

202 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-27109-2022 (O/M)
Date of decision : 07.11.2025

Paramjit Kaur

..... Petitioner

Versus

Superintending Canal Officer, Patiala Circle,
Irrigation Branch, Patiala and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Harvinder Singh Mann, Advocate
for the petitioner.

Mr. Harpreet Singh, AAG Punjab.

Mr. Anil Kumar Garg, Mr. Ashish Paul, Advocates
for respondent.

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HARSH BUNGER, J. (ORAL)

1. Prayer in the instant civil writ petition filed under Article 226 of Constitution of India, inter alia, is for issuance of a writ in the nature of certiorari for setting aside order dated 18.10.2021 (Annexure P-1), passed by learned Divisional Canal Officer, Lehal Division, Irrigation Branch, Patiala (in short 'DCO') and order dated 15.09.2022 (Annexure P-3), passed by Superintending Canal Officer, Patiala Circle, Irrigation Branch, Patiala (in short 'SCO').

2. Briefly, respondents No. 3 and 4 alongwith others filed an application before canal authorities with the plea that they are shareholders of outlet No. 12166/Right, Rajwaha Boha and in the chak of said outlet, their watercourse was running for about 30-35 years, which has been demolished by petitioner and her son Yadwinder Singh,

restultantly, irrigation to their land stopped and their crops were getting damaged, accordingly, prayer for restoration of watercourse was made, in terms of Section 30 (FF) of Northern Indian Canal and Drainage Act, 1873 (in short '1873 Act').

2.1 Upon receipt of aforesaid application, the matter was referred to field staff, whereupon the concerned Zileadar inspected the spot on 21.01.2021 and found that the watercourse had been demolished at the spot and also that the watercourse was existing in the sanctioned warabandi of old map. It was clearly recorded that the area in question had been transferred from outlet No. 37220/TR of Sunam Rajwaha to outlet No. 12166/Right of Rajwaha Boha. It was categorically stated that the watercourse from point 'C' to point 'E' alongside road (as shown in site plan-Annexure P-7) was demolished and beyond that point, the watercourse was existing, accordingly, the concerned Zileadar submitted his report to learned Sub Divisional Officer, Budhlada with the recommendation to restore the demolished watercourse as per records.

2.2 Learned Sub Divisional Officer, Budhlada, upon consideration of the matter, also recommended restoration of 2 acres long canal watercourse, adjacent to the southern side (watt) of killa No. 116//19-20 and forwarded the matter to learned DCO.

2.3 Learned DCO got served notices upon respondents No. 3 and 4 and also petitioner (Paramjit Kaur) and thereafter, the statements of petitioner as well as respondents No. 3 and 4 were recorded.

2.4 Thereafter, learned DCO again got the spot inspected on 26.07.2021 from concerned Zileadar and learned Sub Divisional Officer, who reported that according to the warabandi map watercourse

point 'C' to point 'E' was demolished at spot and on account of which, the land of warabandi khata No. 17/1, 171 and 171/1 is not getting canal irrigation, accordingly recommendation for restoration of watercourse was made.

2.5 It appears that during the course of hearing by learned DCO, it was not clear from the report of concerned Zileadar and learned Sub Divisional Officer as regards length of the watercourse, which has been demolished and also as to when the shop was built in the area of the petitioner (Paramjit Kaur), accordingly, a clear report was sought in that regard.

2.6 It transpires that Gram Panchayat, Khudal Kalan gave in writing that the shop has been constructed by petitioner after 06.07.2020, regarding which a complaint was submitted by private respondents to concerned SHO, complaining that petitioner had constructed a shop on the land of watercourse.

2.7 Upon consideration of the matter as well as records, learned DCO, vide order dated 18.10.2021 (Annexure P-1), ordered that the demolished watercourse from point 'C' to point 'E', as shown in the map in chak of outlet No. 12166-Right Rajwaha Boha, be restored under Section 30 (FF) of 1873 Act, by observing as under :-

“ Case was called. Attendees were heard. All aspects considered. As per the recommendations of Zileadar Dayalpura and Sub Divisional Officer Budhlada, and the records attached with the file, the demand of the applicants is valid. According to the reports of the field staff, the opposition party has demolished the water course point C to E in map and included said land in her land and has built a shop and beyond that water course point E to F is existing.

