

202 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-23304-2019 (O/M)
Date of decision : 04.09.2024

Major Singh and others Petitioners

Versus

State of Punjab and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Ankush Gupta, Advocate
for the petitioners.

Mr. Navneet Singh, Senior DAG Punjab.

Mr. Nitesh Singla, Advocate
for respondents No. 7 and 8.

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HARSH BUNGER, J. (ORAL)

1. Petitioners (Major 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 20.04.2018 (Annexure P-7), passed by learned Divisional Canal Officer, Lehal Division (Irrigation Branch), Patiala (in short 'DCO'), whereby an application filed by private respondents No. 7 and 8, seeking restoration of water course, was allowed.

1.1 A further prayer has been made for setting aside order dated 20.03.2019 (Annexure P-8), passed by learned Superintending Canal Officer, Patiala (in short 'SCO'), whereby the appeal filed by petitioners against the order dated 20.04.2018 (Annexure P-7), was dismissed.

2. Briefly, private respondents No. 7 and 8 filed an application before learned DCO, seeking restoration of water course of outlet No. 61000-R, Budhlada Branch, which was claimed to be demolished by petitioners for about 10 karams on the southern side of petitioners' killa No. 81//18-24. Upon receipt of said application, report from Zileadar, Beeroke, was called; who after inspecting the spot submitted his report to the Sub Divisional Officer, Canal Sub Division, Budhlada, wherein it was stated that there is a pucca water course on both the sides and approximately 10 karams water course is demolished in the southern side of khasra No. 81//18-24, accordingly, the restoration of the said water course was recommended. The Sub Divisional Officer further forwarded the case to learned DCO.

2.1 The learned DCO upon examination of the matter and after affording opportunity of hearing to the concerned parties, ordered restoration of the demolished water course, vide his order dated 20.04.2018 (Annexure P-7) by holding as under :-

“All the parties present in court were heard carefully. Record was perused. After discussing the same with concerned Jileadar Beeroke and Revenue Department, it is found that the claim of the applicants is genuine. This watercourse is running from last 30-35 years and this watercourse was made pakka by Water Resources Management and Development Corporation Division Number 2, Mansa. Entire committee of co shares of village Bachoana had given one complaint regarding demolition of water course to Water Resources Management and Development Corporation Division No. 2, Mansa on 13/12/2016 and in Sadar Police Station Budhlada on 07/12/2016, but accused ignored to restore the watercourse on one pretext or other and

filed case in Civil Court, Budhlada. There is 3-4 kilometer pakka watercourse on both the sides on the spot. Thus 10 karam of watercourse which has been demolished at southern side of killa number 18/2 and killa No. 24/2 of rectangle number 81, is ordered to be restored under Section 30-FF of The Northern India Canal and Drainage Act, 8 of 1973 and Punjab Amendment Act 23 of 1965.”

2.2 Being aggrieved against the aforesaid order dated 20.04.2018 (Annexure P-7), the petitioners preferred an appeal before learned SCO, which was also dismissed, vide order dated 20.03.2019 (Annexure P-8) by holding as under :-

“ After considering all the facts discussed above, it is clear that watercourse was made pakka by Tubewell Department and this watercourse has pakki wari under section 68 of act. In para number 10 of appeal filed by appellants, they have admitted the fact of running kacha watercourse on the spot and from the arguments raised by both the parties it is proved that on the spot at the southern side of killa number 18/2 and 24/2 of rectangle number 81, 10 karam kacha watercourse is running. The present appeal is filed by the appellants under section 30 FF (4) of Canal and Drainage Act. This section is related to demolished watercourse, whereas in the present case, the watercourse is running on the spot through which the area of appellants and respondents is irrigated. Thus the claim of appellants u/s section 30 FF (4) is dismissed. The co sharers have to take care of watercourses themselves and watercourse is to be made pakka by Tubewell Department. Thus there is no need to interfere in the order dated 20.04.2018 passed by Divisional Canal Officer, Lehal Division I.B, Patiala. Thus the decision

of Divisional Canal Officer, Lehal Division I.B, Patiala is upheld and appeal of the appellants is dismissed. Concerned co sharers may kindly be informed because on the date of hearing i.e. 07.02.2018, the matter was reserved.”

2.3 In the aforementioned circumstances, the petitioners have filed the present writ petition before this Court, seeking relief(s), as noticed above.

