

121 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-29814-2024 (O/M)

Date of decision : 06.11.2024

Jagjit Singh and another

..... Petitioners

Versus

Superintending Canal Officer and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Harmanpreet Singh Sehgal, Advocate
for the petitioners.

Mr. Navneet Singh, Senior DAG Punjab.

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HARSH BUNGER, J. (ORAL)

1. Petitioners (Jagjit Singh and another) 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 29.04.2024 (Annexure P-6), passed by learned Divisional Canal Officer, Faridkot (in short 'DCO') and also the order dated 09.09.2024 (Annexure P-8), passed by learned Superintending Canal Officer, Sirhind Canal Circle, Ludhiana (in short 'DCO').

2. Briefly, respondent No. 3-Jagraj Singh filed an application before canal authorities alleging that private respondent No. 5-Daljeet Singh alongwith his brother (Sukhjit Singh) had demolished the watercourse, running on the eastern side of Rect. No. 173, Killa No. 25 and Rect. No. 203, Killa No. 5, 6, 15, due to which irrigation to his agricultural fields had stopped. It was further stated that the said

watercourse had been in existence for the last 50-60 years. Accordingly, prayer was made for restoration of the same.

2.1 Upon receipt of aforesaid application by canal authorities, the matter was got enquired into through concerned Zileadar, who recommended restoration of aforesaid watercourse and the matter was sent to Sub Divisional Officer, Dhaipai, who also recommended restoration of demolished watercourse and the matter was forwarded to learned DCO.

2.2 Learned DCO inspected the spot and vide order dated 11.12.2023 (Annexure P-2), ordered the restoration of the demolished watercourse.

2.3 The aforesaid order dated 11.12.2023 (Annexure P-2) was challenged by respondent No. 5-Daljeet Singh by filing an appeal before learned SCO, who vide order dated 08.02.2024 (Annexure P-3), remanded the matter to learned DCO with a direction to pass a fresh order.

2.4 On remand, learned DCO, vide order dated 29.04.2024 (Annexure P-6), allowed the restoration of the watercourse through the land of the present petitioners. An appeal filed by petitioners against order dated 29.04.2024 (Annexure P-6) was dismissed by learned SCO, vide order dated 09.09.2024 (Annexure P-8). Hence, the instant civil writ petition.

3. Learned counsel for petitioners submits that the canal authorities have erred in law and facts in passing the impugned orders. It is submitted that the authorities below have failed to establish that there

exists a watercourse, falling under the ambit of Northern India Canal and Drainage Act, 1873 (in short '1873 Act'). It is further submitted that the watercourse has been ordered to be restored on the basis of old warabandi, wherein the name of predecessors of respondent No. 3-Jagraj Singh, was mentioned. It is next submitted that the petitioners had purchased the land in question from which the watercourse has been ordered to be restored vide impugned order. It is contended that there is no watercourse running at the spot and in the garb of restoration of watercourse, a new watercourse has been provided, which is untenable in law. It is stated that on an earlier occasion, respondent No. 3-Jagraj Singh had applied to the canal authorities for getting a watercourse through the land of the petitioners, however, the same was dismissed. With the aforesaid submissions, prayer has been made for setting aside the impugned orders.

4. Heard.

5. In the present case, respondent No. 3-Jagraj Singh submitted an application before the canal authorities, seeking restoration of the demolished watercourse, falling on the eastern side of the land bearing Rect. No. 173, Killa No. 25 and Rect. No. 203, Killa Nos. 5-6-15. The learned DCO, vide order dated 11.12.2023 (Annexure P-2), ordered the restoration of the demolished watercourse as per sanctioned warabandi on the eastern side at point 173//25 and 203//5-6 under Section 30-FF of 1873 Act. It transpires that on an appeal filed against order dated 11.12.2023 (Annexure P-2), the learned SCO, vide order dated 08.02.2024 (Annexure P-3), came to the conclusion that there has

been tampering in the warabandi and the nakkas have not been correctly shown at the spot; accordingly, the matter was remanded to the learned DCO with a direction to peruse the original record of warabandi and also inspect the spot himself and thereafter pass a speaking order. The relevant extracts of order dated 08.02.2024 (Annexure P-3), passed by learned SCO read as under :-

“ The case was presented for hearing, the case was perused, the appellant, respondent and other co-sharers were heard. On hearing the arguments, and perusing the record and holding discussions it was found that the order dated 11.12.2023 passed by the Divisional Canal Officer, Faridkot Canal and Groundwater Division, Faridkot has not been passed as per actual facts. There is tampering with pen in the copy of warabandi in the revenue record and as per the copy the nakkas have not been correctly shown on the spot. By remanding back the case, the Divisional Canal Officer, Faridkot Canal and Groundwater Division, Faridkot is directed to peruse the original record of warabandi and inspect the spot himself and pass a speaking order in the present case within 30 days. This order is being passed under Section 30FF of the Northern India Canal and Drainage Act 8 of 1873, Punjab Amendment Act 23-1965.”

