

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

CWP-9217-2015

Date of decision : 21.02.2024

Lakhbir Singh

.....Petitioner

versus

Superintending Canal Officer and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. J.K. Singla, Advocate
for the petitioner.

Mr. Navneet Singh, Senior DAG, Punjab assisted by
Ms. Sanmeet Kaur, Zileदार.

Mr. Baltej Singh Sidhu, Senior Advocate with
Mr. Chandan Singh, Advocate and
Mr. Jashandeep Singh, Advocate
for respondent No.3.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing/setting aside the impugned order dated 08.01.2015 (Annexure P-6) passed by respondent No.1 vide which the appeal filed by petitioner against the order dated 16.02.2011 has wrongly been dismissed and also setting aside the order dated 16.02.2011 (Annexure P-3) passed by respondent No.2 vide which the watercourse in dispute has been restored wrongly and illegally on the application filed by respondent No.3 against the provisions of the act being unjust, unfair, wrong, erroneous, cumbersome, oppressive, arbitrary, cryptic, without perusing the record carefully and without recording the legal and valid findings in view of the judgments detailed in the headnote of the petition.

It has been submitted by counsel for the petitioner that petitioner and respondent No.3 are residents of Village Bhai Rupa, District Bathinda and their land is situated at Outlet No.15350-TF Khanda Banna Minor. It is submitted that both the petitioner and respondent No.3 have dispute regarding the watercourse from D to E as shown in the site plan which is not a pacca watercourse. He has submitted that the pacca watercourse is shown in the site plan as ABCD. It is submitted that the watercourse D to E was never in existence as the petitioner cultivated the land of respondent No.3 from last about 10 years on chakota basis and as there was no source to irrigate the land of respondent No.3, petitioner made kacha watercourse from his land to irrigate the chakota land but about 5 years ago, respondent No.3 demanded exorbitant rate of chakota which the petitioner refused to pay. It is submitted that respondent No.3 malafidely filed the application for restoration of the demolished khal of Moga Bhurji 15350 TF Khanda Bana Minor Village Bhairupa and has obtained the report of Deputy Collector in connivance with the Canal Authorities. He has submitted that the report submitted is totally vague as it never mentioned any Khasra Number and any Nakka Number which could prove the allegations against the petitioner that he dismantled the watercourse from D to E. It is submitted that the Zildar Phul conducted his enquiry and wrongly recommended for restoration of the watercourse from point D to E on the basis of report of respondent No.2 and thus, passed the impugned order dated 16.02.2011 for restoration of watercourse which is unsustainable in the eyes of law. It is submitted that being aggrieved, petitioner filed the appeal before respondent No.1.

However, the same was dismissed on the ground of limitation vide order

dated 01.08.2011. Being aggrieved, petitioner approached this Court by way of filing CWP-16682-2011 which was allowed by this Court vide order dated 26.08.2014 by remanding the case for decision afresh. In pursuance to the remand order, respondent No.1 had illegally dismissed the appeal filed by the petitioner vide order dated 08.01.2015 without considering the facts and circumstances of the case and totally in violation of the provisions of Section 30 FF of the Canal Act (for short 'the Act'). He has submitted that the impugned orders passed are illegal and being arbitrary, deserve to be *set aside*. It has been submitted that the findings recorded by respondents No.1 and 2 are based on a false report of Zileadar Phul which is totally in violation of the principles of natural justice. He has submitted that there was no evidence whatsoever to show that the watercourse allegedly dismantled was legally sanctioned watercourse or by easement or by way of agreement between the parties. Thus, the impugned order being in violation of Section 30 FF of the Act and the view taken by the authorities below being unsustainable in the eyes of law, deserve to be *set aside*.

Per contra, learned Senior counsel for respondent No.3 has vehemently opposed the submissions made by counsel for the petitioner. He has submitted that petitioner had demolished the watercourse meant for irrigation of the land of respondent No.3, hence, respondent No.3 filed an application for restoration of the watercourse. In pursuance to the same, the Zileadar Section Phul inspected the spot and submitted the report with the recommendation of restoration of watercourse. He has drawn the attention of this Court to the reply filed where the relevant extract of the report was reproduced as follows:-

“From the spot inspection and on enquiries made it reveals that watercourse was running. Warabandi seen in which the Nakkas have been sanctioned. Nakka has been sanctioned in the name of Pritam Singh brother of the applicant at Khata No.247/5. Watercourse Mark ABC is in existence at the spot. Watercourse from point C to D is Kacha one. Watercourse from D to E has been demolished and fresh evidence of demolished water course is in existence. As per the demand made by the applicant and in the interest of irrigation demolished watercourse mark DE is hereby recommended to be restored.”

