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

CWP No. 14848 of 2015(O&M)

Date of decision : 28.07.2017

Harpal Singh

..... Petitioner

versus

**Superintending Canal Officer
and others**

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr. C.M.Munjal, Advocate
for the petitioner.

Mr.Saurav Khurana, DAG, Punjab.

Mr. S.S.Brar, Advocate
for respondent No.3.

RAKESH KUMAR JAIN, J. (Oral)

CM-10183-2016

This application is filed by respondents No. 1 and 2 to place on record the affidavit of Deputy Collector, Abohar Canal Division, Canal Colony, Abohar, District Fazilka. Application is allowed.

Main case

This petition is filed to challenge the order dated 11.10.2013 passed by the Superintending Canal Officer, Ferozepur by which appeal filed by respondent No. 3 has been accepted and the order dated 11.06.2013 passed by the Divisional Canal Officer has been set aside.

The petitioner has alleged that he along with his father Gurjit

Singh is the owner of the land measuring 60 Kanal 08 Marla situated in

Village Dodewala, Tehsil Abohar, District Fazilka and they are the shareholders of the outlet number 5040TL, Doda Minor. The grievance of the petitioner is that the respondent No. 3 has dismantled the sanctioned water-course at point A-B shown in dark blue colour in the site plan which was in existence for the last many years. The petitioner filed application for restoration of the water-course A-B because he was not getting irrigation to his land. The District Canal Officer, Abohar referred the case to the Sub Divisional Officer, Abohar for seeking his report about the existence of the water-course muchless its demolition at the hands of respondent No. 3. The Sub Divisional Officer, Abohar submitted his report to the District Canal Officer which is available on record as Annexure P-4 in which the following observations were made by him:-

“The spot of this case was inspected by the undersigned on 22.3.2013 in the presence of Jaspal Singh, Chowkidar. On inspection of the spot it was found that the running water-course of the applicants from point A-B of 6-7 karams has been demolished and due to this the irrigation to the land of applicant has stopped. The concerned party was sown wheat crop at the place of demolished watercourse, which has been done afterwards, because as per the spot the wheat sown in 183M/7/1 and sown at the demolished point A-B is high and low and this fact proves the demolition of watercourse. The turn of water of the applicant has been sanctioned on this watercourse under Section 68 and the nakka of taking water at 184M/9-11 and for giving water at 183M/22-24 rasta has been sanctioned”.

The Sub Divisional Officer further opined that on the aforesaid basis he recommended for the restoration of the demolished watercourse at point A-B and under Section 30FF of the Northern India Canal and Drainage Act,

1873. The District Canal Officer decided the application of the petitioner on 11.06.2013 and passed the following order:-

“The case was investigated. The site plan was seen. In the site plan, the watercourse prior to and after the demolished watercourse, is in existence on both the sides. On this watercourse the turn of water of the applicant has been sanctioned under Section 68. The Nakka for taking water of the applicant has been fixed at 184/9-11. The Zildar Illaqua and the Sub Divisional Officer Abohar have also recommended for the restoration of demolished watercourse A-B. From the perusal of all these facts, the demand of the applicant is genuine. There is no other source of irrigation for the land of the applicant except this watercourse. Therefore, the fact of sanctioned Nakka in Warabandi and existence of watercourse prior to and after demolished watercourse A-B at the spot proves that the other party has demolished the watercourse of the applicant and with the demolition of the water course, the applicant was suffered loss of irrigation. Therefore, keeping the interest of irrigation in view, the demolished watercourse A-B is hereby restored at its original place under Section 30-FF of the Northern India Canal & Drainage Act 8 of 1873 Amended 23 of 1965. This order was kept reserved, therefore, information of this decision be given to both the parties”.

The appeal filed by the petitioner before the Superintending Canal Officer was allowed on 11.10.2013. At the time of allowing the appeal the Superintending Canal Officer made the following observations:-

“After perusing the case from all angles, the undersigned has found that the respondents have failed to produce any solid proof regarding the demolition of the watercourse by the appellant.”.

Learned counsel for the petitioner has submitted that there is a report of the Sub Divisional Officer, tendered to the District Canal Officer prepared after spot inspection, finding that the watercourse A-B was in existence and was demolished as a result of which irrigation to the land of the petitioner has stopped.

On the other hand, learned counsel for respondents has submitted that the petitioner had earlier approached this Court by way of CWP No. 28306 of 2013 which was withdrawn by him on 14.05.2015 and, therefore, on the same cause of action he cannot be allowed to file second petition.

I have heard learned counsel for the parties, perused the available record and am of the view that the present appeal deserves to be allowed. Insofar as, the objection of the respondents is concerned, at that time it was argued before this Court that the appeal filed by respondent No. 3 is pending before the Divisional Canal Officer and as a result thereof the petitioner withdrew the petition. Insofar as, the issue as to whether the watercourse has been demolished or not, or the petitioner is not shown in the list of warabandi, is to be reassessed by the Superintending Canal Officer, after hearing the parties again specially with reference to the report of the Sub Divisional Officer who has inspected the spot himself and opined that there was a watercourse A-B on the land in question which has been demolished.

With these observations, the present petition is hereby allowed and the impugned order passed by the Superintending Canal Officer is set aside and the case is remanded back to him to decide the matter again keeping in view the aforesaid observations made by this Court and pass a

well considered and reasoned order.

The parties are directed to appear before the Superintending Canal Officer on 10.08.2017.

(RAKESH KUMAR JAIN)
JUDGE

July 28, 2017
sunita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No