3. Learned counsel for petitioners submits that the learned canal authorities below have erred in law and fact in ordering restoration of demolished water course without ascertaining the correct position existing at the spot. While referring to the site plan (Annexure P-3), learned counsel for petitioner submitted that the land of the petitioners is comprised in Rect. No. 81, Killa No. 13, 17, 18, 24/2 (shown in pink colour), whereas the land of private respondents and their relatives is comprised in Rect. No. 81, Killa No. 23, 24/1; Rect. No. 107, Killa No. 3, 4, 7, 8 etc. (shown in green and orange colour). It is further submitted that on the southern side of Killa No. 81//18, 24/2, there is a water course shown in blue colour, which is comprised in Khasra No. 302 and next to the water course (on the southern side thereof), there is a road shown in red colour and then the land of private respondents is there as shown in green and orange colour. It is submitted that the water course in Khasra No. 302 was an old one, which was dismantled by the Punjab Water Resources Management and Development Corporation (respondent No. 4) for its reconstruction and the entire issue arose there when the reconstruction of the said water course was started. It is submitted that private respondents had infact encroached upon the area of the road falling adjoining to their lands in Killa No. 81//23, 24/1 and on account of

the said encroachment, the road as well as the water course were shifted towards the land of the petitioners. It is next submitted that the petitioners had no objection if the water course is constructed within the area of water course comprised in Khasra No. 302 after its due and proper demarcation so that the area of the petitioners comprised in Killa No. 81//13, 17, 18, 24/2 is not diminished. However, it is contended that the Canal Authorities did not get the demarcation of the area conducted and the learned DCO wrongly passed the impugned order dated 20.04.2018 (Annexure P-7), which order was further upheld by learned SCO, vide its order dated 20.03.2019 (Annexure P-8). It is further contended that virtually the restoration of water course has been ordered illegally in the land of the petitioners when no such water course ever existed in their land nor the petitioners had ever demolished the said water course. It is also submitted that on account of injustice being done by respondent No. 4-Corporation, the petitioners had to file a suit for permanent injunction wherein an interim injunction restraining laying any water course in the area of the petitioners was passed, however, subsequently, on account of passing of the impugned orders (Annexure P-7 and Annexure P-8), the said suit came to be dismissed, vide judgment and decree dated 13.04.2019 (Annexure P-11), passed by learned Civil Judge (Junior Division), Budhlada. It is, therefore, submitted that the impugned orders are patently illegal and perverse, accordingly, the same be set aside.

5. Per contra, learned counsel appearing for the State of Punjab informs the Court that the water course has been restored at the site where it was earlier running for the last more than 35 years. It is further

of which even a case FIR was registered and considering the entire matter, the learned Canal Authorities had rightly ordered restoration of the demolished water course at site. Learned State counsel further informs that although, private respondents were found in possession of some area of the road, however, presently, the things are in place and no interference is required to be made in the impugned orders. As regards the allegations of the petitioners that the demolished water course has been restored in the land of the petitioners, it is submitted that the said submission was made by the petitioner before the Civil Court as well, however, the petitioners had failed to lead any evidence in that regard, accordingly, their claim was rejected. With the aforesaid submissions, prayer for dismissal of the instant writ petition was 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, the Canal Authorities below were only concerned regarding restoration of the demolished water course under Section 30 (FF) of the Northern India Canal and Drainage Act, 1873. A finding of fact was returned by the Canal Authorities that the water course in question is running from the last 30-35 years and the said water course was made pucca by Water Resources Management and Development Corporation, Division No. 2, Mansa and also that this water course has a permanent warabandi under Section 68 of 1873 Act. It has further come on record that the existence of the water course at the site had been admitted by the petitioners.

7.1 Further, it is the stand of the petitioners that the water course was running at the site in khasra No. 302, which abuts the land of the petitioners on the southern side of killa No. 81//13, 17, 18, 24/2.

Petitioners claim that since the said water course in khasra No. 302 was old one, the same was dismantled by respondent No. 4-Corporation for its reconstruction and at that time while reconstructing the said water course, the same was sought to be shifted towards the land of the petitioners and at that time, the petitioners objected to the same and they also filed a civil suit for permanent injunction. Petitioners state that they have no objection if the water course is constructed in its place where it was running earlier in khasra No. 302, however, it cannot be restored in the land of the petitioners. Petitioners claim that in case the water course is to be constructed in their land then the land has to be acquired by paying compensation to them. On the other hand, it is the stand of the State that the water course has been ordered to be restored at site in Killa No. 302 itself and the same has not been restored in the land of the petitioners.

7.2 In view of the aforesaid stands taken by the respective parties, it is to be seen as to whether the water course has been made in the land of the petitioners or not.

