

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

**CWP No.11020 of 2018
Date of Decision:24.09.2018**

Ram Murti

...Petitioner

Versus

Superintending Canal Officer, Bhakhra Water Service Circle, Sirsa
(Haryana) and others

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA

Present: Mr. P.K. Ganga, Advocate
for the petitioner.

G.S. SANDHAWALIA, J. (ORAL)

The present writ petition is directed against the order dated 15/27.11.2017 (Annexure P-4) passed by Superintending Canal Officer, order dated 06.07.2017 (Annexure P-3) passed by Divisional Canal Officer and order dated 09.01.2017 (Annexure P-2) passed by Sub Divisional Canal Officer, Sirsa, whereby restoration of watercourse has been ordered.

A perusal of the order dated 27.11.2017 (Annexure P-4) would go on to show that while dismissing the revision petition of the petitioner it was noticed that the scheme for lining of a katcha watercourse into a *pucca* watercourse had been approved by the Division Canal Officer under Section 18(2) of Haryana Canal & Drainage Act, 1974 (for short, the 'Act') vide order 29.11.2011. At that stage, petitioner, who had been present, did not raise any objection. Vide order dated 26.03.2012 (Annexure P-6) the respondent No.1 had modified the said decision regarding the lining scheme of outlet 50000-L KUSHMBHI MINOR. The said order had never been challenged by the petitioner at

any stage and civil suit was filed on 15.07.2016 for permanent injunction by the petitioner in which private respondents Satbir and Jagat Pal were also arrayed subsequently as defendants.

Respondent No.4 Jagat Pal had filed an application on 16.08.2016 (Annexure P-1) for restoration of the watercourse alleging that Warabandi under Section 68 was fixed in the watercourse and it was a government lined watercourse which had been dismantled on 12.08.2016. After inspecting the spot, the respondent No.3 Sub Divisional Canal Officer came to the conclusion that watercourse fell in the category of permanent watercourse under Section 2 (15) and passed the order for permanent restoration of the watercourse. It was noticed that an FIR was also registered against the petitioner. The petitioner's appeal was dismissed on 06.07.2017 (Annexure P-3) as he did not come forth and it was also noticed that the civil suit had been dismissed on 28.03.2017 and eventually led to the order passed by respondent No.1 on 27.11.2017 (Annexure P-4) which has noticed the above facts also.

The defence of the respondent No.4 before the Civil Court was that vide order dated 26.03.2012 (Annexure P-6) the respondent No.1 had sanctioned the watercourse and it had been made *pacca* and running since then. The watercourse was in the length of 165 feet which has been dismantled and the construction costs was about Rs.70,000/- and thus, the Government had incurred a loss on this account. Resultantly, civil suit was also dismissed as noticed by respondent No.2. In the meantime, the authorities had also directed for restoration and therefore, keeping in view Section 24 of the Act, the civil suit was dismissed. Section 2 (15) of the Act reads as under:

“(15) “watercourse” means any channel including all its subsidiary works which is supplied with water from a canal, but not maintained at the cost of the State Government, and is sanctioned under this Act or is in existence under an agreement or by prescription.”

Keeping in view the above cumulative facts and the fact that the watercourse was sanctioned under Section 18 and the petitioner had never challenged the same and therefore, the dismantling which had taken place and which had been ordered to be restored by the authorities vide order dated 09.01.2017 (Annexure P-2) which has further been upheld, does not suffer from any infirmity which would warrant interference by this Court.

Accordingly, in view of the above the present writ petition is dismissed in limine.

24.09.2018
pvd

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No