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

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Date of decision: 13.03.2026

Jasbir Singh

....Petitioner

Vs.

Superintending Canal Officer, Ludhiana and others

....Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present: Mr. G.L. Bajaj, Advocate
for the petitioner.

Mr. Nirmaljit Singh Diwana, Sr. DAG, Punjab.

HARSH BUNGER J. (Oral)

1 Petition herein is, *inter alia*, seeking a writ in the nature of Certiorari, for setting aside the order dated 19.09.2024 (Annexure P-9) passed by learned Divisional Officer, Faridkot and order dated 13.01.2025 (Annexure P-10) passed by learned Superintending Canal Officer, Sirhind Canal Circle, Ludhiana.

2. Briefly, respondent No.3 – Sarban Singh filed an application before Canal Authorities, seeking restoration of the demolished watercourse falling on Moga No.63375/R Rajbaha Sandhwa., on the plea that his area is situated in village Vania Ka Agwar, Faridkot, which he had purchased from Jangir Singh and Gurpreet Singh sons of Smt. Balwant Kaur (being the legal heirs of Smt. Balwant Kaur). Sarban Singh (respondent No.3) claimed that the canal (watercourse) was carved out during consolidation operation in village, along side the passage, however, the present petitioner and his

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brother had demolished the watercourse, which has resulted in stoppage of irrigation to his area; accordingly prayer for restoration of demolished watercourse was made.

3. Upon receipt of the aforesaid application by the Canal Authorities, the matter was got investigated from the field staff. It appears that, upon carrying out investigation at the spot, the concerned Zildar submitted his report dated 22.07.2024 (Annexure P-6), recommending the restoration of watercourse; the relevant extract of the report reads as under:-

“Spot inspection of the case was conducted on 22.7.2024. Record was given by the applicant and as per the statement which has been recorded by the applicant on 22.7.2024 that his khal point BCD which has been demolished, the same may be restored. According to the record submitted by the applicant, on these Bandobast numbers their turn is on khata no.43/1 which is in the name of Smt. Balwant Kaur. Taking of water turn is upwards 11 karam to 2782 and 2782/1 and for giving the water turn is 9 karam back to 2779-2780. As per the demand of applicant, the khal BCD which has been demolished by the opposite party, demand is made for its restoration. This khal is of warabandi. In this regard, court case is going on, the hearing of this case is fixed for 29.8.2024. This case is being sent to you for taking further proceedings.”

4. Thereafter upon receipt of the report/recommendation from the field staff, notices were issued to the concerned shareholders (including the present petitioner-Jasbir Singh) who appeared and opposed the claim of respondent No.3.

5. The learned Divisional Canal Officer upon consideration of the matter and after affording due opportunity of hearing to all the concerned

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parties, passed order dated 19.09.2024 (Annexure P-9), thereby directing restoration of the demolished watercourse (C-D) in Khasra Nos.2783, 2782/1, 2782, 2781, 2780.

6. Feeling aggrieved against the aforesaid order dated 19.09.2024 (Annexure P-9), petitioner herein preferred an appeal before the learned Superintending Canal Officer, which was dismissed vide order dated 13.01.2025 (Annexure P-10).

7. In the aforementioned circumstances, present petition has been filed before this Court, for seeking relief(s) as noted hereinabove.

8. I have heard the learned counsel for the petitioner and perused the paperbook with his able assistance.

9. Evidently, respondent No.3 approached the Canal Authorities on the plea that the present petitioner has demolished the watercourse, and resultantly the irrigation to his area has been stopped. Thereafter, the matter was got inquired into from the field staff, whereupon, the concerned Zildar submitted his report recommending the restoration of watercourse.

10. Subsequently, the matter was taken up by the learned Divisional Canal Officer, who vide order dated 19.09.2024 (Annexure P-9) directed restoration of the watercourse. Even the appeal preferred by the petitioner against the order dated 19.09.2024 (Annexure P-9) was dismissed by the learned Superintending Canal Officer vide order dated 13.01.2025 (Annexure P-10), by observing as under:-

“On 13.1.2025, case was perused. Record along with the file, Site plan of the spot and order dated 19.9.2024 passed by Divisional Canal Officer, Faridkot were considered. From

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examining the case it is found that report has been submitted by the filed staff, in which demand has been made to restore the demolished khal and that khal is running in Warabandi and Nakkas have been established, from which the existence of the khal is found, meaning the khal remained running, as such order dated 19.9.2024 passed by Divisional Canal Officer, Faridkot, Canal and Ground Water Division, Faridkot is kept upheld. This order is passed under Section 30-FF of Northern India Canal & Drainage Act 8 year, 1873, Punjab Amendment Act 23-1965.”

