

121 IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP-19810-2024 (O/M)

Date of decision : 14.08.2024

Amarjit Singh

..... Petitioner

Versus

Superintending Canal Officer, Ferozepur Canal Circle and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. R.S. Dhillon, Advocate  
for the petitioner.

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HARSH BUNGER, J.

1. Petitioner (Amarjit Singh) 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 setting aside the order dated 28.03.2024 (Annexure P-8), passed by Divisional Canal Officer (in short 'DCO') whereby the appeal filed by respondent No. 3 (Abhishek) against an order dated 29.01.2024 (Annexure P-7), passed by learned Deputy Collector, Abohar was allowed.

1.1 A further prayer has been made by the petitioner for setting aside the order dated 03.07.2024 (Annexure P-9), passed by the Superintending Canal Officer (in short 'SCO') whereby the appeal filed by the petitioner against the order dated 28.03.2024 (Annexure P-8) was dismissed.

1.2 Another prayer has been made by the petitioner for upholding the order dated 29.01.2024 (Annexure P-7) passed by the Deputy Collector, Abohar.

2. Briefly, respondent No. 3-Abhishek filed an application under Section 30-FF of the Northern India Canal and Drainage Act, 1873 (in short '1873 Act') before the DCO, seeking restoration of the watercourse on the plea that the watercourse that was running from last fifty years for his agriculture fields, has been demolished by Shri Amarjit Jhanjari son of Baljit Singh (the writ petitioner) and there was no other watercourse for his land, which has made his land waste and barren.

2.1 The application was sent to the Sub Divisional Officer, Abohar, for inquiry, who further called a report from the Zileadar, Jandwala. The concerned Zileadar recorded the statements of the concerned parties, visited the spot, prepared the site plan/map and collected the relevant record including copy of warabandi from the Halqa Patwari. After completing the formalities, the case was sent to the Sub Divisional Officer, Abohar for further action, whereupon the said Sub Divisional Officer inspected the spot and forwarded the case to the DCO for further action.

2.2 The DCO issued notices to the concerned parties. The shareholders, who came present, stated that the watercourse has been demolished from the western side line of Killa No. 18-23 in Rect. No. 84 and respondent No. 3-Abhishek and others were getting canal irrigation to their land through the said watercourse and there is no other watercourse (kachha or pucca). It was also stated that due to non availability of any watercourse, the crop of Kinno orchard was dying and

therefore, the restoration of the said watercourse was necessary. It is apposite to state here that the present petitioner was represented through his counsel.

2.3 The learned DCO upon examining the case, ordered restoration of the watercourse, vide its order dated 14.08.2023 (Annexure P-3).

2.4 It transpires that subsequently, respondent No. 3-Abhishek submitted an application before the Deputy Collector, Abohar, seeking amended water turn (tarmeen wari), wherein a report was submitted by the concerned Zileदार stating that the watercourse that was to be restored as per order dated 14.08.2023, was not restored at the exact spot. Considering the said report of the Zileदार, the Deputy Collector, Abohar, vide its order dated 29.01.2024 (Annexure P-7), ordered that till the time the watercourse is restored at the spot as per the decision of learned DCO, until then, no warabandi can be done on this watercourse and accordingly, the case was ordered to be kept pending till the restoration of the watercourse.

2.5 Feeling aggrieved against the order dated 29.01.2024 (Annexure P-7), respondent No. 3-Abhishek preferred an appeal under Section 68 (5) of 1873 Act before the DCO, which came to be allowed, vide order dated 28.03.2024 (Annexure P-8).

2.6 The petitioner challenged the aforesaid order dated 28.03.2024 (Annexure P-8) under Section 68 (6) of 1873 Act, before the learned SCO; who vide its order dated 03.07.2024 (Annexure P-9), dismissed the said petition.

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

4. Learned counsel for petitioner submits that the impugned orders (Annexure P-8 and Annexure P-9) are liable to be set aside being illegal and arbitrary. It is submitted that the petitioner never demolished the watercourse of respondent No. 3 and there is nothing on record to show that any watercourse was ever constructed or was ever present on the western side line of Killa No. 18-23 of Rect. No. 84. It is submitted that the petitioner had produced enough evidence on record as regards the actual position of the watercourse, however, the same have been wrongly ignored by the authorities below. Accordingly, it is prayed that the impugned orders be set aside and the order dated 29.01.2024 (Annexure P-7), passed by Deputy Collector, Abohar be maintained.

