

104 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision : 16.09.2024

CWP-27034-2018 (O/M)

Rajinder

..... Petitioner(s)

Versus

State of Haryana and others

..... Respondent(s)

CWP-24715-2021 (O/M)

Satish

2024:PHHC:125993

..... Petitioner(s)

Versus

State of Haryana and others

..... Respondent(s)

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. J.K. Sehrawat, Advocate
for the petitioner in CWP-27034-2018 and
for respondent No. 6 in CWP-24715-2021.

Mr. Ashok Kumar Verma and Ms. Shikha Dogra, Advocates
for the petitioner in CWP-24715-2021 and
for respondents No. 8 and 9 in CWP-27034-2018.

Ms. Upasana Dhawan, AAG Haryana.

Mr. A.S. Manaise, Advocate (Legal Aid Counsel) with
respondent No. 10 in person in CWP-27034-2018.

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HARSH BUNGER, J. (ORAL)

1. By this common order, I shall dispose of abovementioned two civil writ petitions as both arise out of the same proceedings. For brevity, facts have been taken from CWP-27034-2018.

2. Petitioner (Rajinder) has filed the instant civil writ petition under Articles 226/227 of Constitution of India, inter alia, seeking a writ

in the nature of certiorari quashing the order dated 04.09.2018 (Annexure P-6), passed by respondent No. 3-Superintending Canal Officer, Hisar (in short 'SCO') and order dated 30.11.2016 (Annexure P-3) passed by respondent No. 6-Sub Divisional Canal Officer, Hisar (in short 'SDCO'), whereby respondents No. 4 and 6 have wrongly, arbitrarily ordered the restoration of water course without their jurisdiction.

3. Briefly, respondent No. 8 (Om Singh) filed an application under Section 24 of the Haryana Canal and Drainage Act, 1974 (in short '1974 Act'), seeking restoration of dismantled lined water course 'AB' falling in the chak of outlet RD-170500-L, Petwar Distributary; in the middle line of Rect./Killa No. 225//14x16, village Satroad Kalan, Tehsil and District Hisar; on the plea that the petitioner-Rajinder and one Dilbag had dismantled the aforesaid water course, which was running for more than 40 years and resultantly, irrigation to his fields had stopped. Upon receipt of the said application, the proceedings were commenced by the Canal Department.

3.1 The concerned Zildar, after investigation and site inspection, recommended restoration of dismantled lined water course 'AB'.

3.2 In these proceedings, the petitioner appeared and contested the same on the ground that their area now falls in the chak of outlet RD-1560-L, New Ladwa Minor due to the reason that shareholders had damaged the bed of lined water course, as F.S.L. of new channel is lower than Petwar distributary. It was stated that the length of damaged water course is only 10 feet and they have not dismantled the water course.

3.3 The SDCO, vide his order dated 30.11.2016 (Annexure P-3), ordered restoration of water course by observing as under :-

“Decision: I have carefully examined the record and heard the parties at length. It is fact that running lined watercourse was dismantled. I have inspected the site on 10.11.2016 and found Nishan (evidence) for dismantling the watercourse. The watercourse of the outlet RD 170500-L, Petwar Disty. was remodeled in year 2011 which was running more than 40 years.

As narrated above dismantled watercourse allowed for restoration as permanent in the chak of outlet RD 170500-L, Petwar Disty., on the common lined Rect/Killa No. 225//14x16 as shown in khaka plan. If any hindrance create by the respondent in his fields should be removed alongwith restoration of watercourse.”

