

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

CWP-29452-2023 (O&M)

Date of decision : 15.02.2024

Naresh Kumar

.....Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Ms. Anju Arora, Advocate
for the petitioner.

Mr. Navneet Singh, Senior DAG, Punjab assisted by
Mr. Ramanpreet Singh, DCO.

Mr. J.S. Warring, Advocate
for caveator/respondents No.7 to 9.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the impugned order dated 06.11.2023 (Annexure P-8) passed by the Superintending Canal Officer, Ferozepur Circle, Ferozepur and order dated 28.07.2023 (Annexure P-7) passed by the Divisional Canal Officer, Rajasthan Canal Divisional, Ferozepur at Abohar and quashing of report dated 16.05.2023 (Annexure P-4). Further prayer has been made for staying the impugned order dated 06.11.2023 (Annexure P-8) and order dated 28.07.2023 (Annexure P-7) during the pendency of the writ petition.

It has been submitted by counsel for the petitioner that an application was filed by the respondents before the Deputy Collector, Abohar Canal Division for change of warabandi on 03.11.2022 stating therein that the kacha water course which is running on Western Side of field with Rectangle No.129 Killa No.8-13-18, from this water course

their fields were not properly irrigated and therefore, for better irrigation their turn be fixed on pakka water course running on Rectangle No.129 Killa No.9-12-9 on Eastern side with passage and their turn be fixed after Serial No.78. On the basis of mutual understanding and settlement, respondent No.4 i.e. Deputy Collector, Abohar passed the order to fix their turns at the pakka water course. She submits that order dated 02.12.2022 was implemented at the spot. It has been submitted that kacha khal running from the fields of petitioner and his co-sharer was carved out by the petitioner and his co-sharer from his own land and both pakka khal and kacha khal were running from the area of petitioner's land. It is submitted that the private respondents in connivance with respondent No.6 started harassing the petitioner and gave a false and frivolous complaint on 01.05.2023 before the Divisional Canal Officer, Abohar. It is further submitted that respondent No.12 was hand in gloves with respondent No.6 i.e. Zildar. Hence, the then Zildar at the behest of respondent No.6 gave a false and frivolous report on 16.05.2023. It is submitted that Zildar in his report did not mention that *warabandi* sanctioned by the Divisional Canal Officer was as per the spot. She submits that respondent No.5 in his report dated 30.05.2023 had clearly mentioned that turn of water was changed and continued at the spot. She submits that respondent No.3 passed the order dated 28.07.2023 which is arbitrary and illegal. Aggrieved by this order, petitioner had filed an appeal before the Superintending Canal Officer. However, the same was dismissed without appreciating the evidence on record and the law settled vide impugned order dated 06.11.2023.

Learned counsel for the petitioner has vehemently contended that when there is a pakka khal then there is no need of kacha khal which even otherwise runs from the land of the petitioner. However, the authorities below have failed to appreciate the same. She submits that the impugned orders passed are totally in violation of Sections 23, 30-A and 68 of the Northern India Canal and Drainage Act. She submits that the report dated 16.05.2023 by the Zileadar is totally based on wrong facts and thus, the impugned orders suffer from patent illegality.

Per contra, learned counsel for the caveator-respondent has vehemently opposed the submissions made by counsel for the petitioner. He has submitted that the kacha khal as contended by counsel for the petitioner is a sanctioned watercourse which is running since long. He has submitted that land of the petitioner and other co-sharers is being irrigated through this khal only. He has submitted that as there is a difference in the level of the land of the respondent and the khal and as such, land of the respondent cannot be efficiently irrigated from the pakka khal which is at a lower level than that of the land of the respondent. He submits that the impugned orders have been passed taking into consideration the complete record submitted by the authorities and also the inspection report. This Court had summoned the Officer, Mr. Ramanpreet Singh, DCO who is present in the Court. He has apprised this Court that the kacha khal which was demolished by the petitioner is a sanctioned watercourse and was running from last more than 25 years. However, the petitioner without any authority, demolished the same. He has submitted that the impugned orders have been passed on hearing the parties and perusing the report submitted and thus, suffers from no

infirmity whatsoever.

Heard. On hearing counsel for the parties, the Officer present and in the Court and perusing the record of the case, it is apparent that the application was filed by the respondent praying for restoration of demolished khal water Outlet No.23809-R, Dolatpura Minor. SDO Abohar marked the enquiry to Zileadar Zandwala on the presentation of the application. The spot was inspected on 27.07.2023 the watercourse was not found present at the spot and thus, the recommendation was made for restoration of the same. Resultantly, the application filed by the respondent was accepted by the Divisional Canal Officer vide order dated 28.07.2023 by directing the restoration of the demolished watercourse. In the appeal filed by petitioner, the parties were heard again and the record was re-examined. The SDO, Abohar himself had visited the place and recommendation for the restoration of this watercourse was made. As per record, the watercourse A, B was found to be sanctioned watercourse as per *warabandi* and thus, the same having been demolished khal was restored as per Section 30 FF. Thus, there are concurrent findings by both the revenue authorities in favour of the respondents. This Court in the facts and circumstances of the case, does not find any infirmity in the impugned orders and thus, the petition being devoid of any merits, is hereby dismissed.

15.02.2024
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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