

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.215

CWP-21961-2016 (O&M)
Date of decision : 19.2.2020

Satbir

..... Petitioner

VERSUS

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. H.N. Sahu, Advocate, for the petitioner.

Mr. Manish Dadwal, AAG, Haryana.

Mr. Shalender Mohan, Advocate, for respondents No.4 to 8.

SUDHIR MITTAL, J. (Oral)

An application dated 14.6.2016 was filed by the private respondents for restoration by a demolished water-course. The Sub-Divisional Canal Officer directed restoration for a period of six months vide his order dated 21.6.2016. Appeals were filed by both parties. The appeal filed by the petitioner was dismissed vide order dated 27.9.2016, but the appeal filed by the private respondents was allowed and restoration was ordered, permanently. Thus, the present writ petition has been filed.

Learned counsel for the petitioner has made two-fold submissions. Firstly, the water-course being temporary in nature could not have been ordered to be restored permanently as the maximum period for which a temporary water-course can be restored, is one year according to the proviso to Section 24(2) of the Haryana Canal and Drainage Act, 1974

(hereinafter referred to as 'the Act'). Secondly, it has been submitted that land of the private respondents is being cultivated through a sanctioned water-course and thus, they do not need the demolished water-course for cultivating their land.

Learned counsel for the petitioner however admits that a temporary water-course was in existence.

Learned counsel for the private respondents submits that the writ petition is not maintainable as the alternate remedy of revision under Section 20(3) of the Act, is available. It is further stated that according to the report prepared by the Canal Authority, the water-course was in existence for more than 20 years and thus, it was not a temporary water-course. Consequently, it could have been restored on a permanent basis.

The existence of an alternate water-course is, however, not denied. It is submitted that merely because some other source of irrigation is in existence, it does not entitle a party to demolish a running water-course.

An alternative remedy under Section 20(3) may be provided, however, writ jurisdiction is not barred by existence of an alternate remedy. As a self-imposed practice High Courts refuse to exercise jurisdiction, if there exists an alternative remedy. In this case, the writ petition has been pending since the year 2016 and thus, it would not be just and proper to dismiss it on account of availability of an alternative remedy. Thus, argument of learned counsel for the private respondents regarding the writ petition being not maintainable, is rejected.

A perusal of the order dated 21.6.2016 of the Sub-Divisional Canal Officer shows that a report had been called for from the concerned

been in existence since the year 1980. Thus, as on date of application, the water course had been running for almost 36 years. 'Temporary water-course' is defined by Section 2 (12) of the Act. According to this definition, a water course falls within definition of 'temporary water-course' provided it has been running for a period of not less six months prior to the date of its demolition and is not covered in the definition of 'water course' given in Section 2 (15) of the Act. A water channel comes within definition of 'water course' under Section 2(15) of the Act, if it is (a) sanctioned under this Act, (b) in existence under an agreement or (c) in existence by prescription. There is no evidence on record regarding the water-course being a sanctioned one. However, from the report of the Zildar, it is evident that it has been in existence for around 36 years. Accordingly, conclusion is inescapable that said water-course had been running either under an agreement or by virtue of prescription. In either case, it falls in the definition of 'water-course' given in Section 2 (15) of the Act, and thus, it cannot be classified as a 'temporary water-course' under Section 2(12) of the Act.

By virtue of proviso to Section 24 (2) of the Act, a temporary water-course cannot be directed to be restored for more than one year. Since, the water-course in dispute is not a temporary water-course, it can be ordered to be restored, permanently.

So far as the argument regarding existence of an alternative source of irrigation is concerned, learned counsel for the petitioner has not been able to point out any statutory provision, which debars restoration of a demolished water-course, in case, some other source of irrigation is available. Thus, the argument in this regard is rejected.

For the aforementioned reasons, I do not find any merit in the writ petition and the same is dismissed.

(SUDHIR MITTAL)
JUDGE

19.2.2020
Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No