3.4 Being dis-satisfied against the aforesaid order dated 30.11.2016 (Annexure P-3), the petitioner herein preferred an appeal before the Divisional Canal Officer, Hansi (in short 'DCO'), which was allowed, vide order dated 22.03.2018 (Annexure P-5) and the order dated 30.11.2016 (Annexure P-3) was set aside by holding as under :-

“DECISION:- I have carefully examine the documents produce by the both the party including khaka plan, parat warabandi, decision of chakbandi of New Ladwa Minor. I have inspected the site personally on 12.03.2016. From the record, I found that disputed lined watercourse is exists and running in killa No. 225//4, 7, 14, 17, 24 Eastern line as per joint decision of DCO, Hisar W/S Division, Hisar and DCO, Hansi W/S Division, Hansi has left no jurisdiction to decide the appeal on merit. Moreover, the respondent are shareholder of chak outlet RD 170500/L Petwar Disty. they have no right to irrigate their fields through out of chak watercourse. They are

directed to get sanctioned watercourse as per due procedure of law.

Keeping in view the facts the appeal is accepted and order dated SDCO dated 30.11.2016 is set aside.

The decision taken on 22.03.2018 be conveyed to all concerned under rules.”

3.5 Feeling aggrieved against the order dated 22.03.2018 (Annexure P-5), respondent No. 8 preferred a revision petition before the SCO, which was allowed, vide order dated 04.09.2018 (Annexure P-6) whereby the order dated 22.03.2018 (Annexure P-5) was set aside with a direction that the water course is restored on permanent basis.

4. In the aforementioned circumstances, the petitioner has filed the instant civil writ petition for the relief(s), as noticed above.

5. Learned counsel for the petitioner submits that the Canal Authorities below have erred in law and fact in ordering restoration of water course without appreciating the order dated 22.09.2016 (Annexure P-1), which was passed jointly by DCO, Hisar and DCO, Hansi under Section 18 (2) of the 1974 Act regarding sanction of chakbandi at outlet RD-660/L, 1560/L, 5450/L, 9014/R, 11390/L, 12500/L, 14850/R and 15700/Tail, New Ladwa Minor by transfer of area from outlet RD-170500/L, Petwar Distributary; 5000/R, 10260/R, 14616/L O.P. Jindal Nalwa Distributary and 10900/L Old Siwani FDR of village Satroad Kalan and Ladwa, Tehsil and District Hisar. It is submitted that the aforesaid order dated 22.09.2016 (Annexure P-1) was confirmed by SCO, Hisar and also implemented at the site, therefore, there was no occasion for exercising powers under Section 24 of 1974 Act. It is further submitted that the New Ladwa Minor shall cater to

irrigation requirements of the shareholders, therefore, there is no requirement for restoration of the dismantled water course. It is next submitted that even otherwise, the chak of New Ladwa Minor comes under the jurisdiction of Hisar Water Services Division, Hisar, whereas, the chak of outlet RD-170500/L, Petwar Distributary falls under the jurisdiction of Hansi Water Services Division, Hansi; therefore, the order dated 30.11.2016 (Annexure P-3), passed by SDCO was without jurisdiction. It is also submitted that learned SCO has wrongly ordered restoration of dismantled water course.

5.1 With the aforesaid submissions, prayer was made for setting aside the impugned orders.

6. Per contra, learned counsel for respondents No. 8 and 9 has opposed the submissions made on behalf of the petitioner by submitting that after the construction of New Ladwa Minor, the area of only the petitioner has fallen on the new outlet RD-1560/L, New Ladwa Minor, whereas the area of respondents No. 8 and 9 has remained on the old outlet 170500/L, Petwar Distributary. It is submitted that the land of respondents No. 8 and 9 was receiving canal irrigation since prior to 1991 and upon sanctioning of New Ladwa Minor, the petitioner dismantled a portion 'AB' of the water course, thereby cutting the supply of canal water to their land. In these circumstances, respondent No. 8 filed an application, seeking restoration of the dismantled water course 'AB', which was allowed by SDCO after visiting the spot and finding that the water course had infact been dismantled at site. It is further submitted that merely on account of the reason that the area of the petitioner had fallen in the chak of new outlet RD-1560/L, New Ladwa Minor, the same does

not entitle the petitioner to demolish the running water course. It is next submitted that the water course in dispute is a sanctioned water course and the only remedy available to the petitioner was to take recourse under Section 17 of 1974 Act. It is also submitted that the area of respondents cannot be irrigated from the New Ladwa Minor and respondents have been deprived of canal irrigation for the last many years, which has caused serious prejudice to them. Accordingly, prayer has been made for dismissal of the instant civil writ petition.