7.3 In my considered view, the aforesaid issue as regards the claim of the petitioners that the water course has been made in their land, stands answered by the findings returned by the civil court where the petitioners had failed to lead any evidence that the water course was being made in their land. The relevant findings of the learned Civil Court, read as under :-

“11. As far as regarding the ownership of the plaintiffs over the suit property is concerned, the defendants have not disputed the ownership of the plaintiffs over the suit property and further the plaintiffs have produced on record Jamabandi for the year 2013-15 Ex P1 which also proves that that plaintiff no. 1 is co-sharer of land

measuring 9 Kanal 11 Marla comprised in Khasra no. 81//18/2 (5-7), 24/2 (4-4) situated at Village Bachuana Tehsil Budhlada and plaintiff no. 2 and Mukhtiar Singh (since deceased) i.e. predecessor of defendant no.3 to 7 are co-sharers of land measuring 20 Kanal 9 Marla comprised in Khasra no. 81//13 (8-0), 17(8-0), 18/1(4-9) situated at Bachuana Tehsil Budhlada District Mansa. Further as per Revenue record produced on record by the witness PW1 and PW4, there is no watercourse recorded in the suit property. Rather, the plaintiffs have proved on record Mussavi Ex P7 and Ex P8 and as per this document, number of Government Khal is 302 which runs adjoining to Khasra no. 81//18/1, 24/2 which is also not disputed by the defendants.

12. The plaintiffs have claimed that the defendants are trying to carve out the watercourse in the suit property, whereas the defendants have pleaded that they are reconstructing and making the watercourse cemented on the same place where it exists from the last 30-35 years. First of all, I find that the defendants are claiming that they are reconstructing watercourse and making in cemented on the same place where it exists and in this regard, the defendants have proved photograph Ex D1 to Ex D3 during the cross examination of the witnesses PW1 to PW3. Therefore, it was required on the part of the plaintiffs to prove if the area where watercourse is being reconstructed or being made cemented as shown in the photographs Ex D1 to Ex D3 is part of the suit property, but the plaintiffs have not produced on record any evidence either in the shape of demarcation or other document to prove that the area where watercourse is being reconstructed or being made cemented falls within the suit property. Thus merely on the oral version of the plaintiffs that the area

where watercourse is being reconstructed by the defendants falls within suit property is having no legs to stand. The plaintiffs have approached this court for the relief of permanent injunction and therefore, it was required on the part of the plaintiffs to prove their own case and if the defendants have not proved demarcation of the property to show that the watercourse is being reconstructed over its prescribed area, then the plaintiffs cannot take advantage of weakness of the defendants in this regard.

13. Further, I find that during cross examination of the plaintiff Major Singh ie PW1, PW2 Amrik Singh and PW3 Gurcharan Singh, the defendants have put photographs Ex D1 to Ex D3 to these witnesses and these witnesses have stated that the photographs Ex D1 to Ex D3 are of the spot/land in dispute and in these photographs a demolished Khal is seen. These witnesses have not denied the authenticity of these photograph Ex D1 to Ex D3. The perusal of these photographs shows that the cemented khal has been constructed on both sides in straight line and only upon the area which is alleged to be the suit property by the plaintiffs, the Khal is in demolished condition. The witness PW1 during his cross examination has admitted that the Khal has been reconstructed by the defendants under its rules prior to his land and after his land and similarly the witness PW2 Amrik Singh and PW3 Gurcharan Singh during their cross examination have stated that Khal has been reconstructed by the defendants under its rules prior to land and after land of plaintiffs. Therefore, once the defendants have reconstructed the water course as per law and rules prior to and after the land of the plaintiffs which is also in straight line as per Ex D1 to Ex D3, then there is nothing to show as to why the defendants would carve

out any watercourse in the suit property if the same was not running earlier at the same place and as per these photograph it appears that there is no other watercourse on the spot as alleged by the defendants except the one shown in these photographs.

13. Otherwise also, the plaintiffs have pleaded that there is Kacha Khal on southern side of Khasra no. 81//18/1 and 24/2 and the witness PW1 during his cross examination has stated that the khal in dispute is in existence at the spot since last more than 30-35 years. Similarly, the witness PW2 Amrik Singh has stated that the Khal in dispute is in existence at the spot since last more than 10 years whereas the witness PW3 Gurcharan Singh has stated during his cross examination that the khal in dispute is in existence at the spot since last more than 35 years. However except the Khal shown in photographs Ex D1 to Ex D3, the plaintiffs have failed to prove on record any evidence to show the existence of any other khal at different place than shown in these photographs and had there been any other khal in existence at different place than shown in Ex D1 to Ex D3 from the last 10 to 35 years, then definitely the plaintiffs would have produced any cogent and reliable evidence to prove its existence but they have failed to do so.

