

CWP No.16049 of 2010

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

**CWP No.16049 of 2010
Date of decision:24.03.2017**

Smt. Raj Kumari ... Petitioner
Vs.

The Superintending Canal Officer, Ferozepur
and others ... Respondents

CWP No.16288 of 2010

Smt. Raj Kumari ... Petitioner
Vs.

The Superintending Canal Officer, Ferozepur
and others ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. K.S.Dadwal, Advocate
for the petitioner.

Mr. Yatinder Sharma, Addl.A.G.Punjab.

Mr. S.P.S.Tinna, Advocate
for respondents No.3 to 5.

AMIT RAWAL J. (Oral)

This order of mine shall dispose of two writ petitions bearing
Nos.16049 and 16288 of 2010.

The grievance of the petitioner in the present writ petitions is
with regard to restoration of water course which has been declined by the
Divisional Canal Officer and upheld by the Superintending Canal Officer.

According to Mr. K.S.Dadwal, Advocate as per the report of Zileadar (Annexure P-2), there is a finding of demolition of water course but yet same has not been restored. In this regard, he has also drawn the attention of this Court to the order dated 14.05.1990 of Tehsildar exercising the power of Assistant Collector Ist Grade, Abohar in partition proceedings of land measuring khasra no.11/1(0-9), 12/1(0-9) of rectangle no.179 and killa no.15/3(0-9) of rectangle no.180 was kept for joint passage, water course, compromise at page 83 and the order passed thereon. He further submits that all these points are part of record and have not been adhered to which were essential and necessary for adjudication of the lis, thus, there is gross illegality and perversity in the orders under challenge.

Per contra, Mr. S.P.S.Tinna, learned counsel appearing on behalf of respondents No.3 to 5 submits that it has been established on record that following three essential ingredients for the purpose of restoration of water course have not been complied with:-

- i) by prescription
- ii) by agreement
- iii) by sanction

In the absence of same, rightly so, the Divisional Canal Officer and as well as the Superintending Canal Officer did not grant the permission for restoration of the water course as the water course on the northern and western side of the land of petitioner is already in existence, in essence, she has source of irrigation from that tuck, thus, the orders under challenge are perfectly legal and justified. He further submits that his clients have no

intention to cause any harassment or inconvenience to the petitioner, in case this Court is of the opinion that the matter requires redetermination and the authority can also provide an alternative water course but not from the land of the answering respondents.

I have heard learned counsel for the parties, appraised the paper book and of the view that the factum of order as indicated in the compromise and being part of the record or not, liberty is granted to the petitioner to place on record the same and the matter requires re-determination as all these factors would be essential and necessary for the purpose of consideration of application for restoration of water course. Equally so, the request of Mr. S.P.S.Tinna, Advocate is also just and fair regarding the provisions of alternative water course from other source, in essence, not from the land of his clients.

Resultantly, the order dated 30.6.2010 of the Superintending Canal Officer is hereby set aside and the matter is remitted back to him for deciding the matter afresh and for arriving at some amicable settlement keeping in view the observations made herein-above preferably within a period of three months from the date of receipt of a certified copy of this order.

Accordingly, the writ petition stands disposed of.

March 24, 2017

savita

Whether Speaking/Reasoned

Whether Reportable

(AMIT RAWAL)

JUDGE

Yes/No

Yes/No