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2024:PHHC:047881-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA-1203-2016 (O&M)

Reserved on: 07.02.2024

Pronounced on: 5th April, 2024

Harcharan Singh and another

...Appellants

Vs.

Superintendent Canal Officer, Ludhiana
and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. Sandeep Khunger, Advocate
for the appellants.

Mr. Rohit Bansal, Sr.D.A.G., Punjab.

Mr. S.S.Sidhu, Advocate
for respondent Nos.4 and 5.

DEEPAK MANCHANDA, J.

1. By way of present Intra-Court appeal the appellants have assailed the order dated 28.03.2016 passed in the CWP No. 7627 of 2015, which had been allowed, where the orders dated 02.02.2015 (Annexure P-4) passed by Respondent No.1-Superintendent Canal Officer, Ludhiana and 07.10.2014 (Annexure P-3) passed by respondent No. 2-Divisional Canal Officer, Bathinda were set aside and the order dated 17.06.2014 (Annexure P-2) passed by respondent No.3-Deputy Collector, Bathinda was ordered to be restored.

2. The facts emanated from the pleadings of the present case are that respondents No. 4 and 5 filed the writ petition being petitioners therein under Articles 226/227 of the Constitution of India by raising the dispute with regard

to use and distribution of water from a water course known as “Wahr-bandis” (fixing of turns of water) and sought quashing of the order dated 02.02.2015 (Annexure P-4) along with the order dated 07.10.2014 (Annexure P-3), which are passed under Section 68 of the Northern India Canal and Drainage Act, 1873 (for brevity, ‘the Act’). It is mentioned that one Parshotam Lal son of Pala Singh and others, residents of village Ghuda, Tehsil and District Bathinda, who were co-sharers in RD No.17050/L Doom Wali Minor, moved an application before respondent No.2- Divisional Canal Officer, Bathinda for shifting their land RD No.5811/R Kot Guru Sub Minor as their land is nearer to the said Sub Minor. Respondent No.2 approved the scheme under Section 30-B (2) of the Act and ultimately demand of Parshotam Lal etc. was accepted and area measuring 44.11/43.45 acres GA/CCA was transferred from RD No. 17050/L Doom Wali Minor to RD No.5811/R Kot Guru Sub Minor vide order dated 10.04.2013 (Annexure P-1).

3. In order to implement the order dated 10.04.2013 (Annexure P-1) the concerned Zileadar prepared proposed ‘Wahr Bandi’ of RD No. 5811/R Kot Guru Sub Minor and sent the same to the Deputy Collector, who after giving notice and hearing the parties concerned made turn wise allocation, which was objected by present appellants, on the ground that their turn of khata Nos.59, 60 and 62 be fixed after the turn of respondent No. 4 at Khata No. 64 and respondent No. 5 at Khata No. 66. It is further mentioned that respondent No. 3 vide order dated 17.06.2014 (Annexure P-2) fixed the turns, therefore, present appellants preferred appeal and vide order dated 07.10.2014 (Annexure P-3), the same was set aside. Aggrieved by the said order, the present appellants preferred an appeal before the Superintendent Canal Officer, Ludhiana i.e. respondent No. 1, but same was also dismissed vide order dated 02.02.2015

(Annexure P-4).

4. Learned counsel for the appellants contends that there was no requirement to change the turn of water courses, which were running for the last 50 years and the learned Single Judge failed to notice that the area of the appellants is at higher level whereas the area of the respondents No. 4 and 5 is at low level and for this very reason the turn of water of the appellants was fixed after the turn of water of the respondents No. 4 and 5. Learned counsel for the appellants has argued that while shifting the water course, respondent No.3-Deputy Collector, Bathinda did not consider the Section 30-A of the Act, where a draft scheme should have been prepared, published and the objection should have been invited from the concerned shareholders and only thereafter the said scheme could have been sanctioned and that too by the Divisional Canal Officer-respondent No.2 only. It is also argued that Section 68 of the Act does not empower the authorities to shift the turn of water from one water course to another water course and there was no jurisdictional error by the respondent Nos. 1 and 2 while passing the orders dated 02.02.2015 and 07.10.2014 and the learned Single Judge failed to notice that there was no loss of irrigation to the respondent Nos. 4 and 5 as the land of respondent Nos. 4 and 5 was situated at a low level. Learned counsel for the appellants again contends that the learned Single Judge observed in the impugned judgement that the land of the appellants touches both the water courses prior to the land of private respondents, therefore, the turn of the appellants shall come as per principle of 'first come first serve' and the said principle should have been applied keeping in view the situation of the lands as well as level of the holdings and to support his arguments has relied upon the site plan (Annexure P-6) annexed with the writ petition.

