

131 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-2386-2025 (O/M)

Date of decision : 29.01.2025

Narinder Kumar and another

..... Petitioners

Versus

The Superintending Canal Officer, Ferozepur Canal Circle,
Ferozepur and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Sandeep Khunger, Advocate
for the petitioners.

Mr. Navneet Singh, Senior DAG Punjab.

Mr. Jaswinder Singh Grewal, Advocate
for caveator-respondent No. 3.

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HARSH BUNGER, J. (ORAL)

1. Prayer in this writ petition filed under Articles 226/227 of Constitution of India, inter alia, is for issuance of a writ in the nature of certiorari for setting aside the order dated 02.08.2024 (Annexure P-7), passed Divisional Canal Officer, Rajasthan Feeder Division, Ferozepur (in short 'DCO') and also order dated 18.11.2024 (Annexure P-9), passed by Superintending Canal Officer, Ferozepur Canal Circle, Ferozepur (in short 'SCO').

2. Briefly, respondent No. 3 (Reeta Rani through her husband Narinder Singh) filed an application before the canal authorities, seeking restoration of demolished watercourse of outlet No. 100325/R Malukpur Rajbah, village Alamgarh on the plea that they had purchased 26 Kanal of

land out of joint tak (block), whose turn of water (warabandi) was fixed at Serial No. 6 and the said watercourse was running for the last 40 years. It was alleged that about 25-30 karams of watercourse has been demolished by the petitioners, namely, Narinder Kumar and Purshotam Kumar. Accordingly, it was submitted that upon demolition of watercourse, they are not getting any water for their area and there was no other source of irrigation, therefore, prayer was made for restoration of demolished watercourse at its original place.

2.1 Upon receipt of said application by the canal authorities, the matter was referred to concerned Zileadar for investigation, who submitted his report dated 14.05.2024 (Annexure P-5), recommending the restoration of demolished watercourse and the matter was forwarded to Sub Divisional Officer, Abohar (in short 'SDO').

2.2 Learned SDO, vide report dated 20.06.2024 (Annexure P-6), also recommended the restoration of demolished watercourse by observing as under :-

“ On receipt of the case in this office, the spot inspection in this case was carried out by the undersigned on 13.06.2024. From the spot inspection, it was found that the katcha watercourse which was running from Point A to B-C-D-E-F-G at the spot for the irrigation of the area of the applicant through which the area of the applicant was being irrigated has been demolished about 40 Karams from Point E-F by the concerned party from their area comprised in Nos. 205/24. In the area of this demolished watercourse, the concerned party has sown cotton crop at the spot. With the demolition of this katcha watercourse, the link of the watercourse for the irrigation of the area of the applicant has been come to an end and there is no other watercourse

at the spot for the irrigation of his area. The turn of water of the area of the applicant and the concerned party stood sanctioned jointly at Sr. No. 6, the nakka for taking water of which is sanctioned at 204/5 205/1-middle and giving water at 204/6-205/1. The applicants have too purchased this area from the concerned party. From the perusal of the statements added with the case as well as the reports, it has been found that the concerned party is referring to the watercourse from other side i.e. at Point A, A-1, A-2 A-3 which stood sanctioned in consolidation and according to the report of the Ziledar as well as according to the situation at the spot, watercourse A-1 is running at the spot. Ahead to it from Point A-1 to A-3, the watercourse is not running and this watercourse is lying closed for a long period. By intimating you all these facts, it is mentioned that the area of the applicant was being irrigated from the watercourse which was running through the area of the concerned party out of which the concerned party has demolished about 40 karams watercourse from Point E-F. Before and after thereto, the entire watercourse is in existence at the spot. Therefore for the restoration of this demolished Katcha watercourse at Point E-F itself under Section 30-FF, the case is sent with recommendation for further suitable action.”

2.3 Thereafter, the matter was put up before the learned DCO, who after affording due opportunity of hearing to concerned parties, ordered restoration of the watercourse, vide order dated 02.08.2024 (Annexure P-7).

