

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

CWP No.8176 of 2015 (O&M)
Date of decision : 14.03.2017

Rakesh and another

...Petitioners

Versus

Superintending Canal Officer and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. R.N. Lohan, Advocate for the petitioners.

Mr. Sandeep Singh Mann, Sr. DAG, Haryana.

Mr. Ramesh Chahal, Advocate for respondent No.4.

AMIT RAWAL, J. (Oral)

The petitioners are aggrieved of the impugned order dated 10.02.2015 (Annexure P-3) of Superintending Canal Officer, whereby order of the Divisional Canal Officer (Annexure P-2) dated 18.07.2014, has been set aside.

Mr. R.N. Lohan, learned counsel appearing on behalf of petitioners submits that the petitioners applied for restoration of water course AB in its original condition which has been running at the site by Haryana State Minor Irrigation Tubewells Corporation (hereinafter to be referred as HSMITC) for the last more than 30 years but the same has been

demolished by respondent No.4 due to which irrigation of their area has been stopped. Sub Divisional Canal Officer dismissed the application filed under Section 24 of Haryana Canal and Drainage Act, 1974 for restoration of water course, on the ground that it stood dismantled 10 years ago but the order of SDCO was not based on the correct appreciation, much less, was not backed by any spot inspection whereas in appeal before DCO though after inspection of the site found the existence of water course at site and ordered for restoration of the water course. The water course is on the side of the road and, therefore, no grievance could have been caused. The private respondents had taken this order to the SCO-respondent No.1 who on the basis of the surmises and conjectures ordered for restoration of the water Course CDE as indicated in Annexure R-1 which was not in existence and had already been closed way back i.e. when the consolidation was done in the year 1966, thus, impugned order is not sustainable in the eyes of law.

He has also drawn the attention of this Court to para No.9 of the written statement filed on behalf of respondent Nos.1 to 3, which reads as under:-

“9. That contents of para No.9 of the petition are admitted to the extent that water course in dispute was lined by the HSMITC authorities in the year 1980. However, contents of rest of the para are wrong and hence denied. It is submitted that the water course in dispute has not been running at site for the last ten years and therefore, the demand of the petitioner to bring the disputed water course to its original condition was rejected. The petitioners were advised to dig the water course which was left by the Consolidation Department for

doing irrigation to the area thereof. The location of reserved water course has been marked on the khaka plan as water course CDE. The copy of site plan showing the location of disputed water course as well as location of water course reserved by the Consolidation Department is attached herewith as Annexure R-1 for kind perusal of this Hon'ble High Court.”

As per the stand of the private respondents, water course ordered by the DCO is seriously effected them as it would take away the portion of his land without any compensation.

Mr. Sandeep Singh Mann, Sr. DAG, Haryana, on instructions from Mr. Ram Kumar, SDO who is present in the Court, submits that water course ordered to be utilized by the petitioner as CDE and CD is not in existence but only E, thus, urges this Court for dismissal of the writ petition.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is force and merit in the submission of Mr. Lohan, from the perusal of site plan, much less, para No.9 of the written statement, water course was in existence, thus, there is compliance of provision of Section 2(15) of the Haryana Drainage and Canal Act, for, there has to be three conditions:-

1. by Sanction
2. by prescription.
3. by agreement

Since, water course used is in existence, therefore, restoration from A to B is perfectly, legal and justified as order of SDCO was not backed by any inspection. Even SCO has also committed illegality and

perversity in ordering for alternative water course i.e. CDE which according to the statement suffered by SDO is not working, thus, order of SCO is not sustainable in the eyes of law and is hereby set aside and that of DCO is restored.

Writ petition stands allowed, in aforementioned terms.

14.03.2017

pawan

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No