

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.123

CWP-4262-2020 (O&M)

Date of decision : 17.2.2020

Gursewak Singh

..... Petitioner

VERSUS

Superintending Canal Officer and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. S.S. Maini, Advocate, for the petitioner.

SUDHIR MITTAL, J. (Oral)

The petitioner challenges the order dated 5.12.2019 passed by the Superintending Canal Officer, whereby, the appeal of respondent No.2 has been allowed.

Respondent No.2 filed an application for restoration of a demolished water-course. Thereupon, an enquiry was conducted and the Zildar submitted a report that an existing water-course has been demolished. However, the Divisional Canal Officer rejected the application for restoration by finding that the land of respondent No.2 had an alternative source of irrigation. He did not find that the report of the Zildar that a running water-course was demolished, was erroneous.

Aggrieved by the order of the Divisional Canal Officer, respondent No.2 filed an appeal, which has been allowed.

Learned counsel for the petitioner has raised two submissions. Firstly, it has been submitted that the land of respondent No.2 has an alternate source of irrigation from the sanctioned water-course and thus, no order of the restoration could have been passed. Secondly, he submits that the water-course alleged to have been demolished, was a temporary water course and its restoration could not have been ordered. He relies upon a

Vs. Superintending Canal Officer, Sirhind Canal Circle, Ludhiana and Others’.

The existence of an alternate source of irrigation is no justification for demolishing a running water-course. Thus, the argument is misconceived. Regarding water-course being temporary in nature, it is observed that this argument pre-supposes that a water-course was in existence, albeit temporary in nature. A temporary water-course is defined in the Northern Indian Canal and Drainage Act, 1873 (for short ‘the Act’) as a water-course which have been in existence continuously for a period of not less than six months. Such a water-course cannot be demolished and its restoration can be sought under Section 30-FF of the Act. Thus, I do not find any error in the order of the Superintending Canal Officer, although, the learned Superintending Canal Officer has not given the proper reasons in support of his order. The judgment in Naib Singh’s case (supra) is not applicable in the facts of this case as in the said case the water-course had been running for less than six months and thus, was not covered within the meaning of ‘temporary water-course’.

Accordingly, the writ petition has no merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

17.2.2020

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No