



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

LPA No.2818 of 2024 (O&M)
Reserved on: 25.11.2024
Date of Decision: 13.12.2024

Rajinder
...Appellant
Versus
State of Haryana and others
...Respondents

CORAM: *HON'BLE MR. JUSTICE G.S. SANDHAWALIA*
 HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA

Argued by:- Mr. Zorawar Singh Chauhan, Advocate
 for the appellant.

Mr. Ankur Mittal, Addl. A.G., Haryana with
Mr. Saurabh Mago, DAG, Haryana.

Meenakshi I. Mehta, J.

Feeling aggrieved by the judgment handed down by learned Single Judge on 16.09.2024, whereby *Civil Writ Petition (CWP) No.27034 of 2018*, as filed by the appellant-writ petitioner (here-in-after referred to as ‘the appellant’) for seeking the issuance of a writ in the nature of certiorari, quashing the orders Annexures P-6 and P-3 passed by respondents No.3 and 6 on 04.09.2018 and 30.11.2016 respectively, has been dismissed, he (appellant) has chosen to prefer the instant Letters Patent Appeal to lay challenge to the same.

2. Bereft of unnecessary details, the facts, culminating in the filing of the present intra-Court appeal, are that the appellant had filed the above-



referred CWP, while averring that outlet RD 170500-L, Petwar Distributary, had been serving his land as well as the land of respondents No.8 and 9 for irrigation. However, respondents No.4 and 5 planned for the construction of New Ladwa Minor RD 1560-L and the Scheme for the same was published and had been approved accordingly and his (appellant's) land and the land of respondents No.8 and 9 was allocated to the New Ladwa Minor for irrigation but the afore-said respondents moved an application to respondent No.6 for restoration of the dismantled lined watercourse of outlet RD 170500-L on the eastern line of Rectangle No.225 Killa No.14, marked as 'AB' in the site-plan and the above-mentioned application was allowed vide the order Annexure P-3. Then, he (appellant) filed an appeal before respondent No.5 to assail order Annexure P-3 and the same was accepted vide the order dated 22.03.2018 (Annexure P-5). Thereafter, respondents No.8 and 9 moved a revision-petition against order Annexure P-5 and vide order Annexure P-6, respondent No.3 allowed it and set-aside order Annexure P-5 and ordered for the restoration of the watercourse in question on permanent basis.

3. Respondents No.1 to 7 filed their joint written-statement to controvert the averments as set-forth by the appellant in the afore-referred CWP. In their separately filed joint written-statement, respondents No.8 & 9 contested the claim of the appellant by asserting that he (appellant) had illegally dismantled the above-mentioned watercourse which had resulted in cutting the supply of the canal water for irrigation of their land and the afore-said watercourse had been in existence for the last more than 20 years and it fell within the category of permanent "watercourse" as defined in



Section 2(15) of the Haryana Canal and Drainage Act, 1974 (for short 'the Act'). After hearing the counsel for the parties, learned Single Judge has dismissed the above-referred CWP vide the impugned judgment, as already indicated in the opening para of this judgment.

4. We have heard learned counsel for the appellant as well as learned State counsel for respondents No.1 to 7 in the instant appeal, at the preliminary stage and have also gone through the file/record carefully.

5. Learned counsel for the appellant has contended that the watercourse in question had been dug in the land of the appellant as he had volunteered/consented for the same but after the construction of New Ladwa Minor RD 1560-L, the chunk of the land, including the land of the appellant and respondents No.8 & 9, was allocated to this New Minor for irrigation and it being so, the appellant was well within his right to dismantle the watercourse in question but however, respondents No.3 and 6 had failed to consider these facts in the correct perspective and learned Single Judge has also not properly appreciated the matter and therefore, the impugned judgment is not legally sustainable and deserves to be set-aside.

6. Per-contra, learned State counsel for respondents No.1 to 7 has argued that the watercourse in question is a sanctioned and lined one and it had been in existence for more than 20 years before being dismantled and it had been catering to the lands of several other shareholders, besides the appellant and respondents No.8 & 9, for irrigation and hence, the appellant did not have any right to dismantle the same and thus, the impugned orders and the judgment as well, are perfectly legal.



7. Before adverting to the discussion on the merits of the present appeal, we deem it expedient to refer to the definition of “watercourse” as provided under Section 2(15) of the Act, which reads as under: -

“(15) “watercourse” means any channel including all its subsidiary works which is supplied with water from a canal, but not maintained at the cost of the State Government, and is sanctioned under this Act or is in existence under an agreement or by prescription.”

8. Now, coming to the merits of the appeal, it is pertinent to mention here that respondents No.1 to 7 have asserted in Para No.5 (reply on merits) in their joint written-statement that the lined watercourse in question had been running for the last more than 20 (twenty) years before its demolition and it fell within the definition of “watercourse” as provided under Section 2(15) of the Act. Further, in Para No.3 of his affidavit dated 25.10.2023, the Sub Divisional Canal Officer, Deosar Water Services, Sub Division Hisar, has also made specific depositions to the effect that the watercourse in question as well as another watercourse leading to the area of respondents No.8 and 9, were proved to have been dug at the site simultaneously, in the year 1991 and he has further deposed in Para No.5 therein that the area of respondents No.8 and 9 falls in the ‘chak’ (chunk of land) of outlet RD 170500-L Petwar Distributory. The appellant has not been able to produce any material on the file to prove to the contrary.

9. Then, even if the appellant had consented or volunteered for carving out the lined watercourse in question through his land, even then, the fact remains that respondent No.3 has categorically observed in the order Annexure P-6 that the afore-said watercourse ran along the boundary of the



‘*chak*’ (chunk of land) of outlet RD 170500-L with its head reach right upto Square (Rectangle) No.228 Killa Nos. 4 & 5 and the field openings (*Nakkas*) were available on the left bank of this lined watercourse and the shareholders of outlet RD 170500-L could not be deprived of their right to use the above-referred watercourse and moreover, the same, being a lined one and having been continuously running for the last more than 20 years, fell within the category of permanent watercourse under Section 2(15) of the Act and was so restored. It being so, the orders qua the restoration of the watercourse in question cannot be construed to be illegal/unjustified/unreasonable at all.

10. As a sequel to the fore-going discussion and in view of the findings as recorded by learned Single Judge, we are of the considered opinion that there is no cogent and valid reason/ground to interfere with the impugned judgment. Resultantly, the appeal in hand, being *sans* any merit, stands dismissed accordingly.

(G.S. SANDHAWALIA)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

13.12.2024
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Whether speaking/reasoned: Yes
Whether Reportable: No