

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

Sr. No.212

**CWP No.22297 of 2016
DECIDED ON: February 07, 2020**

RAMPHAL AND ANOTHER

..PETITIONERS

VERSUS

**CHIEF CANAL OFFICER, BHAKRA WATER SERVICES,
IRRIGATION AND WR DEPARTMENT, HARYANA AND OTHERS**

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. R.N. Lohan, Advocate,
for the petitioners.

Mr. Manish Dadwal, AAG, Haryana,
for respondents No.1 to 4.

Mr. L.S. Sidhu, Advocate,
for respondents No.5 to 12.

SUDHIR MITTAL, J. (ORAL)

The private respondents moved an application for restoration of a demolished watercourse. The said application was allowed by the Sub-Divisional Canal Officer, Narwana Water Services Sub-Division, Narwana, District Jind by order dated 24.07.2015 (Annexure P-3). Aggrieved, the petitioners filed an appeal before the Divisional Canal Officer but the same was dismissed vide order dated 07.12.2015 (Annexure P-4). Thereafter, the petitioners preferred a revision petition before the Superintending Canal Officer. This revision petition was accepted vide order dated 25.03.2016 (Annexure P-5). On merits, it was found that the order of restoration was

CWP No.22297 of 2016

illegal as there was no watercourse in existence. This order was challenged through an appeal filed by respondents No.5 to 12 and vide order dated 22.09.2016 (Annexure P-6), the appeal was allowed.

2. Learned counsel for the petitioners has submitted that the order dated 22.09.2016 (Annexure P-6) passed by the learned Chief Canal Officer was without jurisdiction as no appeal lies against an order passed by the Superintending Canal Officer. According to sub-section (4) of Section 24 of The Haryana Canal and Drainage Act, 1974 (hereinafter referred to as the Act), an appeal only lies against the order of the Sub-Divisional Canal Officer to the Divisional Canal Officer and the order passed upon such an appeal is final. An appeal lies against the order of the Superintending Canal Officer under sub-section (2) of Section 20 of the Act only in a case pertaining to matters covered under Section 17 of the Act.

3. Learned counsel for respondents No.5 to 12 admits that in a matter of restoration of watercourse, the order of the Divisional Canal Officer in appeal is final in view of the provisions of Section 24(4) of the Act. He, however, submits that Section 20(3) of the Act provides residuary powers to the learned Chief Canal Officer as well as the Superintending Canal Officer to call for the records of any pending or decided case to examine the legality or propriety of any proceedings or any other order made by the subordinate authorities. Thus, the order dated 22.09.2016 (Annexure P-6) passed by the learned Chief Canal Officer cannot be said to be without jurisdiction. It may be treated to have been passed in exercise of revisional jurisdiction.

CWP No.22297 of 2016

4. Sub-section (4) of Section 24 of the Act is reproduced below for ready reference:-

“24. Restoration of demolished or altered etc. watercourses.

(1) xxxxxxx

(2) xxxxxxx

(3) xxxxxxx

(4) Any person aggrieved by the order of the Sub-Divisional Canal Officer, may prefer an appeal within fifteen days of the passing of such order to the Divisional Canal Officer, whose decision on such appeal shall be final.

(5) xxxxxxx”

5. Section 20 of the Act is also reproduced below:-

“20. Appeal and revision:-

(1) An appeal against the decision of the Divisional Canal Officer under sub-section (2) of Section 18 shall lie to the Superintending Canal Officer within thirty days of the publication of the scheme under Section 19.

(2) An appeal shall lie against the decision of the Superintending Canal Officer passed under sub-section (1) in regard to any of the matters covered under clauses (a), (b) and (c) of sub-section (1) of Section 17, to the Chief Canal Officer within thirty days of the date of such decision.

(3) The Chief Canal Officer or the Superintending Canal Officer may suo motu call for the record of any case, pending before or disposed of by any subordinate authority, for the

CWP No.22297 of 2016

purpose of satisfying himself as to the legality or propriety of any proceedings or of any order made therein and may pass such order in relation thereto as he may think fit.

Provided that no such order shall be made without affording the person affected an opportunity of being heard.”

6. From the aforementioned statutory provisions it is evident that Section 24 pertains to restoration of demolished or altered etc. watercourses. In such proceedings, an appeal lies against the order of the Sub-Divisional Canal Officer to the Divisional Canal Officer and the order passed in appeal is final. No further appeal or revision lies. Accordingly, if Section 24 of the Act is read in isolation, even the order dated 25.03.2016 (Annexure P-5) passed by the Superintending Canal Officer was without jurisdiction. However, all provisions of an Act have to be read harmoniously. Section 20 of the Act is a provision pertaining to appeals and revisions. Sub-section (1) thereof, provides that an appeal lies to the Superintending Canal Officer against an order passed by the Divisional Canal Officer upon consideration of objections filed to a public scheme. Sub-section (2) thereof, provides an appeal to the learned Chief Canal Officer against an order of the Superintending Canal Officer. Sub-section (3) gives powers to the Chief Canal Officer and the Superintending Canal Officer to call for the record of any pending or decided case so as to examine the legality or propriety of the proceedings or any order made therein. This provision is residuary in nature as it does not refer to any particular provision in respect of which the revisional power can be exercised.

CWP No.22297 of 2016

7. Thus considered, the order dated 25.03.2016 (Annexure P-5) passed by the Superintending Canal Officer as well as order dated 22.09.2016 (Annexure P-6) passed by the learned Chief Canal Officer cannot be said to be without jurisdiction. It is settled law that a proceeding initiated under a wrong provision of law can be entertained with reference to the correct provision of law. Accordingly, the order dated 22.09.2016 (Annexure P-6) passed by the Chief Canal Officer is deemed to have been passed in exercise of revisional jurisdiction and is not an order passed without jurisdiction.

8. On merits, learned counsel for the petitioners has argued that the order of the Chief Canal Officer is cryptic and non-speaking. It is also contrary to the record. The finding of the learned Chief Canal Officer that the petitioners had agreed that the watercourse was running for the last 50 years is perverse.

9. Learned counsel for the respondents have drawn my attention to the written statement filed on behalf of respondents No.1 to 4. In para 4 thereof, it has specifically been averred that according to the record of the department, a watercourse had been running at site for the last 20 years before its demolition. Site plan (Annexure R-1) has also been referred to wherein the demolished watercourse is reflected by the letters 'AB'. It is further argued that no counter has been filed to this specific averment and thus, the submission of learned counsel for the petitioners is incorrect.

10. A perusal of the site plan (Annexure R-1) clearly shows that a watercourse 'AB' was in existence. There is no rejoinder to the assertion in this regard. Thus, from the record of the department, it is evident that a

CWP No.22297 of 2016

watercourse was in existence. Accordingly, the contention of learned counsel for the petitioners that no watercourse was in existence cannot be accepted.

11. For the aforementioned reasons, the writ petition is dismissed.

February 07, 2020

Ankur

**(SUDHIR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes

Whether Reportable

Yes