

134 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-2474-2025 (O/M)
Date of decision : 18.02.2025

Subhash Chander

..... Petitioner

Versus

Superintending Canal Officer and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Ashok Kumar Khunger, Advocate
for the petitioner.

Mr. Navneet Singh, Senior DAG Punjab.

Mr. Prateek Pandit, Advocate
for caveator-respondent No. 4.

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HARSH BUNGER, J. (ORAL)

1. Petitioner (Subhash Chander) has 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 02.08.2024 (Annexure P-5), passed by learned Divisional Canal Officer, Rajasthan Feeder Division, Ferozepur (in short 'DCO'), whereby he ordered restoration of watercourse.

1.1 A further prayer has been made for setting aside the order dated 20.12.2024 (Annexure P-6), passed by learned Superintending Canal Officer, Ferozepur Canal Circle, Ferozepur (in short 'SCO'), whereby an appeal filed by the petitioner against order dated 02.08.2024 (Annexure P-5), has been dismissed.

2. Briefly, respondent No. 3 (Lekh Ram) submitted an application before the canal authorities for restoration of watercourse, which was alleged to have been demolished by the petitioner along with one Vijay Kumar.

2.1 The petitioner appeared in the aforesaid proceedings before the canal authorities and submitted objections stating that the prayer made by Lekh Ram etc. is false. The petitioner claims that he has purchased the land from respondent No. 5 (Rajbir Singh) on 25.05.2023 and at that time, no watercourse was running on the land of the applicants i.e. respondents No. 3 and 4, namely Lekh Ram and Rajpal. It is further claimed by the petitioner that in the revenue record, there was no watercourse connecting through the land purchased by the petitioner, therefore, there was no question of demolition of watercourse. It was stated by the petitioner that before executing sale deed in his favour, respondent No. 5 (Rajbir Singh) had exchanged his land comprised in Rect. No. 161, Kila No. 3/1/1, 8/2/2, 19/1 on 14.08.2023, vide mutation No. 5493, with his paternal uncle Rajpal (respondent No. 4 herein). It was stated that by way of this exchange, respondent No. 5 (Rajbir Singh) had left passage and watercourse for the land of Rajpal (respondent No. 4), however, when the petitioner purchased the land from respondent No. 5 (Rajbir Singh), then respondent No. 5 (Rajbir Singh) had given an affidavit that he had exchanged the land, vide mutation No. 5493, with his paternal uncle Rajpal (respondent No. 4), but he will not demand his watercourse from the land sold to the petitioner.

2.2 It appears that learned DCO upon consideration of the matter ordered restoration of the watercourse, vide order dated 02.08.2024 (Annexure P-5).

2.3 Being dis-satisfied, the petitioner preferred an appeal against order dated 02.08.2024 (Annexure P-5) before learned SCO, however, the same was dismissed, vide order dated 20.12.2024 (Annexure P-6).

3. Learned counsel for petitioner submits that a fraud has been played with the petitioner by respondent No. 5 in connivance with respondent No. 4 and in this regard, the petitioner had submitted a complaint to the police on 10.07.2023, whereupon respondents No. 4 and 5 were summoned and the matter was compromised, wherein it was settled that mutation regarding exchange of land between respondents No. 4 and 5 will be cancelled and after cancellation, they will get the mutation again entered in the revenue record regarding exchange of land between respondents No. 4 and 5, wherein respondent No. 5 will give 4 karam land adjoining to Khasra No. 161//3/2/1 for passage and watercourse to respondent No. 4. It is therefore contended that in view of the undertaking given by respondents No. 4 and 5 before the police, the petitioner had made a statement requesting the police that he does not want to take any action in view of compromise. The said compromise (Annexure P-1) is stated to be signed by by the petitioner, Vijay Kumar, respondent No. 4 and respondent No. 5. It is accordingly contended that in view of compromise (Annexure P-1), respondent No. 4 is not entitled for watercourse from point 'C' to point 'D', which has been wrongly ordered to be restored by the authorities below.

4. Heard.

5. In the present case, respondents No. 3 and 4 had sought restoration of watercourse on the plea that the same has been wrongly demolished by the petitioner. On the other hand, petitioner claims that he had purchased land measuring 27 Kanal – 18 Marla from respondent No. 5 (Rajbir Singh) in the following manner :-

“27 Kanals 18 Marlas i.e.

a) Land measuring 21 Kanals comprised in Rectangle No. 161, Killa No. 3/1/2 (5-16), 3/2 (1-8), 4 min west (5-0), 7/1 min west (1-12), 8/1 (1-6), 8/2/1 (5-18), khewat No. 53 ;

b) Land measuring 6 kanals 18 marlas comprised in rectangle No. 161, killa No. 7/2 min west (0-16), 13/2 (6-2) khewat No. 56 as per jamabandi for the year 2019-20, situated in the area of Village Bassian, Tehsil Abohar, District Fazilka.”

