No.4 filed an appeal under Section 55(6) of the Haryana Canal & Drainage Act, 1974 before the learned Superintending Canal Officer, Sirsa. Learned Superintending Canal Officer heard both the sides, perused the record and accepted the appeal in lieu of the compensation to the petitioner as per the offer of respondent No.4 vide his impugned order dated 03.07.2017. Aggrieved by the order dated 03.07.2017 passed by the Superintending Canal Officer, petitioner is before this Court by way of filing the present petition.

3. Learned counsel for the petitioner vehemently contends that the application filed by respondent No.4 was against the principle of “first come first serve” and thus, on hearing both the sides, the District Collector finding the same to be not genuine, dismissed the same vide his order dated 16.11.2016. He submits that in the appeal filed by respondent No.4

before the learned Divisional Canal Officer, he again failed to substantiate his claim and thus, his appeal was dismissed vide order dated 27.01.2017. Hence, being aggrieved, he filed the revision petition before learned Superintending Canal Officer assailing both these orders. He further submits that learned Superintending Canal Officer however, has accepted his revision vide impugned order dated 03.07.2017 on the basis of irrelevant considerations. He has submitted that the land of respondent No.4 is located at two places whereas land of petitioner as well as eight other shareholders falls in between as is evident from the *parat warabandi*. He has submitted that accepting the demand of private respondent for consolidation of the *warabandi* of two chunks of his land is against the well settled principles of “first come first serve” as per the mandate of Rule 8 of Appendix 'E' of the Irrigation Manual in Haryana. He has submitted that thus, finding the prayer of respondent No.4 against the Rule 8, it was rightly rejected by the Deputy Collector and learned Divisional Canal Officer. However, learned Superintending Canal Officer illegally justified the consolidation of *Wari* of two chunks and the land of private respondent by giving Bharai of 12 minutes to the petitioner which is inappropriate. He has submitted that the area on Outlet R.D. 112075-R, Mammer Khera Disty is sandy area and *wari* allowed at this outlet is about 24 minutes per acre. Thus, the petitioner would suffer loss in the process as he has been given only 12 minutes Bharai by the Superintending Canal Officer in lieu of consolidation of *wari* by the private respondent after Khata No.17. Thus, he submits that the view taken by the learned Superintending Canal Officer being totally against the statutory provisions, deserves to be *set aside*.

4. *Per contra*, learned counsel for respondent No.4 has vehemently opposed the submissions made by counsel for the petitioner. He has submitted that the view taken by learned Superintending Canal Officer is totally justified as the petitioner has been duly compensated with *Bharai* and has been given 12 minutes more turn of water from share of respondent No.4. He has submitted that the land of respondent is at two places and hence in order of better irrigation, he filed the application to consolidate his *wari* at one place which was not legally appreciated by the Deputy Collector and the Divisional Canal Officer and thus, the same has been rightly appreciated by the learned Superintending Canal Officer by duly compensating the petitioner wherein he has been given 12 minutes more for *Bharai*. It is submitted that no violation whatsoever has been committed by learned Superintending Canal Officer and the petitioner has been duly compensated, thus, there being no infirmity in the order passed by learned Superintending Canal Officer, the petition deserves to be dismissed with costs.

5. This Court had summoned learned Deputy Collector to assist the Court vide its order dated 16.11.2023. Mr. Ram Karan, Deputy Collector, Sirsa came present in person in the Court on 24.11.2023 and he submitted before the Court that the grievances of the petitioner would be redressed by providing him extra time for *Bharai*. It was submitted by the Deputy Collector that though the petitioner had already been given 12 minutes extra *Bharai* time but the same would be further increased to 25 minutes. In pursuance to the submissions made, Mr. Ram Karan, Deputy Collector filed his affidavit dated 02.12.2023 wherein he deposed that petitioner-Ami Lal had already been provided 12 minutes actual *Bharai* for three killas for the irrigation of his fields which falls in chak of Outlet

RD 112075/R. It is further deposed that he would be given extra *Bharai* of 13 minutes and hence, in this way, petitioner would be able to get total 25 minutes of *Bharai* for the irrigation of his canal irrigated land.

6. Heard. On hearing counsel for the parties and perusing the record, it is apparent that the precise dispute involved in the present case starts on filing of the petition by respondent No.4 before the Irrigation Authorities for the Amendment of his *warabandi*. It was submitted by respondent No.4 that his land falls in two chunks and thus, the *warabandi* be clubbed at one place. The precise grievance raised by counsel for the petitioner is that the prayer made by respondent No.4 is in violation of the principles of “first come first serve”. Though he has submitted before this Court that if the prayer of respondent No.4 is accepted then he would have to maintain a lengthy watercourse which is *kacha*. He has further argued before this Court that the land being sandy, petitioner would not be able to irrigate his land in 12 minutes compensated by the learned Superintending Canal Officer in the impugned order passed. On verification made by this Court, it was found that the watercourse is *pakka* which has been later on verified by counsel for the petitioner as well and that the watercourse is a lined course and thus, *pakka*. In view of the affidavit filed by the Divisional Canal Officer in addition to the effect that 12 minutes of extra time given by learned Superintending Canal Officer, 13 minutes more have been granted and thus, in all, the petitioner was compensated with an extra time of 25 minutes of *Bharai* for irrigating his land. Thus, the grievances of the petitioner has been duly redressed keeping in view the better irrigation of both the sides.

7. In the considered opinion of this Court, in view of the position as explained above, there remain no scope of interference in the

impugned order passed and hence, the petition is dismissed however, with a modification in the impugned order passed by the Superintending Canal Officer that instead of 12 minutes *wari* as given in lieu of compensation to the petitioner, the same would be read as 25 minutes. The respondents-authorities would comply with the undertaking given before this Court in letter and spirit.

8. Since the main case has been decided, the miscellaneous applications, if any, stand disposed of.

25.04.2024
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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