5. Per contra, learned counsel for the respondent Nos. 4 and 5 also referred to the site plan as well as Section 68 and the Instruction 8 of Appendix E of Punjab Irrigation Manual and has argued that the impugned judgement as well as prepared water distribution system as mentioned in order dated 17.06.2014 (Annexure P-2) do not suffer from any infirmity and learned Single Judge has rightly restored the order dated 17.06.2014 by allowing the writ petition filed by the respondent Nos. 4 and 5. He submits that the purpose of fixing the turn is for proper irrigation of the land, whereas it is not the case of the appellants that their land is not being irrigated in absence of water, so no loss has been caused to the appellants and stand taken by them that the water course in question was prepared 50 years ago cannot be changed at this stage, has no legs to stand.

6. During the course of arguments, learned State counsel was directed to have instructions with regard to existing water course through which the water was being distributed to the present parties and also to better understand the controversy, the assistance of concerned Zileadar was also sought, who has assisted the learned State counsel and has produced the photographs of the running water course at the spot. As per photographs, which are marked as Annexure A, the running water course is in existence and same is not disputed by either of the parties.

7. Having heard the learned counsels for the parties and after perusing the material available on record, we are of the view that the learned Single Judge while allowing the writ petition minutely examined the site plan and relied upon the same being a relevant document to understand the controversy between the parties and observed that as per site plan (Annexure P-6), where the water course was marked as 'ABCE', shown in green colour is

coming from the North to South. At point 'B', it bifurcates into two branches i.e. 'BD' and 'BCE'. The water course marked as 'BCE' was in dispute between the parties, where the land of present appellants falls in khata Nos.59, 60, 61, 62 and 63 and land of the respondent Nos. 4 and 5 falls in Khata Nos. 64 and 66. Learned Single Judge while perusing the site plan further observed that the land of present appellants at Khata No. 59 touches both watercourse branches i.e. 'BD' and 'BCE' as watercourse 'AB' splits at point 'B', watercourse 'BD' goes towards Eastern side alongside Killa No. 198//16/1, 16/2, 17/1, 17/2, 17/3, 18/1, 18/2, 19/1 and 19/2 and watercourse 'BCE' was shown going downward along with Killa Nos. 197//20, 21, Killa No. 211/1, 10, 11 and on the other side the same was shown along with Killa No. 198//16/2, 25 and Killa No. 210/5, 6, 15 and 16 on the common watt.

8. Further learned counsel for the appellants has argued that while shifting the water courses, the Deputy collector respondent No. 3 did not consider and follow Section 30-A of the Northern India Canal and Drainage Act, 1873 whereas the order dated 17.06.2014 passed by the respondent No. 3-Deputy Collector shows that after receiving the inspection report on the application of Balraj Singh son of Surjit Singh of wahrbandi, all the shareholders including present appellants appeared and participated in the proceedings and got recorded their statements by signing the same. It is also clearly mentioned in the said order that none of the shareholders raised any objection about their turn too and the same was accepted on the basis of collective statements. Keeping in view the same the arguments raised by the learned counsel for the appellants is not tenable. The second argument raised by the learned counsel for the appellants is that Section 68 of the Act does not empower the authorities to shift the turn of water from one water course to

another water course and there was no jurisdictional error by the respondent Nos. 1 and 2 while passing the orders. The arguments raised by the learned counsel for the appellants are not acceptable in the context that once the appellants themselves raised no objections in reference to the order dated 17.06.2014 passed by respondent No.3-Deputy Collector, wherein they themselves signed the same with no objection.

9. As far as the power of Deputy Collector under Section 68 of the Act is concerned, the same are very clear and loud, which has also been dealt by the learned Single Judge while passing the impugned judgement. There is no gainsaying that Section 68 of the Act empowers the Deputy collector to order use or distribution of water and settlement of differences as to mutual rights and liabilities of persons interested in watercourse and the same can be easily assessed by perusing the order dated 17.06.2014 (Annexure P-2), which was passed amongst persons by making an enquiry wherein notices were issued to the appellants being entrusted persons which is apparent in the order itself where appellants participated and gave no objection to the arrangement made by the Deputy Collector.