2.4 Feeling aggrieved against order dated 02.08.2024 (Annexure P-7), the petitioners preferred an appeal before learned SCO, however, same was dismissed, vide impugned order dated 18.11.2024 (Annexure P-9).

3. In the aforementioned circumstances, the petitioners have filed the instant civil writ petition before this Court, for the relief(s), as noticed hereinabove.

4. Heard.

5. Learned counsel for petitioners has raised two submissions; firstly, that before ordering restoration of the watercourse, no finding has been returned by the canal authorities as to whether the watercourse in question is a sanctioned watercourse or not and secondly, that there is a watercourse, which was left at the time of consolidation in the village; which can be ordered to be restored.

6. I have considered aforesaid submissions raised on behalf of petitioners, however, I do not find any merit in the same; firstly, the canal authorities below have ordered restoration of the watercourse in question primarily considering the aspect that it is the petitioners themselves, who had sold land to respondent No. 3 (Reeta Rani) out of their joint holdings and in the sale deed, it has been explicitly recorded that the area being sold is '*26 Kanal Cultivable Nehri Land*'. Even the nature of land is recorded as '*Cultivable Nehri Land*' (meaning that the land in question is being irrigated through canal water). It is further noticed from the sale deed (Annexure P-2), executed by the petitioners in favour of respondent No. 3 that the market value/collector rate of the land sold was also taken as that of cultivable nehri land and there is further recital in the sale deed, which reads as under :-

“The possession of the above sold land has been handed over to the purchaser i.e. Rectangle No. 205 Killa No. 16/2(4-0), 25(8-0), Rectangle No. 210 Killa No.5(8-0), 6 Min North (6-0) which was in our share and possession

alongwith rights of ownership, ingress and outgress, passage, tree, watercourse, turn or water alongwith tubewll etc. Now the purchaser has become owner and now I have no concern with the above land. The rights which were available to me the same shall now be available to the purchaser.”

6.1 A perusal of abovesaid recital in the sale deed (Annexure P-2) leaves no manner of doubt that the petitioners themselves had sold 26 Kanal of cultivable nehri land to respondent No. 3 and had conveyed all rights of ownership, ingress, outgress, passage, tree alongwith watercourse and turn of water alongwith tubewell etc. It has not been disputed either before the canal authorities below or before this Court as well that the area sold by the petitioners to respondent No. 3 forms a part of joint land, which is being catered by a watercourse, whereupon turn of water (wari) of joint land has been fixed at serial No. 6.

6.2 That apart, the canal authorities below have found as a matter of fact that upon spot inspection, it was found that the watercourse, which was running from point A to B-C-D-E-F-G at the spot for the irrigation of area of respondent No. 3, had been demolished in about 40 karams (note: 1 karam=5 ½ feet) from point 'E' to point 'F' by the petitioners from their area comprised in khasra No. 205//24. It has further been observed that with the demolition of this watercourse, the link of the watercourse for the irrigation of the area of respondent No. 3 has come to an end and that there is no other watercourse at the spot for the irrigation of area of respondent No. 3.

6.3 As regards second submission raised on behalf of the petitioner that the canal authorities could have ordered restoration of watercourse, which was left during the consolidation; suffice it to say that no such prayer was made by respondent No. 3 and, therefore, there was no occasion for the canal authorities to have gone into the same.

7. Having considered the matter in totality and in the peculiar facts and circumstances of the case, once the petitioners being the owner of bigger chunk of land had themselves sold part of their land holding clearly conveying the rights in the watercourse and also in the turn of water, vide sale deed (Annexure P-2) to respondent No. 3, it does not lie in the mouth of the petitioners to say that there is no watercourse or that respondent No. 3 is not entitled to the irrigation facilities.

7.1 As far as reliance upon judgment in the case of '**Jagar Singh Versus Superintending Canal Officer and others, 1972 PLJ 147**'; it is observed that the same is not applicable to the facts of this case.

8. In view of what has been discussed above, I find no merit in this writ petition and the same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

29.01.2025
sjks

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