10.1. A perusal of the above-extracted observations made by the learned Superintending Canal Officer would reveal the following facts:-

- (i) the field staff had recommended the restoration of the watercourse;
- (ii) watercourse is running in the *Warabandi* and *Nakkas* have been established, which depicts the existence of the watercourse.

11. Before this Court, learned counsel for the petitioner submits that merely on the basis of *Warabandi*, the watercourse could not have been ordered to be restored and that too without recording any finding as to whether the watercourse in question has been sanctioned by law or by prescription or by way of agreement.

11.1 It is still further submitted that even otherwise, once the matter was filed before the learned Divisional Canal Officer, he should have inquired into the matter at his own level and should not have relied upon the report submitted by the Zileदार.

12. I have considered the aforesaid contentions raised on behalf of the petitioner.

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12.1 As regards the first contention of the petitioner that *Warabandi* could not have been made basis for the restoration of watercourse; it is observed that now it is well-settled that *Warabandi* is best evidence to see the existence of the watercourse. In this regard, reference can be made to the judgment in the case of ***Ajit Singh v. Superintending Canal Officer, 2017 (1) RCR (Civil) 279***; wherein this Court held that "*Warabandi*" is the best proof of turn of canal water for irrigation.

12.2 Further, in the case of ***Brij Lal v. State of Punjab, 1985 RRR 76***; this court held as under: -

"...What is more in the written statement filed on behalf of respondents Nos. 1 to 3, it has been clearly mentioned that on the water course warabandi has been sanctioned in favour of the aggrieved share-holders under Section 68 (4) of the Act to which no objection had been taken by the petitioner at any stage. In view of the above fact either by implication the watercourse would be taken as a sanctioned water course or in any case it would be taken that the petitioner had agreed to the use of the said water-course by the respondent-shareholders and that is why no objection had been raised when the department sanctioned warabandi on the said water course giving right to the respondent shareholders to take water through that water course to their fields... "

12.3 Even an Hon'ble Full Bench of this Court in the case of ***Karam Singh v. Superintending Canal Officer, 1988 Punjab Law Journal 408*** held as under:-

"16. Once Warabandi has been sanctioned in accordance with the procedure prescribed after hearing the concerned shareholders the remedy, if any, lay under section 63 of the Act, and that cannot be allowed to be urged in collateral proceeding

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that the watercourse on the basis of which Warabandi has been fixed is not authorised....”

12.4 Keeping in view the aforestated legal position, it is held that *Warabandi* can be relied upon by the Canal Authorities to see the existence of watercourse and the same can be duly considered along with other material available on record to direct restoration of demolished watercourse. Accordingly, the first contention raised on behalf of the petitioner is rejected.

13 As regards the second submission that Canal Authorities have not recorded any finding that the watercourse in question has been either sanctioned by law or by agreement or by prescription; it is observed that there is sufficient material available on record by way of *Warabandi* regarding existence of the watercourse. Even *Nakka* to the area of Smt. Balwant Kaur (predecessor-in-interest of respondent No.3) is shown at point 2785-2786-2767. Apparently, the aforesaid *Warabandi* in favour of Smt. Balwant Kaur (predecessor-in-interest of respondent No.3) has not been challenged by the petitioner till date.

13.1. In the attending circumstances, once the existence of the watercourse have been found by way of *Warabandi* records, which has not been challenged till date by any party, it is to be taken that the watercourse in question is sanctioned by way of agreement between the shareholders of the Moga No.63375/R Rajbaha Sandhwa, which would be covered within definiting of watercourse.

13.2 I am also of the view that, even if the matter is remanded to the Canal Authorities for recording a specific finding as to whether, the watercourse in question (regarding which the restoration had been sought), is



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sanctioned by law, by agreement or by prescription, the same would be a useless formality, especially considering the fact that there is sufficient material available on record to show the existence of the watercourse. Accordingly, the aforesaid contention is rejected.

14. As regards the third contention that the learned Divisional Canal Officer should have himself carried out the inspection without delegating the power to concerned Zildar; suffice it to say the said issue is no more *res integra*, and the same stands conclusively decided in ***Karam Singh v. Superintending Canal Officer, 1988(2) RRR 163***; wherein Hon'ble Full Bench of this court, held as under:-

“7. The case came up for motion hearing before S.P. Goyal and D. V. Sehgal, JJ, on September 24, 1986, and the following order was passed :-

"Relying on Kheta Ram v. The State of Haryana 1974 PLJ 294 and Zora Singh and another v. Superintending Canal Officer and others, 1982 PLJ 240 : 1985 R.R.R. 306, it is contended that under Section 30 FF(2) of that Northern India Canal and Drainage Act it is the Divisional Canal Officer who has to personally conduct the enquiry and any decision based on the enquiry got conducted from the junior officers would be without jurisdiction, The provisions of the section do not warrant any such conclusion. We, therefore, feel that the above noted two decisions require reconsideration by a larger Bench. This petition is, accordingly, admitted and ordered to be placed before the learned Chief Justice for referring the matter to a larger Bench.

