

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No. 11074 of 2015 (O&M)

Date of Decision: February 20, 2020

Albel Singh

.....Petitioner

versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Harsh Aggarwal, Advocate
for the petitioner

Ms. Samina Dhir, DAG Punjab

Mr. Deepak Gupta, Advocate
for respondent No. 4

Sudhir Mittal, J. (Oral)

The petitioner is aggrieved because his watercourse was demolished by respondent No. 4. An application for restoration thereof was filed by him, upon which report dated 11.11.2008 of the Zileadar was received stating that the water course had infact been demolished. The DCO, however, dismissed his application vide his order dated 17.12.2010. The petitioner went in appeal and the same was allowed by the Superintending Canal Officer by his order dated 17.10.2013. Respondent No. 4 challenged the order of the Superintending Canal Officer by way of a writ petition and the same was allowed vide order dated 22.12.2014. Directions were issued to the Superintending Canal Officer to decide the case afresh after hearing both parties. Post remand, vide order dated 24.03.2015, the Superintending Canal Officer has dismissed the appeal of the petitioner leading to the filing of the present writ petition.

Learned counsel for the petitioner submits that the concerned Zildar has submitted a report that existing watercourse was demolished. This finding has not been upset by any of the authorities below and yet the application has been dismissed. The reason for dismissal is that an alternate source of irrigation is available to the petitioner. This reason can not be sustained in law as existence of an alternative source of irrigation is not an excuse for demolishing the existing watercourse. Thus, the writ petition deserves to be allowed.

Learned counsel for respondent No. 4 submits that from the orders of the authorities below, it is evident that an alternative source of irrigation is available to the petitioner. The application has been filed on account of personal enmity and, thus, the orders of the authorities below are legal and valid.

In my considered opinion, once a finding of fact regarding demolition of a watercourse has been returned, an order of restoration thereof is a necessary consequence. The existence of an alternative water course is not relevant at all and, thus, the authorities below have erred in law.

The writ petition is accordingly, allowed and orders dated 24.03.2015 (Annexure P-9) and 17.12.2010 (Annexure P-6) are set aside. It is directed that the application for restoration filed by the petitioner be decided afresh after granting an opportunity of hearing to the parties within six months from the date of receipt of certified copy of this order.

February 20, 2020

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No