

145 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-37616-2025 (O/M)
Date of decision : 15.01.2026

Piara Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Ms. Sonia G. Singh, Advocate
for the petitioner.

Mr. Nirmaljit Singh Diwana, Senior DAG Punjab.

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HARSH BUNGER, J. (ORAL)

1. Prayer in this 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 20.02.2024 (Annexure P-3), passed by learned Divisional Canal Officer, Jandiala Canal and Ground Water Division WRC Amritsar (in short 'DCO') and order dated 08.07.2024 (Annexure P-5), passed by learned Superintending Canal Officer, Upper Bari Doab, Canal Area, District Amritsar (in short 'SCO').

2. Briefly, private respondents herein submitted an application before learned DCO, stating that petitioner herein had demolished the watercourse from outlet No. 46800/49895.

2.1 Upon consideration of the matter, learned DCO, vide order dated 20.02.2024 (Annexure P-3), ordered restoration of watercourse.

2.2 Feeling aggrieved against learned DCO's order dated 20.02.2024 (Annexure P-3), petitioner preferred an appeal before learned SCO, which has been dismissed, vide order dated 08.07.2024 (Annexure P-5).

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

4. Heard.

5. In this case, private respondents No. 4 to 6 submitted an application before canal authorities stating therein that the watercourse, which irrigates their land, has been demolished by petitioner herein (Piara Singh) and bricks, which had been used in watercourse, have been utilized by petitioner for construction of his house.

5.1 Upon receipt of aforesaid application, the matter was got investigated from the field staff.

5.2 The concerned Zileadar inspected the spot and submitted his report to concerned Sub Divisional Canal Officer, which was further placed before learned DCO. Thereafter, notices were issued to parties, who appeared before learned DCO and put-forth their respective claims.

5.3 Learned DCO, after considering the matter, ordered restoration of demolished watercourse, vide order dated 20.02.2024 (Annexure P-3), the relevant extract of which reads as under :-

“After perusing the case as well as documents on record, the court found that the opposite party is stating about constructing the water course at his own expenses. This water course is built on the north side of killa

number 23-24-25 of 24 m. Killa No. 23-24 of 24 M which is owned by the opposition party whereas killa No. 25 is owned by Gurpratap Singh son of Mahinder Singh. If the opposite party had constructed this water course for the irrigation of their own field through their own motor at their own expenses, then there was no justification in constructing the same through killa No. 25 of 24 M. The water course of outlet 46800/L minor Khara Part A, B, C, D, E, F, was officially constructed about 30-35 years ago. A small over pass has also been built in the road on the northern side of 24 M of 22/2-23. Warabandi under Section 68 is also approved. It has also been given in writing by shareholders that the outlet is running since long. As per the report of the Patwari from the beginning to the end of the outlet, i.e. from A to F, the watercourse was constructed from the bricks of same brand, from which it is proved that irrigation was being done in past through this non-approved watercourse. Therefore, keeping in view the interest of irrigation and as well as the food storage of the country, the demolished non-approved water course which was earlier constructed with bricks and has been demolished on the northern side of killa number 23 24 of 24 M Parts D, E, F, as per site plan is hereby restored, under section 30-FF (2) of the Northern India Canals and Drainage Act 8 of 1873, as amended time to time.”

5.4 The aforesaid order passed by learned DCO has been further affirmed by learned SCO, vide order dated 08.07.2024 (Annexure P-5), the relevant extract of which reads as under :-

“Both the parties were heard patiently. The case record was thoroughly examined. The reports of the Zelidar Khara and Sub Divisional Officer Raiyan as well as order passed by the Divisional Officer Canal Jandiala Canal and Ground Water Division, Water Resources Department, Punjab, Amritsar

have been perused carefully, in which the water course of outlet 46800/Left Minor Khara, Part A.B.C.D.E.F was officially paved about 30-35 years ago. A government overpass has also been built on the road at Killa No. 22/2 of Murabba 24 and on the northern side of Killa No. 23. Warbandi under Section 68 is also approved, which proves that irrigation was being done from this non-schemed water course, which proves the existence of water course. So keeping in view all the facts as well as for the betterment of canal irrigation from point E to F and to increase the food grains of the country, the order dated 20.02.2024 passed by Divisional Officer Canal, Jandiala Canal and Ground Water Division, Water Resources Department, Punjab, Amritsar under section 30 FF (3) of the North India Canal and Drainage Act 8 of 1873, as amended time to time, is upheld and the appeal of the appellant is dismissed”

5.5 A perusal of finding returned by canal authorities below would show that a finding of fact has been recorded that the watercourse of outlet No. 46800/L Minor Khara, Part A-B-C-D-E-F was officially constructed about 30-35 years ago and even warabandi under Section 68 is also approved thereon. Further, it has come on record that the shareholders have given in writing that the outlet is running since long. Even as per report of Patwari, the watercourse is stated to have been constructed from bricks of the same brand from point 'A' to point 'F'. Since the watercourse has been found to be demolished on the northern side of area comprised in Rect. No. 24, Killa No. 23-24 at point 'D-E-F', the same has been ordered to be restored.