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It is in this manner that the matter has been placed before us.

Section 30 FF of the Act reads as under :-

(1) If a person demolishes, alters, enlarges or obstructs a watercourse or causes any damage thereto, any person affected thereby may apply to the Divisional Canal Officer for directing the restoration of the watercourse to its original condition.



(2) On receiving an application under sub-section (1) the Divisional Canal Officer may, after making such enquiry as he may deem fit, require by a notice in writing served on the person found to be responsible for so demolishing, altering, enlarging, obstructing or causing damage, to restore at his own cost, the watercourse to its, original condition within such period as may be specified in the notice.

xxx xxx xxx”

8. Interpreting sub-section 2 of section 30-FF of the Act, Tuli J., in **Bakhtawar Singh v. Superintending Canal Officer, 1973 PLJ 622**, observed as under :-

"The impugned notice issued is. therefore, without jurisdiction because the Divisional Canal Officer could not delegate the power to any subordinate officer. "

The learned Judge opined that since the enquiry had been got conducted by the Divisional Canal Officer through the Ziledar and the Sub Divisional Canal Officer, the order passed upon such an enquiry was without jurisdiction This judgment was followed by R. N. Mettal, J, in **Kheta Ram v. State of Haryana, 1974 PLJ 294**, with the following observations :-

"The enquiry is to be made by the Divisional Canal Officer himself and not through any other agency. If he enquires into the matter through any other officer the notice issued on the basis of that enquiry will be illegal and void."

9. These two judgments were followed by Punchhi, J., in **Zora Singh v. Superintending Canal Officer, 1982 PLJ 240 : 1985 R.R.R. 306**, who held as under :-

"The enquiry conceived of is an enquiry to be conducted by the Divisional Canal Officer himself concededly, he did not conduct any such enquiry but resorted to the convenient method of getting it done from the Sub Divisional Officer and relying on his report issued the impugned notice. Thus, the impugned action, notice and orders are void ab initio."

10. Section 30-FF of the Act provides that if a person demolishes, alters or enlarges, or obstructs a watercourse or causes any damage thereto, any person affected thereby may apply to the Divisional Canal Officer for directing the restoration of the watercourse to its original condition. Sub section (2) of section 30-FF postulates that on receiving an



application under sub-section (1), the Divisional Canal Officer may, after making such enquiry as he may deem fit require by a notice in writing served on the person found to be responsible for so demolishing, altering, enlarging, obstructing or causing damage, to restore at his own cost, the watercourse to its original condition within such period as may, be specified in the notice.

11. The notice to the person responsible for the demolition has to be issued after a thorough enquiry, and after giving a definite finding. If he chooses to call for a report to facilitate a detailed enquiry, that cannot be said to vitiate the order. Calling for such a report is a part of the enquiry. However, it does not flow from the statute that the Divisional Canal Officer himself could not call for a report from his subordinates. He has to satisfy himself, on the basis of some material, that there existed a watercourse which has been demolished or enlarged or obstructed to. Even the Courts whose procedure is regulated by Civil Procedure Code have been getting the enquiries made by Local Commissioners subject to limitations prescribed by law, and based their judgments on the report of the Local Commissioner. After the enquiry, if the Divisional Canal Officer is prima facie satisfied that the watercourse has been demolished, he issues a notice to the concerned party or parties, and after hearing him/them passes such an order as envisaged by sub, section (2) of section 30 FF of the Act. Of course, he cannot conclude the case with the report of the Sub Divisional Canal Officer but has to give an opportunity to the parties to put forward their cases, hear them and decide the matter on the basis of the evidence. Sub-section (4) of section 30-FF of the Act provides a right of appeal to the party who is aggrieved by an order passed by the Divisional Canal Officer.

12. The view taken by Tuli, J., in Bakhtawar Singh's case (supra) does not lay down the correct law. The interpretation placed on sub. section (2) of section 30 FF does not flow from it. The other two judgments reported as Kheta Ram (supra) and Zora Singh (supra) are based upon Bakhtawar Singh's case (supra), and for the same reasons have to be overruled. With respect, the view taken by the learned judge in Bakhtawar Singh's case (supra) does not emanate from sub-section (2) of section 30-FF. We accordingly overrule all the three decisions being not in-accordance with law..."



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14.1 Keeping in view the observations made by this Court in Karam Singh (supra), the third contention of the petitioner is also rejected.

15. Considering the totality of circumstances, I find no merit in the instant writ petition and the same is accordingly dismissed.

16. All the pending application(s), if any, shall also stand closed.

13.03.2026
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(HARSH BUNGER)
JUDGE

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