5.1 It is the case of the petitioner that a compromise (Annexure P-1) was arrived at between the petitioner and respondents No. 4 and 5 before police station and the averment in that regard is found in para 4 of the writ petition, which reads as under :-

“4. That when the petitioner came to know the fraud played with the petitioner by the respondent No. 5 in connivance with the respondent No. 4, the petitioner and Vijay Kumar made a written complaint to the police on 10.07.2023. After receipt of the complaint, the respondents No. 4 and 5 were summoned and thereafter the matter was compromised between the petitioner, Vijay Kumar as well as between the respondents No. 4 and 5. According to the compromise it was settled that the mutation regarding the exchange of the land between the respondents No. 4 and 5 will be cancelled and after cancellation they will get the mutation again entered in the revenue record regarding the exchange of land between the respondents

No. 4 and 5. It was further agreed that respondent No. 5 will give 4 karams land adjoining to Khasra No. 161//3/2/1 in khwheat No. 53 for passage and water course to respondent No. 4. Thus in view of the undertaking given by the respondents No. 4 and 5 before the police, the petitioner and Vijay Kumar requested the police that they do not want to take any action in view of the compromise. The said undertaking was signed by the petitioner and Vijay Kumar as well as respondents No. 4 and 5, which was duly attested by the witnesses. A true translated copy of the said writing duly signed by the parties is annexed herewith as Annexure P-1.”

5.2 However, when the aforementioned averment made in para 4 of the writ petition is considered in the light of the settlement (Annexure P-1), it is seen that the compromise (Annexure P-1) does not reflect any such settlement between the parties, as claimed by the petitioner. The relevant extracts of compromise (Annexure P-1) read as under :-

“ It is submitted that we had submitted an application on 10.07.2023 against (1) Rajbir Singh (Rajbir Munjal Aadhar No. 7230 2709 0795, Mobile No. 9988870280) son of Amar Lal Munjal son of Kanshi Ram, resident of House No. 503/13, Krishna Nagar, Jalandhar-1, Tehsil and District Jalandhar co-sharer of land of Village Bassian, (2) Rajpal son of Kanshi Ram son of Sunder Lal, resident of Jalandhar. That now the respectable persons have got effected our mutual compromise and we after having been satisfied with the compromise do not want to take any action against both the above mentioned persons.

Therefore, it is requested that the application submitted by us may be consigned, then we have got no objection to the same. Your act will be highly grateful.”

5.3 Therefore, there is nothing to indicate that any settlement was arrived at between the petitioner and respondents No. 3 and 4 that they would not claim any watercourse from the land, which has been purchased by the petitioner from respondent No. 5 (Rajbir Singh).

5.4 Learned DCO ordered restoration of watercourse, vide order dated 02.08.2024 (Annexure P-5) by observing as under :-

“..... The record has been perused. Site plan of the spot has been inspected. The reports of the Ziledar Area and Sub Divisional Officer Abohar have been perused. The statements of both the parties has been perused. From the perusal of the documents enclosed with the case, it has been found that the turn of the land of the applicant is approved at Serial No. 37-37/1. The Nakka of Serial No. 37 regarding taking water from 153/23-24 and Nakka for giving water to 161/10-12 and Nakka of Serial No. 37/1 for taking water from 161/10-12 and giving water to 161/7-13 is approved, from which point B-C and C.D.E. turn of water falls within the category of duly sanctioned water course, from which water course from point C to D has been demolished, the clarification of which stands made from the reports received from the lower staff. While keeping in view the above, upon perusal of record, under Section 30 FF of Northern India Canal and Drainage Act, 8 of 1973 Amended 23 of 1965, the water course contemplated at point C-D is hereby restored.”

5.5 The canal authorities upon consideration of the matter came to the conclusion that their turn was approved at Serial No. 37-37/1 and the Nakka of Serial No 37 regarding taking water was from 153/23-24 and Nakka for giving water was at 161/10-12 and similarly Nakka of Serial No. 37-1 for taking water was from 161/10-12 and giving water was at 161/7-13, which was approved from point 'B-C' and point 'C-D-E'

and the same fall within the category of duly sanctioned watercourse.

Since the watercourse was found to be demolished from point 'C' to point 'D', same has been ordered to be restored.

5.6 Evidently, giving and taking points of watercourse in question fall within the area comprised in Rect. No. 161, which has been purchased by petitioner from respondent No. 5.

6. In this view of the matter, I find no merit in the instant civil writ petition and same is accordingly dismissed.

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

(HARSH BUNGER)
JUDGE

18.02.2025
sjks

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