5.1 On remand, the learned DCO, vide order dated 29.04.2024 (Annexure P-6), verified the warabandi from the original records and found that a watercourse was sanctioned alongwith nakkas on the western side of Rect. No. 172, Killa No. 20-21 and Rect. No. 204, Killa No. 1 through common boundary of Killa No. 1-10 of Rect. No. 204 upto nakka at 204//1-9/2. It was further observed that as per Khata No. 93 of warbandi, it crosses the road and reaches till 204//9/1-3/1. A further

finding was recorded that the aforesaid land had been sold and the vendees, who purchased the said land, had demolished the watercourse. The relevant extracts of order dated 29.04.2024 (Annexure P-6), passed by learned DCO read as under :-

“ The spot was inspected on 25.04.2024 and the case was again inquired into on 29.04.2024. The record was perused. On perusing the old Warabandi presented by the opposite party, it was found that the turn of water of the applicant is recorded at serial numbers 91, 92, 93, 94 in the name of his predecessors. This Warabandi was verified from A.C. Branch. After inquiry it was found that a watercourse is sanctioned alongwith Nakkas on the Western side of Killa No. 20-21 of rectangle No. 172 and Killa No. 1 of Khasra No. 204 through the common boundary of Killa No. 1-10 of Khasra No. 204 till Nakka at 204//1-9/2 and as per Khata No. 93 of Warabandi crosses the road and reaches till 204//9/1-3/1. The applicant himself stated in his arguments that on the above points this watercourse had been running through our private land. Now this land has been sold. It appears that after purchasing the land this watercourse has been demolished by the vendee. In the light of order dated 08.02.2024 passed by the court of Ld. Superintending Canal Officer, Ludhiana, by primarily keeping in view the record presented and in view of report of the field staff, Warabandi and on the basis of statement of the applicant, the demolished watercourse is restored on the Western side of Killa No. 21 of rectangle No. 172 and Killa No. 1 of rectangle No. 204. This decision is pronounced under Section 30-FF of the Northern India Canal and Drainage Act, 8 of 1873, Punjab Amendment Act, 23-1965. The decision was kept reserved. The concerned parties be informed about the decision as per rules.”

5.2 A further appeal filed by the petitioners against the order dated 29.04.2024 (Annexure P-6), was dismissed by learned SCO, vide order dated 09.09.2024 (Annexure P-8).

6. Once the authorities below, upon verification of the records, have found the existence of a watercourse on the western side of Rect. No. 172, Killa No. 21 and Rect. No. 204, Killa No. 1 and the said finding has been returned on the basis of sanctioned warabandi, no fault can be found with the orders passed by canal authorities in ordering the restoration of the watercourse at the said location.

7. As regards the contention of learned counsel for petitioners that the watercourse, which has been ordered to be restored, was never demanded by respondent No. 3-Jagraj Singh; suffice it to say that the demand was raised by respondent No. 3-Jagraj Singh on the basis of a warabandi, which was found to be tampered with by learned SCO, vide order dated 08.02.2024 (Annexure P-3), whereby the matter was remanded to learned DCO for perusal of original record of warabandi and to pass a speaking order after inspecting the spot himself. The said order dated 08.02.2024 (Annexure P-3) has already attained finality.

7.1. In compliance of the aforesaid order dated 08.02.2024 (Annexure P-3), passed by learned SCO, the learned DCO himself inspected the spot and verified the original warabandi, from where it was found that the watercourse was infact sanctioned on western side of Rect. No. 172, Killa No. 21 and Rect. No. 204, Killa No. 1. Even otherwise, in essence, if the aforesaid location is seen in the site plan (Annexure P-1), it would be observed that the originally demanded watercourse from the

eastern side of Rect. No. 173, Killa No. 25 and Rect. No. 203, Killa Nos. 5, 6, 15 would reflect the same position as ordered to be restored now by the canal authorities from the western side of Rect. No. 172, Killa No. 21 and Rect. No. 204, Killa No. 1. In the site plan (Annexure P-1), the said site is reflected from point 'D', running downward upto the area shown in orange colour.

7.2 It is well established that in order to see the existence of a watercourse, warabandi is one of the important documents. It is also an established position that if the warabandi is sanctioned and the same is not challenged, then the restoration of the watercourse on the basis of said sanctioned warabandi is taken to be sanctioned watercourse. In this regard, reliance can be placed upon judgment rendered by this Court in the case of ***Ajit Singh v. Superintending Canal Officer, 2017(1) RCR (Civil) 279***; wherein it was held that "Warabandi" is the best proof of turn of canal water for irrigation.

7.3 Further, the observations made by this Court in the case of ***Brij Lal v. State of Punjab, 1985 RRR 76***; are also apt, which are as under:-

“...What is more in the written statement filed on behalf of respondents Nos. 1 to 3, it has been clearly mentioned that on the water course warabandi has been sanctioned in favour of the aggrieved share-holders under Section 68(4) of the Act to which no objection had been taken by the petitioner at any stage. In view of the above fact either by implication the water-course would be taken as a sanctioned water course or in any case it would be taken that the petitioner had agreed to the use of the said water-course by the respondent-shareholders and that is why no objection

had been raised when the department sanctioned warabandi on the said water course giving right to the respondent shareholders to take water through that water course to their fields...”

8. In the present case as well, the canal authorities have ordered restoration of watercourse on the basis of sanctioned warabandi, which reflected that the watercourse was existing on the western side of Rect. No. 172, Killa No. 21 and Rect. No. 204, Killa No. 1.

9. When the above fact is seen in the light of what has been observed by this Court in case of ***Brij Lal (supra)***, it can be safely held that the watercourse in question be taken as a sanctioned watercourse and/or in any case, it would be taken that the concerned shareholders (*including the predecessors of the petitioners*) of the watercourse in question; had agreed to the use of the said watercourse by the respondent No. 3 and also the other shareholders.

10. In view of above discussion, I do not find any merit in the instant civil writ petition and same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

06.11.2024
sjks

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