

124 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-488-2025 (O/M)
Date of decision : 20.02.2025

Abhay Singh and others Petitioner(s)

Versus

State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Jitender Sehrawat, Advocate
for the petitioner(s).

Ms. Upasana Dhawan, AAG Haryana.

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HARSH BUNGER, J. (ORAL)

1. Petitioners 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 04.01.2023 (Annexure P-2), passed by the Sub Divisional Canal Officer, Hisar-II (in short 'SDCO'); order dated 24.04.2023 (Annexure P-3), passed by the Divisional Canal Officer, Hansi (in short 'DCO') and order dated 25.09.2023 (Annexure P-4), passed by the Superintending Canal Officer, Bhakra Water Service, Circle No. 1, Hisar (in short 'SCO').

2. In the present case, private respondents No. 5 to 8 preferred an application under Section 24 of Haryana Canal and Drainage Act, 1974 (in short '1974 Act, seeking restoration of watercourse through Rectangle/Killa No. 48//7-8-9-10 and 49//6/1 (northern side) in the chak of outlet No. RD-37800-R, O.P Jindal Nalwa Distributary, shown at point

'AB' in site plan (Annexure P-1). Upon receipt of aforesaid application, the matter was got investigated from the concerned Zileadar, who after proper investigation and site inspection, recommended restoration of the dismantled watercourse and forwarded the matter to the learned SDCO. Thereafter, notices were issued to the concerned shareholders. The private respondents claimed that the present petitioners had dismantled the running watercourse on site, on account of which the irrigation of their area is stopped and they have no other alternate to irrigate their area. The private respondents produced the copy of sanctioned warabandi for the last 23-24 years. They also produced the sanctioned warabandi for the year 2007 pertaining to the chak of 23200-L Dhamana Minor because before execution of OP Jindal Nalwa Distributary, this area fell in the chak of 23200-L Dhamana Minor.

2.1 On the contrary, present petitioners opposed the claim of private respondents on the plea that this watercourse was linked with Dhamana Minor and presently, OP Jindal Nalwa Distributary runs at the site. It was stated that in case the watercourse at point 'AB' was restored, then the area of the petitioners would be divided in two parts and they would not be able to cultivate their area properly. It was also submitted that proper warabandi has not been made till now, as only a bhaichara warabandi is running at site.

2.2 Considering the respective stands of the parties, learned SDCO ordered restoration of dismantled watercourse for a period of six months, vide order dated 04.01.2023 (Annexure P-2) by observing as under :-

“ Further after consideration of all relevant record and after site inspection, I come to the conclusion that the dismantled water course shows on khaka plan A B and runs at site through rect./killa no. 48/10-9-8-7 and 49/6/1 North side of killa line is as per running position is ordered to restore for the period of six months for one crop. The period of restoration of water course will be started after the restoration of water course at site. The Respondents are directed to restore the dismantled water course AB through rect./killa 48/10-9-8-7 and 49/6/1 northern side as per running position with in the period of 15 days after convey the decision.”

2.3 The aforesaid order dated 04.01.2023 (Annexure P-2) came to be challenged by present petitioners by filing an appeal before learned DCO.

2.4 However, learned DCO dismissed the appeal of petitioners, vide order dated 24.04.2023 (Annexure P-3), by observing as under :-

“ I have carefully examined record, Khaka plan and heard the parties at length. After perusal of khaka plan and record produced before me and the site was inspected by undersigned on dated 24.03.2023. It is concluded that in present condition, the decision of the SDCO, Hisar dated 04.01.2023 is hereby upheld.

But as per the statement of Suresh Yadav in which he stated that they have not arranged the watercourse at outlet RD 33800-R O.P. Jindal Nalwa Disty, because adjoining farmers denied to give the watercourse to them. Further, Suresh stated that they will transfer their whole area to the outlet RD 37800-R O.P. Jindal Nalwa Disty. In that case, as and when, all the area will be transferred to the outlet RD 37800-R O.P. Jindal Nalwa Disty. then the watercourse will be approved as per site condition as per Canal Act.”