6. As far as argument raised by learned counsel for petitioner that directing restoration of watercourse merely on the basis of approved

warabandi is wrong; suffice it to say that in order to see the existence of watercourse, approved warabandi is best evidence.

6.1 In ***Karam Singh v. Superintending Canal Officer, 1988 Punjab Law Journal 408***; an Hon'ble Full Bench of this Court held as under:-

“13. In the present case, the notice was issued to respondent No 3 after the enquiry. The petitioner and respondent No. 3 had ample opportunity to lead evidence to prove their respective contentions. The enquiry which has been got conducted by the Divisional Canal Officer through the Sub-Divisional Canal Officer for satisfying himself that a watercourse has been demolished can be rebutted. Even otherwise, sufficient safeguard is provided in the statute to rebut the basis of primary satisfaction of the Divisional Canal Officer. This is what has been precisely done by the Divisional Canal Officer in the instant case. In the impugned order, the Divisional Canal Officer observed as under :-

"The enquiry of this application was got conducted through Zileadar, Jaito. The file was sent to "Sub Divisional Canal Officer, Dhapai by Zileadar after enquiring into the matter. The Sub Divisional Canal Officer, Dhapai, sent the file after a spot verification with the recommendation that the watercourse may be reinstated. After having received the file, a notice was issued for 12-3-86 for hearing."

After the service of the notice, the Divisional Canal Officer heard the parties and passed the following order :-

"After serving the notice, the acknowledgement was filed in the file (case) and the following persons came present on 12.3.1986

- 1. Sh. Roop Singh Applicant.*
- 2. Sh. Joginder Singh son Of Bant Singh.*
- 3. Sh. Bant Singh son of Natha Singh.*
- 4. Sh. Karam Singh son of Puran Singh.*

Sh. Roop Singh, etc, at Sr. No. 1, 2, 3 stated that the watercourse which was given to their field has been destroyed by Sh. Karam Singh s/o Sh. Puran Singh, and the same may be restarted., This watercourse was in existence since 20 years. Sr. No. 4 Sh. Karam Singh stated that the watercourse which was told to be fallen was neither destroyed by him nor there was any water course as stated by Sh. Roop Singh etc. The watercourse is far off one Acre from his field.

Decision

The case was perused. and the map was seen. The applicant and the other party were heard in detail and argued. The applicant demanded that the watercourse which was given to his field for irrigation and fallen by Sh. Karam Singh may be started (reinstated). The demand of the applicant has been found correct as per detail below :-

- 1. The Ziledar Jaitu after spot verification (Visit) reported that the watercourse demolished, is sanctioned watercourse given to the field of the applicant.*
- 2. Sub Divisional Officer Dhupai after spot visit on 3.1.1986 reported that the watercourse at A BCD has been demolished. Watercourse ABFG is sanctioned one in warabandi. Watercourse may be restored as recommended by SDO.*

3. *It is established in arguments that the watercourse which is demolished was running one.*

4. *The argument of Sh. Karam Singh is not acceptable that the watercourse was not destroyed by him. The warabandi made under section 68 shows that the watercourse was in existence in running stage.*

Keeping in view the above circumstances and irrigation purpose, the watercourse ABCD demolished by Sh. Karam Singh is restored under Section 30-FF of the Northern India Canal and Drg. Act 8 of 1873 as amended. Decision announced in Canal Rest House Jaitu."

