

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
124

CWP-3626-2019

Date of decision: 26.02.2019

PAWAN

...PETITIONER

VS.

PARTAP AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. Ajay Vijarania, Advocate,
for the petitioner.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court impugning the orders dated 14.08.2018 and 23.10.2018, Annexures P-2 and P-4 respectively, passed by the Sub-Divisional Canal Officer, Sorakhi, Water Services Division, Sorakhi and Divisional Canal Officer, Bhiwani Water Services Division, Bhiwani, respondents No. 2 and 3 respectively, on the plea that the application, which has been submitted by respondent No. 1, was for restoration of a temporary *khal*. He contends that once it is an admitted fact that the *khal* was temporary one, the same could not have been allowed to be restored. He, therefore, contends that the impugned orders cannot sustain. In support of his contention, counsel for the petitioner has placed reliance upon the judgments passed by this Court in **Jagar Singh vs. Superintending Canal Officer and others**, 1972 PLR 315, **Balbir Singh vs. Divisional Canal Officer**, 1983 PLJ 244 and **Amar Singh vs. State of Haryana and others**, 1986 PLJ 507. He, thus, contends that the impugned orders cannot sustain.

I have considered the submissions made by the learned counsel for the petitioner and with his assistance, have gone through the impugned orders.

A perusal of the order passed by the Divisional Canal Officer, Bhiwani Water Services Division, Bhiwani dated 23.10.2018, whereby the appeal preferred by the petitioner stands dismissed, would show that the *warabandi* was sanctioned on 02.09.1987 by the Deputy Collector, Bhiwani Water Service Division, Bhiwani and since then, the water course ABC, which was sought to be restored, was running at the site. It is apparent that the said water course has been running for more than 30 years and, therefore, with efflux of time and as per the definition of the water course, the same would acquire the status of a permanent water course. The orders, therefore, as passed by the authorities below dated 14.08.2018 and 23.10.2018, Annexures P-2 and P-4 respectively, which have been impugned herein, cannot be said to be in accordance with law.

As regards the judgments, on which reliance has been placed by the counsel for the petitioner, the same would not be applicable to the case in hand as in those cases, the plea, which has been taken and had been accepted, was that the water course was neither sanctioned by law nor was by agreement and even by prescription and merely on the ground of *warabandi* in respect thereof being got fixed cannot be a ground for restoration of the said water course.

Present is a case where as per the definition of the water course, as provided under the Haryana Canal and Drainage Act, 1974, this water course having attained the status of permanent water course, can be therefore, ordered to be restored. The orders, as passed by the authorities

below, therefore, do not call for any interference.

The writ petition being devoid of merit stands dismissed.

February 26, 2019

**(AUGUSTINE GEORGE MASIH)
JUDGE**

pj

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No