5. I have heard learned counsel for the petitioner and have also perused the paperbook with his able assistance.

6. Evident, in the present case, the restoration of watercourse was ordered by the learned DCO, vide its order dated 14.08.2023 (Annexure P-3) by observing as under :-

*“The case was investigated. The arguments of both the parties present in the court were considered. Record was examined. The statements of applicant and respondents were examined. Site plan/map of the spot was viewed. The reports of Zildar concerned and Sub Divisional Officer were examined. The S.D.O. Abohar after personally visiting at the spot along with all the concerned has reported that the land of applicant was canal irrigated by the water course at point DEFG out which the water course at point DE*

*has been demolished by 67 Karams and in front of this demolished water course at point E one pakka Nakka is standing on the spot which provides the evidence for existence of this water course. In front of the point E, water course EFG is running at the spot. **One SIDE LINE/WALL of the demolished water course is still standing on the western side line of the Rectangle No. 84/18-23, on the spot and whose second side was on the eastern line of the Rectangle No. 84/19-22.** There is no other alternative arrangement of any water course for the land of applicant by which water irrigation of his land can be done. Therefore, keeping the above facts and interest of irrigation paramount as per the S/30 FF of N.I.C. And D Act, 8 of 1873 Amendment 23 of 1965, the water course point DE is hereby restored.”*

6.1 The aforesaid order dated 14.08.2023 (Annexure P-3) has not been challenged by the petitioner.

6.2 It appears that after the watercourse was restored at the spot, respondent No. 3 applied for his water turn/warabandi wherein the Zildar submitted a report that the watercourse had not been restored at the exact spot and considering the said report of Zildar, the Deputy Collector, Abohar, vide its order dated 29.01.2024 (Annexure P-7), ordered that till the time the watercourse is not restored as per the decision of learned DCO, till then no warabandi can be done. However, on an appeal filed by respondent No. 3 against the order dated 29.01.2024 (Annexure P-7), the learned DCO passed an order dated 28.03.2024 (Annexure P-8) fixing warabandi/water turn(s). The further petition under Section 68 (6) of 1873 Act, filed by the petitioner was also dismissed by learned SCO, vide order dated 03.07.2024 (Annexure P-9).

6.3 In essence, the petitioner is seeking setting aside of the impugned orders (Annexure P-8 and Annexure P-9) on the plea that since the watercourse has not been restored at the exact place, therefore, no warabandi can be fixed thereon. However, I do not find any merit in the said plea of the petitioner as there is no document/material to indicate that the watercourse has not been restored as per the order dated 14.08.2023 (Annexure P-3).

6.4 Further, the learned DCO, vide its order dated 28.03.2024 (Annexure P-8), has recorded a finding of fact that the watercourse has been restored as per the decision dated 14.08.2023 of learned DCO, Abohar and the watercourse is operational at the spot and the watercourse has been made permanent by the Power DC Lining Division. It has further been held by the learned DCO that during the time of making the water course permanent by department of power designing board, it has been found by considering the statements dated 16/01/2024 given by the other stakeholders attached with the case that the water course has been made permanent with their consent in which petitioner-Amarjit was also present. In this regard, the relevant extract of order dated 28.03.2024 (Annexure P-8) reads thus :-

*“The case was investigated. Records were checked. Site plan of the spot was viewed. The report of the Zileदार illaqa and the decision of Deputy Collector, Abohar dated 29/01/2024 has been considered. During the hearing, it was found that the water course has been restored as per the decision of DCO/ABR dated 14/08/2023 and the water course is operational at the spot and the water course has been made permanent by the power DC lining division and the*

*appellant had prayed for sanctioning/establishing of wara bandi on the current operational water course on the spot. The statements given by the respondent in the court of Deputy Collector Abohar during the hearing dated 29/12/23 were considered in which their objection was that as per the decision of DCO/ABR dated 14/08/2023, the water course was forcefully restored on Rectangle No. 84M in Killa No. 18-23, however, that water course was earlier operative on the eastern side line at the point DE 84M/19-22. The water course does not fall under the category of permissible water course so the demand to establish the area and water turn as per the record should be rejected. But during the time of making the water course permanent by department of power designing board it has been found by considering the statements dated 16/01/2024 given by the other stakeholders attached with the case that the water course has been made permanent with their consent in which Amarjit is also present. During the hearing, 15/03/2024 and 28/03/2024, the respondent party did not appear in the court even being notified. From which it is clear that they do not want to present their stand. Considering the above said facts, keeping in view the interest of better canal irrigation, the appeal is allowed for the series no. 13/1 Bimla Devi area/land 11 canal 14 marlas, whose nakka for taking water on 84M in (13-19) and giving water on 84M in 2, and on 101M in 3, and series no. 13/2 Abhishek and others area/land 64 canal 11 marlas, Nakka taking water on 84M in 22, 101M in 3, and water giving on 85M in (12-18) is allowed as per the section 68 (5) of the Northern India Canal and Drainage Act, 8 of 1873, Amendment 23 of 1965.”*

6.5 Therefore, once the watercourse has been restored at the spot and made permanent by the Department of Power with the consent of the stakeholders, which included the petitioner as well, it does not lie in the mouth of the petitioner to now dispute the location of the restored watercourse.

6.6 Still further, it is noticed that the petitioner is not the owner of the land comprised in Rect. No. 84, Killa No. 17, 18, 23, 24, but he has taken the said land on lease from one Raman Kumari daughter of Lakshman Narayan.

6.7 Furthermore, it is noticed that before the learned DCO, the petitioner did not appear and considering the facts and circumstances of the case, the warabandi has been ordered and no fault can be found with the same.

7. In view of the aforementioned facts and circumstances, I do not find any merit in this writ petition and the same must fail. Resultantly, the instant writ petition is dismissed.

8. All pending application (s), if any, shall also stand closed.

(HARSH BUNGER)  
JUDGE

14.08.2024  
sjks

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