14. *The action taken by respondent No. 2 is strictly in conformity with the mandatory provisions of sub section (2) of section 30-FF of the Act and no fault can be found with it.*

15. *There is yet another aspect of the matter which deserves to be noticed. Para No. 4 of the writ petition reads as under :-*

"That although the petitioner had made arrangements for irrigating his land by entering into an agreement with Mukhtiar Singh for digging up the private watercourse in the manner mentioned above, Respondents No. 3 in connivance with the canal authorities is alleged to have got Warabandi sanctioned showing the above mentioned private watercourse to be extending from points A to D in the year 1974-75"

The corresponding para of the written statement is in the following terms :-

"Not admitted. The Warabandi was sanctioned under Section 68 of the Northern India Canal and Drainage Act 8 of 1873 (As amended) and Nakkas were fixed after hearing the concerned shareholders. As per record there is no wari of Mukhtiar Singh on the disputed watercourse "

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

17. In view of the finding recorded above, the writ petition is dismissed. However, we leave the parties to bear their own costs..."

6.2 At this stage, another contention has been raised by learned counsel for petitioner that the Canal Authorities, prior to directing restoration of the watercourse, did not record any finding as to whether the watercourse in question is sanctioned by law, established by prescription or by way of an agreement, suffice it to say that sufficient evidence is available on record regarding the existence and demolition of the watercourse at the site.

6.3 The warabandi pertaining to the demolished watercourse is also available on record, which further substantiates its existence. It is well settled that the warabandi constitutes the best evidence of the existence of a watercourse. In addition, the previous orders passed by the Canal Authorities regarding the fixation of turns and the change of outlet provide further corroboration of the sanctioned existence and use of the watercourse.

6.4 In my considered view, the mere fact that the Canal Authorities have not specifically recorded whether the watercourse in question is sanctioned by law, established by prescription, or by way of an agreement does not alter the factual position. The record clearly demonstrates that the watercourse has been duly approved and is indeed in existence.

7. Even if the matter was to be remanded to the canal authorities for recording a specific finding regarding the category of the watercourse, that would amount to a mere formality, as the ultimate outcome of the proceedings would remain unchanged, especially when the existence of the demolished watercourse has been conclusively established on record beyond any shadow of doubt.

8. In this regard, reference can be made to the judgment rendered d in ***"M/s Dharampal Satyapal Ltd. v. Deputy Commissioner of Central Excise, Gauhati"***, 2015(6) RCR (Civil) 382, wherein the Hon'ble Apex Court, while deciding the matter, referred to the 'useless formality theory' and observed as under :

"31. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasising that the principles of natural justice cannot be applied in straight-jacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason - perhaps because the evidence against

the individual is thought to be utterly compelling - it is felt that a fair hearing 'would make no difference' - meaning that a hearing would not change the ultimate conclusion reached by the decision-maker - then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in Malloch v. Aberdeen Corporation, (1971) 1 WLR 1578 at 1595, who said that a 'breach of procedure. cannot give (rise to) a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court dos not act in vain'. Relying on these comments, Brandon LJ opined in Cinnamond v. British Airports Authority, (1980) 1 WLR 582 at 593 that 'no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing'. In such situations, fair procedures appear to serve no purpose since 'right' result can be secured without according such treatment to the individual. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the Courts. Even if it is found by the Court that there is a violation of principles of natural justice, the Courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that order passed is always null and void. The validity of the order has to be decided on the touchstone of 'prejudice'. The ultimate test is always

the same, viz., the test of prejudice or the test of fair hearing.

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38. In Escorts Farms Ltd. (Previously known as M/s. Escorts Farms (Ramgarh) Ltd.) v. Commissioner, Kumaon Division, Nainital, U.P. & Ors., (2004) 4 SCC 281, this Court, while reiterating the position that rules of natural justice are to be followed for doing substantial justice, held that, at the same time, it would be of no use if it amounts to completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. It was so explained in the following terms:

"64. Right of hearing to a necessary party is a valuable right. Denial of such right is serious breach of statutory procedure prescribed and violation of rules of natural justice. In these appeals preferred by the holder of lands and some other transferees, we have found that the terms of Government grant did not permit transfers of land without permission of the State as grantor. Remand of cases of a group of transferees who were not heard, would, therefore, be of no legal consequence, more so, when on this legal question all affected parties have got full opportunity of hearing before the High Court and in this appeal before this Court. Rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. In view of the legal position explained by us above, we, therefore, refrain from remanding these cases in exercise of our

discretionary powers under Article 136 of the Constitution of India."

9. In view of the above discussion, I find no compelling reason to interfere with the concurrent findings recorded by the Canal Authorities. It is, therefore, held that the watercourse in question, which has been directed to be restored, is a 'sanctioned watercourse'.

10. The instant civil writ petition is accordingly, dismissed.

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

(HARSH BUNGER)
JUDGE

15.01.2026
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No