7. Heard.

8. In the present case, respondent No. 8 (Om Singh) filed an application for restoration of dismantled water course 'AB' on the plea that the petitioner had illegally dismantled the same. On the other hand, the claim of the petitioner is that the area of the petitioner as well as private respondent had fallen under the chak of New Ladwa Minor, therefore, there was no occasion for the SDCO and also the SCO to direct restoration of dismantled water course.

8.1 Apparently, the application submitted by respondent No. 8 before learned SDCO seeking restoration of dismantled water course was duly investigated and the report of concerned Zileadar was received recommending restoration of water course. Further, it appears that learned SDCO inspected the site on 10.11.2016 and found evidence as regards dismantling of water course. It was observed by learned SDCO that the water course of outlet RD-170500-L, Petwar Distributary was remodelled in the year 2011 and the same was running for more than 40 years. Accordingly, learned SDCO ordered restoration of water course.

It transpires that on an appeal filed by the petitioner, the order passed by

learned SDCO directing restoration of water course; was set aside by learned DCO by observing that the shareholders of outlet RD-170500/L have no right to irrigate their fields throughout the chak of water course. Evidently, the order dated 22.03.2018 (Annexure P-5), passed by learned DCO was set aside by learned SCO by holding as under :-

“Decision :

I have gone through the Revenue Missal, Khaka Plan and other connected record. The parties have been heard at length.

No doubt the lined watercourse, in question, was wrongly allocated to the newly created chak of outlet RD 1560-L New Ladwa Minor through a jointly passed order by the Divisional Canal Officers, Hisar W/S Division, Hisar and Hansi W/S Division, Hansi in the case of Chakbandi of new Ladwa Minor. But the Chakbandi case of outlet RD 1560-L New Ladwa Minor was remanded by the Chief Canal officer/BWS and the same is still under appeal against appeal No. 42/2018 in this Court. Thus it is wrong to say that the petitioners have no right to claim the said lined watercourse. Even the plea of the Divisional Canal Officer, Hansi Water Services Division, Hansi is not sustainable. Right from its lining the lined watercourse, in question, was property of the chak of outlet RD 170500-L Petwar Disty. Even this lined watercourse runs along the boundary of this chak in its head reach right up to square/Killa No. 228//4-5. Moreover, field openings/Nakkas are available on the left bank of this lined watercourse. Hence, the first right accrues to the chak of Petwar Disty. to retain this lined watercourse. Accordingly, the shareholders of outlet RD 170500-L Petwar Disty. cannot be deprived of their right to use the watercourse.

In view of the aforementioned facts, I find no reason to disallow the demanded restoration of the watercourse. Being a lined and continuously run watercourse for the last more than 20 years, it falls in the category of a permanent watercourse under section 2 (15) of Haryana Canal and Drainage Act 29 of 1974. Thus the watercourse is hereby restored on permanent basis. The revision petition having based on genuine grounds, is hereby accepted and the decision of the Divisional Canal Officer, Hansi, Hansi W/S Division, Hansi dated 22.03.2018 is set aside.

Decision taken on 04.09.2018 and be conveyed to all concerned.”

8.2 A perusal of the above extracted findings returned by learned SCO would show that a finding of fact has been recorded that a lined water course in question was property of chak of outlet RD-170500/L, Petwar Distributary, which runs along the boundary of this chak in its head reach right upto Killa No. 228//4-5 and the nakkas are available on the left bank of this lined water course, therefore, the first right accrues to the chak of Petwar Distributary to retain this lined water course and shareholders of this outlet RD-170500/L cannot be deprived of their right to use the water course. Accordingly, learned SCO returned a finding that the water course in question falls under the category of permanent water course under Section 2 (15) of 1974 Act and the same was ordered to be restored on permanent basis.