Not only this, the witness PW1 during his cross examination has stated that place of khal is adjoining to his land and after that there is link road approaching from village Daska to Bachuana and similarly the witness PW2 Amrik Singh and PW3 Gurcharan Singh have stated that adjoining to land of Khal there is link road between Bachuana and Daska. Therefore, if there is land of the plaintiff adjoining to the watercourse in question on one side and on the other side of watercourse in question there is link road as stated by

witnesses PW1 to PW3 then on this ground also, it stands proved there is no other watercourse in between the watercourse shown in photographs and link road, which means that there is only one watercourse which is shown in photographs Ex D1 to Ex D3 and same is running at the same place from the last so many years and there is no other watercourse on the spot. Therefore, it stands proved on record that the Khal shown in photographs Ex D1 to Ex D3 is running from the last 30-35 years at the same place and the defendants are reconstructing the watercourse in question on the same place where it exists.

14. Further, the defendants have produced on record copy of FIR no. 96 dated 01.11.2017 Mark A and as per this FIR, a case has been registered against the plaintiff no.1, 2 and 4 on the allegations that they have demolished the Khal in question upto 100 feet and therefore, FIR has been registered against them for the offence under section 353/186/379/427 IPC against them. Though, this FIR has been marked as Mark A but the witness PW1 Major Singh has admitted the registration of FIR no. 96 dated 01.11.2017 against him and others and now challan has been presented against them and they are facing trial. The defendants have also produced on record copy of order dated 20.03.2019 passed by Sh Ramesh Kumar Gupta, PSE-I, Supervisor Canal Officer, Patiala Circle IB, Patiala as Ex D4 wherein the appeal filed by plaintiff no.1, 2, and 4 against the order dated 20.04.2018 whereby directions were given to restore the demolished Khal in question, has been dismissed. Therefore, once the competent authority under the law has found the watercourse in question in its correct place and directions have been issued for restoration of the demolished watercourse in question then on this ground

alone the plaintiffs are not entitled for any injunction from this court.

15. The plaintiffs have cross examined the witness DW1 to DW3, however, perusal of their cross examination shows that the plaintiffs have failed to bring on record anything which could render any help to them to prove that the defendants are carving out watercourse on new place than the place where watercourse was running from the last 30-35 years. Rather it would be appropriate to reproduce the relevant portion of cross examination of witness DW1 which is as under:

“ In Ex DX, the line which is shown in black colour presents Pakka Khal and the line in brown colour represents pakka road with kacha barm. After the pakka road with kacha barm, two karams of land was with our department for construction of khal and at the spot pakka khal is already going on since last 25-30 years. It is correct that the defendant department was constructing pakka khaal on the aforesaid two karams of land where is already going on.”

Now the combined reading of site plan Ex DX with the aforesaid suggestion put by the plaintiffs shows that the defendants are reconstructing the watercourse over two karams land of their department which is situated in between the link road and the suit property and the plaintiffs have not pleaded nor produced on record any other evidence to show if the defendants are not reconstructing the watercourse on the said two karams or carving out new watercourse beyond the said two karams. Therefore, by putting the above said suggestion and by not brining on record anything adverse to the said suggestion, the plaintiffs have admitted that the defendants are reconstructing the watercourse on the same place where it exists from the last 30-35 years.

16. *The counsel for the plaintiffs have submitted that the defendants department has not got done any demarcation before reconstruction of the watercourse whereas it was mandatory upon it to do so. However, I find that this contention of the counsel for the plaintiffs is having no substance of merit at all. The plaintiffs have not produced on record any evidence to show if it was mandatory upon the defendants to get demarcation of the land of watercourse before reconstruction of watercourse which is already running at the spot. Otherwise also, as the defendants have just started the work of reconstruction of the watercourse which already exists at the spot from the last 30-35 years, then in my opinion there was no necessity upon the defendants to seek demarcation of the land.*

Further, if the watercourse is in the area of the suit property owned by the plaintiffs and as it is running from the last 30-35 years, then the plaintiffs have appropriate remedy under law to seek possession of the same by adopting due process of law but they cannot seek injunction against the defendants for restraining them from reconstructing or making the watercourse cemented on the place where it is running from the last 30-35 years.

17. *In view of this, the plaintiffs have failed to prove the onus of this issue, therefore, this issue is decided against the plaintiffs and in favour of the defendants.”*

7.4 From a perusal of above extracted judgment, it is evident that the water course is running from the last 30-35 years at the same place and the Department was reconstructing the water course in question on the same place where it exists. Therefore, once the petitioners have failed to show that the water course has been restored/constructed in their land, there is no scope for any interference by this Court in the finding

returned by the Canal Authorities. Rather, the learned Civil Court has gone to the extent of saying that if the water course is in the area of the suit property owned by the plaintiffs (petitioners herein) and as it is running from the last 30-35 years, then the plaintiffs (petitioners herein) have appropriate remedy under law to seek possession of the same after adopting due process of law. No such steps appear to have been taken by the petitioners.

8. Keeping in view the aforementioned facts and circumstances, I do not find any merit in the instant writ petition and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

04.09.2024
sjks

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