2.5 Being aggrieved, the private respondents preferred a revision petition before learned SCO, which came to be allowed, vide order dated 25.09.2023 (Annexure P-4), whereby the dismantled water course was allowed to be restored on permanent basis, primarily on the following grounds :-

- 1) *The watercourse remained in running condition for the last more than 20 years in spite of change of circumstances.*
- 2) *Warabandi U/Section 55 of outlet RD 37800-R O.P. Jindal Nalwa Disty. has now been approved on dated 17.03.2023 and due to this demolition, wari of the area has been shown as without watercourse at serial No. 2.*
- 3) *To maintain the amicable atmosphere in the chak.*

3. Learned counsel for petitioners has failed to show as to how the aforesaid findings returned by learned SCO were wrong or incorrect. It has also not been shown as to how the aforesaid orders are patently illegal or arbitrary and as to what prejudice has been caused to the petitioners.

4. The only submission raised by learned counsel for petitioners is that learned SCO could not have ordered restoration of watercourse on permanent basis since private respondents did not challenge the order passed by learned SDCO, whereby the watercourse was ordered to be restored only for six months. I have considered the aforesaid submission, however, I do not find any merit in the same. Evidently, the order passed by the learned SDCO was challenged by the present petitioners before learned DCO, who vide order dated 24.04.2023 (Annexure P-3), had upheld the order of learned SDCO; ordering restoration of watercourse,

however, at the same time, it was also observed that since respondent No. 7 herein (Suresh) stated that they will transfer their whole area to RD-37800-R OP Jindal Nalwa Distributary, therefore, as and when the area will be transferred then the watercourse will be approved as per site condition as per the Canal Act. The private respondents were apparently aggrieved against the aforesaid observation made by learned DCO, for which they preferred a revision petition before SCO, which was allowed, as noticed hereinabove. Once the authority upon consideration of the matter has come to the conclusion that restoration of the watercourse on permanent basis was called for on account of the fact that the watercourse was running for more than 20 years and even the warabandi stood sanctioned thereon, therefore, no exception can be taken to the said course.

4.1 Here it would be apposite to refer to a judgement rendered by this court in ***Ram Kumar vs. State of Haryana and others 2012 (1) LAR 589***, wherein the following observations were made:-

“12. The word 'watercourse' has been defined in Section 2(15) of the Act, which reads as under:

(15) "watercourse' means any channel including all its subsidiary works which is supplied with water from a canal, but not maintained at the cost of the State Government, and is sanctioned under this Act or is in existence under an agreement or by prescription.

13. The reading of Section 2(15) makes it clear that the watercourse sanctioned under this Act or in existence under an agreement or by prescription will be deemed to be a watercourse.

14. In the present case, the watercourse has been left during the consolidation by way of a "scheme" confirmed under Section 20 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948. The scheme was approved after inviting objections from the representative of the village, which means that all the residents of the village agreed to the approval of the scheme making reservation for common purpose. The watercourses carved out during the consolidation with the consent of the residents of the village during consolidation are covered under the definition of Section 2(15) of the Act i.e. is in existence under an agreement.

15. It is also an admitted fact that the watercourse had been running since 1954 and has been demolished and has stopped running w.e.f. 20.12.1997 as stated by SCO certainly the watercourse will also come under the definition of prescription as provided in section 15 of the Easements Act, 1882 being in existence for more than 20 years. The action of the authorities is not based on the facts. The watercourses which had been carved out during consolidation as per the scheme approved by the residents of the village, will be deemed to be left out under the agreement and are sanctioned watercourses.

16. Since I have held that watercourses left during consolidation are by the agreement of all the residents of the village as objections were invited before approving the scheme then the authorities are bound to restore such watercourses under the provisions of Section 24 of the Act. In the present case watercourse has been running for more than 20 years will also come under prescription.”

4.2 In my considered view, the learned SCO, while ordering restoration of watercourse on permanent basis, has rendered substantial justice to the parties and the same cannot be faulted with.

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

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

(HARSH BUNGER)
JUDGE

20.02.2025
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No