8.3 Learned counsel for petitioner has not been able to dislodge the aforesaid factual findings returned by learned SCO. That apart, merely because the area of the petitioner has fallen in the chak of New

Ladwa Minor, he has no right to dismantle the already running water course.

8.4 Further, it is observed that vide order dated 16.04.2024, a coordinate bench of this Court had called for the status report in this matter. Thereafter, status report dated 11.07.2024 has been filed and paras 2 and 3 thereof read as under :-

“2. That in compliance of the order dated 16.04.2024, it is submitted that the request for sanctioning the funds for the construction of water course was submitted to government vide E-Office File No. IWRD-400011/27/2024 (Computer No. 1067683) on dated 18.03.2024 for construction of water course in the chak of outlet at RD 1560-L New Ladwa Minor. However, the same was returned back due to imposing Model Code of Conduct in the State of Haryana.

3. That the case for sanctioning the funds for construction of water course in the chak of outlet at RD 1560-L New Ladwa Minor was again submitted to government after over the Model Code of Conduct. Now the government has accorded the approval for spending the amount on the construction of water course in chak of outlet at RD 1560-L New Ladwa Minor. The copy of approval granted by the State Government vide Memo No. 8/11/2024-2IW dated 10.07.2024 is attached herewith as Annexure-R-1 for kind perusal of this Hon'ble High Court. The tender regarding work for construction of water course in the chak of outlet at RD 1560-L New Ladwa Minor has been floated on the Haryana Engineering Works Portal. The work will be started within a period of one month after completing the due course of tender procedure under the State Policy.”

8.5 A perusal of the above extracted status report would show that the work for construction of water course in the chak of outlet at RD 1560-L New Ladwa Minor is still to be carried out.

8.6 Be that as it may, since the area of respondent No. 8 was falling in the chak of outlet RD-170500-L, Petwar Distributary and the water course, which was serving the land of respondent No. 8, was found to be existing and running for more than 20 years, coupled with the finding of fact recorded by canal authorities that there were evidence of dismantled watercourse, therefore, the water course in question was covered under Section 2 (15) of 1974 Act and the same has been rightly ordered to be restored, especially in view of the fact that the area of respondent No. 8 is not getting irrigation from any source.

9. Keeping in view the above discussion, I do not find any merit in the civil writ petition (CWP-27034-2018) and the same is accordingly dismissed.

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

CWP-24715-2021 (O/M)

1. Petitioner (Satish) has 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 quashing the order dated 18.10.2021 (Annexure P-11), passed by learned Sub Divisional Canal Officer, Hisar Water Services Sub Division No. II, Hisar, whereby the matter concerning restoration of water course (as ordered vide order dated 04.09.2018), was kept pending to await disposal of CWP-27034-2018.

1.1 A further prayer has been made for directing respondent No. 2 (Sub Divisional Canal Officer, Hisar Water Services Sub Division No. II, Hisar) to restore the water course in dispute in compliance of order dated 30.11.2016 (Annexure P-1) read with order dated 04.09.2018 (Annexure P-3), passed by learned Superintending Canal Officer, Water Services Division, Hisar (respondent No. 4 herein).

2. Since order dated 04.09.2018, passed by learned Superintending Canal Officer has been maintained by dismissing CWP-27034-2018, accordingly, order dated 18.10.2021 (Annexure P-11), passed by learned Sub Divisional Canal Officer, Hisar Water Services Sub Division No. II, Hisar, is hereby quashed and the civil writ petition (CWP-24715-2021) is disposed of with a direction to respondent No. 2 (Sub Divisional Canal Officer, Hisar Water Services Sub Division No. II, Hisar) to restore the water course in dispute, in terms of order dated 30.11.2016 (Annexure P-1) read with order dated 04.09.2018 (Annexure P-3), passed by learned Superintending Canal Officer, Water Services Division, Hisar (respondent No. 4 herein) within a period of four weeks from the date of receipt/production of certified copy of this order.

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

4. Photocopy of this order be placed on connected case file.

(HARSH BUNGER)
JUDGE

16.09.2024
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No