

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

CWP No.23903 of 2014
Date of decision : 01.06.2017

Surjit Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. Sukhdeep Parmar, Advocate for the petitioner.

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

Mr. J.P.S. Sarao, Advocate for respondent No.4.

AMIT RAWAL, J. (Oral)

The petitioner is aggrieved of the impugned orders dated 11.06.2014 (Annexure P-4) of the Divisional Canal Officer and 11.09.2014 (Annexure P-5) of Superintending Canal Officer, whereby on the application of the private respondents for restoration of the water course at point BIJK, the same has been ordered to be restored.

Mr. Sukhdeep Parmar, learned counsel appearing on behalf of petitioner submits that private respondents have not been able to prove on record the existence of water course through three accepted means i.e. by prescription, sanction or through agreement. Wara Bandi of 50 years has erroneously been relied upon which could form basis for restoration of the water course. Even before the SCO, counsel was not given effective

opportunities to represent his case. Parties under Section 67 of the 1873 Act had already gone to the Civil Court. By providing the aforementioned water course, land would be divided as it was/is not a case of demolition. In fact, respondents have not been able to establish the demolition and, therefore, the petition before the authorities was liable to be dismissed. All these factors have not been noticed by the authorities and therefore orders are liable to be set aside.

On the contrary, Mr. J.P.S. Sarao, learned counsel appearing on behalf of respondent No.4 submits that on submission of the application, site was inspected. The Zileadar made the spot inspection and found that water course ordered to be restored, was in existence. Once there was no dispute of wara bandi of 50 years and continues until and unless there is order of eviction, therefore, it would not lie in the mouth of the petitioner to take such issue. Filing of the Civil suit under Section 67 of 1873 Act, enables the parties to seek vindication of his grievance against the State but the dispute in the present petition is amongst the two private parties which necessitated the respondents to move application under consideration.

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

The orders of both the authorities are based upon report of Zileadar who submitted after spot inspection that too in the presence of the parties. No objection had been filed to the report of Zileadar, much less, no material has been placed on record to belie the findings that the water course ordered to be restored was not in existence. It is a case of ego and nothing beyond. Copy of the Civil Court orders shown and relief sought in

the civil suit is for permanent injunction. The appropriate remedy for seeking restoration is under 1873 Act which has been availed by the respondent(s). The orders under challenge, keeping in view of aforesaid observations, do not call for any interference and accordingly, are upheld.

No ground for interference is made out.

The present writ petition, resultantly stands dismissed.

01.06.2017

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No