Warbandi dated 28.10.2009 approved by Deputy Collector Lehal Division IB Patiala provides proof of presence of canal water course on record. However, on spot, due to the demolition of water course by the opposite party, the canal irrigation of the area of the applicants has been stopped and the crops of the applicants are getting damaged. According to Forms No. 11-D added with file by Zildar Dayalpura the crops of the applicants have been irrigated with canal water in the year 2020. Keeping in view all the above facts, the demolished canal water course from points C to E shown in the map in Chak of Outlet no. 12166/Right Rajwaha Boha is restored under Section 30-F-F of the Amended Canal and Drainage Act, Canal No. 8 of 1873.”

2.8 Feeling aggrieved against order dated 18.10.2021 (Annexure P-1), petitioner preferred an appeal before learned SCO, however, same was dismissed, vide order dated 15.09.2022 (Annexure P-3), by observing as under :-

“ From the available records and file, it appears that the watercourse point CE, which is shown to be demolished in the map, is shown in Warabandi Map Outlet no. 37220/TR Sunam Rajwaha. The area of water course ABCDEF has been transferred to Outlet no. 12166/R Boha Rajwaha and its warabandi has been amended in the year 2009. It has been recorded by the appellant in the statement that watercourse used to run in the land of road which got demolished when the road was widened. So from this it is clear that on spot water course CE was running. According to the warabandi map, this watercourse is shown in the area adjacent to the road. From which it is confirmed that watercourse CE along the road was running in the appellant's land. Therefore, on the basis of lack of evidence and the record contained in the file, the appeal of the appellant is dismissed and the order of Division Canal

Officer, Lehal Division IB Patiala dated 29.09.2021 is upheld. This order is passed under Section 30-B (3) of the Canal and Drainage Act 08 of 1873.”

3. In the aforementioned circumstances, the petitioner has filed the instant civil writ petition before this Court seeking relief(s), as noticed hereinabove.

4. During the course of hearing of this writ petition on 01.10.2025, following order was passed :-

“ Learned counsel for the petitioner submits that the petitioner would have no objection if the water course which has been ordered to be restored is laid by way of underground pipeline in front of the shop constructed by the petitioner, at the expense(s) to be borne by petitioner.

Learned State counsel seeks an accommodation to get instructions as regards the feasibility of laying underground pipeline in front of the shop of the petitioner, so as to restore the water course without changing its alignment.

Adjourned to 07.11.2025.

Interim order to continue till next date of hearing only.

To be taken up immediately after the Urgent List.”

5. Today, Shri Havinder Singh Mann, Advocate has appeared by filing a fresh Vakalatnama on behalf of petitioner with no objection from previous counsel Shri Vijay Sharma, Advocate.

6. At this stage, learned State counsel has submitted that in terms of order dated 01.10.2025, passed by this Court, he has got instructions that it would be feasible for canal department to lay underground pipeline for restoration of watercourse without changing its alignment.

7. On the other hand, Shri Harvinder Singh Mann, learned counsel appearing for petitioner submits that the petitioner would have no objection in restoration of watercourse by way of laying of underground pipeline, however, he submitted that the petitioner is a poor lady with limited resources, therefore, she is not in a position to bear the total expenses for laying of underground pipeline.

8. I have considered the matter and perused the record. There is no manner of doubt that the watercourse from point 'C' to point 'E', alongside the road (as shown in the site plan-Annexure P-7), is reflected in the warabandi record and has been demolished. The canal authorities have also recorded a categorical finding that the watercourse beyond point 'E' continues to exist. It needs no reiteration that the warabandi record is the best evidence to determine the existence of a watercourse.

8.1 It is further noticed that the warabandi dated 28.10.2009, approved by the Deputy Collector, Lehal Division, IB, Patiala, clearly proves the presence of the watercourse on record and, therefore, it must be treated as a sanctioned watercourse. Since the canal authorities have found, as a matter of fact, that the watercourse from point 'C' to point 'E' has been demolished at site, the direction for its restoration has been rightly issued.

9. Even in terms of order dated 01.10.2025, as extracted above, petitioner has not objected to restoration of watercourse and only prayer was to take the watercourse from front side of the petitioner's shop through underground pipeline at the expense of petitioner, however that statement has been withdrawn by new counsel appearing for the petitioner. In this view of the matter, I find no merit in this writ petition

and same is accordingly dismissed. The canal authorities are directed to restore the demolished watercourse at site.

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

(HARSH BUNGER)
JUDGE

07.11.2025

sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No