

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.17795 of 2014

Date of Decision: March 03, 2017

Lalit

...Petitioner

Versus

The State of Haryana & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Ramesh Sharma, Advocate,
for the petitioner.

Mr.Sandeep S. Mann, Sr.DAG, Haryana,
for the State.

Mr.S.S.Duhan, Advocate,
for respondent Nos.5 to 8.

AMIT RAWAL, J.

The prayer in the present writ petition is for setting-aside the order dated 26.6.2014 received on 11.7.2014 (Annexure P-12), whereby the Superintending Canal Officer, Hisar dismissed the revision petition, order dated 27.9.2013 (Annexure P-7), whereby the Divisional Canal Officer, Hansi dismissed the appeal, much less the order dated 10.7.2013 (Annexure P-5), whereby the Sub Divisional Canal Officer, Petwar, Water Supply/Services Division, Hansi ordered for restoration of the watercourse, being illegal and erroneous.

Mr.Ramesh Sharma, learned counsel for the petitioner has submitted that the land of the petitioner comprised in killa No.23 had already been encroached on one side, i.e., by way of khal/watercourse AB

and had been made pucca, thus, from the same killa, on the other side, the alleged khal/watercourse AC under the garb of restoration without any compensation is not sustainable in the eyes of law. No permanent watercourse AC was ever constructed, much less no documentary evidence has been placed on record before the authorities below. No draft Scheme under Section 17 of the Haryana Canal and Drainage Act, 1974 (for short “the Act) showing AC as the watercourse has been prepared nor the same was ever published. Under the garb of application under Section 24 of the Act, watercourse AC could not have been created and even in a case of temporary watercourse, no restoration can be ordered for more than one year. In support of his contention, he has relied upon the following judgments to contend that there has to be compliance of the conditions under Section 2(15) of the Act:-

- a) **Amar Singh Versus State of Haryana and others,**
1986 PLJ 507;
- b) **Bawa Singh Versus Sudagar Singh,** 1985 R.R.R. 264;
- c) **Balbir Singh Versus Divisional Canal Officer,** 1983
PLJ 244; and
- d) **Lachhman Singh son of Chanan Singh Versus**
Superintending Canal Officer, Sirhind Canal Circle,
Ludhiana, 2013 (4) R.C.R. (Civil) 1049.

He further submitted that the watercourse either has to be sanctioned through agreement or by prescription. None of the aforementioned conditions has been fulfilled and, thus, the orders under challenge are liable to be set-aside. The impugned orders have been passed without keeping in mind the earlier orders and maps. During the course of

the hearing, he has drawn the attention of this Court to Annexure P-4 site plan to contend that in the year 2002, the watercourse AB had already been carved out and, therefore, the watercourse AC could not have been granted. There was no demolition.

Per contra, Mr.S.S.Duhan, learned counsel for respondent Nos.5 to 8 has submitted that the orders under challenge are perfectly legal and valid and based upon the spot inspection and the statements of the parties, much less report of the Zileadar and, thus, urges this Court for affirming the findings.

I have heard the learned counsel for the parties and appraised the paper book.

Petitioner Lalit, as per the orders of the authorities below, particularly Sub Divisional Officer, which has been affirmed, had suffered a statement before it and understood the statement by stating that he would not open the watercourse AC shown in the map, because he had given watercourse of dark colour 130/23-24 from East to West. He further stated that he will not open the watercourse 130/23-24 which is on the middle dole of East West direction as that watercourse is in his possession. In my view, the authorities did not only rely upon the statement, but also the report of the Zileadar regarding the demolition of watercourse AC No.130/23-24 and its opening was found to be right. All these factors lead to an irresistible conclusion that the watercourse was in existence since 2002, thus, there is compliance of provisions of Section 2(15) of the Act.

The judgments relied upon (supra) by the learned counsel for the petitioner do not come to the help and aid of the petitioner as those are the cases where none of the conditions as provided under Section 2(15) of

the Act was in existence.

Resultantly, no ground for interference is made out. The orders under challenge are upheld.

Writ petition stands dismissed.

March 03, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No