He has further submitted that the SDO, Sehna Canal Sub Division Rampura Phul vide his report dated 30.08.2010 has also recommended for restoration of the watercourse and the same is reproduced as under:-

“On receipt of case in this Sub Division, the file perused. Site inspection made on 21.08.2010 of demolished watercourse. From the spot inspection it is apparent that running watercourse of the applicant as per the site plan attached with the file has been demolished from point D to E. According, to the Warabandi attached with the case file, the watercourse has already been running. Therefore, case is hereby sent to you for further action with the recommendation for restoration of watercourse from point D to E under Section 30 FF of the Canal Act.”

Thus, he has submitted that it is evident from the report submitted by the Revenue Authorities that the watercourse existed from point D to E which was substantiated from the warabandi record. He has submitted that once the warabandi has been sanctioned for this

watercourse, there is no dispute regarding the existence of the watercourse from point D to E and the same was dismantled by the petitioner hence, the Revenue Authorities were well within their jurisdiction to restore the same in accordance with the statutory provisions of Section 30 of the Act. He has relied upon the Full Bench judgment of this Court titled as **Karam Singh Vs. Superintending Canal Officer and others, 1988(2) R.R.R. 163.** Thus, the impugned orders have been passed by following due process of law which suffer from no infirmity whatsoever. Hence, the petition being devoid of any merits deserves to be dismissed with costs.

Learned State counsel has also opposed the submissions made by learned counsel for the petitioner. He has submitted that on receiving the application from respondent No.3, the requisite legal procedure was followed. The site was inspected and inquiry reports were sought from the Zileadar. On the submissions of the report, the allegations made by respondent No.3 in the application were found to have been substantiated and thus, on hearing both the parties, dismantled watercourse from D to E was directed to be restored in accordance with the provisions of Section 30 of the Act. He has submitted that the impugned orders have been passed on the basis of enquiry conducted and after providing sufficient opportunity of hearing to the petitioner as well as respondent. Thus, there is no violation of principles of natural justice. He has submitted that the impugned orders suffer from no infirmity and thus, the petition deserves to be dismissed.

Ms. Sanmeet Kaur, Zileadar, is also present in the Court and has produced the warabandi record. She has apprised this Court that the

warabandi has been sanctioned on this watercourse from D to E. She has submitted that the existence of this watercourse from D to E was substantiated during the site inspection and from warabandi record and hence, the same having been found demolished was rightly restored by the respondents-authorities.

Heard. After hearing counsel for the parties and perusing the record, it is apparent that respondent No.3 filed the application under Section 30 of the Act for restoration of the dismantled watercourse. The cognizance of the application was taken by the competent authority and the inquiry was marked to the Zileadar Phul. On conducting the inquiry, report was submitted by the Zileadar Phul and it was found that the watercourse from point D to E was demolished and the same deserves to be restored. As mentioned above, the SDO Shena also recommended in his report the restoration of this khal as the same was demolished which as substantiated during the site inspection. Not only this, the warabandi record was also perused and it was found from the warabandi that the warabandi was sanctioned for this watercourse also. The Officer present in the Court has also supported the existence of the watercourse which was substantiated in the site inspection report and the warabandi record. Both the authorities below have heard the petitioner and respondent No.3 and perused the record. On the basis of the same, the watercourse was found to have been demolished illegally and accordingly, the same was restored in accordance with the statutory provisions of Section 30 of the Act. Both the authorities have taken a concurrent view. In the judgment cited by learned Senior counsel, the view taken by this Court further substantiated the view taken by both the authorities below. Petitioner has

failed to point out any infirmity in the concurrent findings arrived at by both the authorities below and thus, the petition being devoid of any merits is hereby dismissed.

21.02.2024
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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