10. Learned Single Judge by referring the Section 68 of the Act and the Instruction 8 of the Appendix E of Punjab Irrigation Manual mentioned that the Instruction 8 of Appendix E of Punjab Irrigation Manual deals with the preparation and modification of 'Wahrbandi' (Order of Turn), where again the reference of site plan was made and mentioned that Khata No. 59 of present appellants touches both the branches of water courses, 'BCE' is shown to be going downward towards South and 'BD' going towards the Western side.

Section 68:

Power of Deputy Collector to order use or distribution of water and settlement of differences as to mutual rights and liabilities of persons interested in watercourse

(1) *The Deputy Collector may, if in his opinion it is necessary so to do, pass an order as to the use or distribution of water from a water-course amongst persons in any estate or a group of estates or in any holding or group of holdings in such estate or estates:*

Provided that no such order shall be passed by the Deputy Collector without making an inquiry into the matter and without giving a notice, to all the persons interested that, on a day to be named in such notice, he shall proceed to inquire into the said matter.

(2) *Whenever a difference arises between two or more persons in regard to their mutual rights or liabilities in respect of the use, construction or maintenance of a water-course, any such person may apply in writing to the Deputy Collector stating the matter in dispute.*

(3) *On the receipt of an application under sub-section (2), the Deputy Collector shall give notice to the other persons interested that on a day to be named in such notice, he shall proceed to inquire into the said matter and after the enquiry he shall pass an order thereon.*

(4) *An order passed under sub-section (1) or sub-section (3) as to the use or distribution of water for any crop sown or growing at the time when such order is made or with regard to the construction or maintenance of water-course shall subject to an order passed on appeal or revision under sub-section (5) and (6), be final.*

(5) *An appeal shall lie to the Divisional Canal Officer against an order referred to in sub-section (4) within a period of thirty days from the date of such order.*

(6) *The Superintending Canal Officer, within whose jurisdiction the water- course is situated, may, suo motu on or an application made in this behalf by an aggrieved person, revise an order passed in appeal by a Divisional Canal Officer under sub-section (5):*

Provided that no such application shall lie unless it is made within a period of thirty days from the date of such order.

(7) *No order passed under this section shall be liable to be called in question in any civil court.*

11. During arguments with the able assistance of the learned counsels, we have also carefully perused the site plan (Annexure P-6) annexed with the writ petition which seems to be the most appropriate and key document to understand the Wahr-Bandi (Water Distribution System), where it is clearly shown that the land of the present appellants is between both the water courses

and prior to the land of respondent Nos. 4 and 5 and the Naka at point ‘E’ the turn of respondent No. 4 is at Khata No. 64 will certainly come after the turn of khata No. 59 of the appellants as the water course has been shown to be flown from North to South. Even if, the present appellants opt for fixing of their turn on water course ‘BCE’ which comes down towards South along common watt of Killa No. 197/20 and 21 and Killa No. 211/1, 10 and 11 and Killa No. 198/16/2, 25 and 210/5, 615 and 16 their land is prior to the land of respondent No. 4 and 5 and the learned Single Judge has rightly observed that in case the principle of first-come first serve is applied to the land of respondents No. 4 and 5, their turn will be fixed prior and if the present appellants opt for turn of water on water course ‘BD’, then there should not be any dispute with the respondents No. 4 and 5 in respect of khata Nos. 64 and 66 and has rightly set aside the orders dated 02.02.2015 and 07.10.2014 and also restored the order dated 17.06.2014, which was passed in consonance with the Instruction 8 of the Appendix E of Punjab Irrigation Manual.

12. In light of aforesaid discussion the judgement dated 28.03.2016 does not suffer from any illegality and we do not find any reason to interfere with the same.

13. Consequently, the present intra-court appeal does not succeed and is accordingly dismissed.

(DEEPAK MANCHANDA)
JUDGE

(DEEPAK SIBAL)
JUDGE

5th April, 2024

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Whether speaking/reasoned:	Yes	No
Whether Reportable:	Yes	No