

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

**CWP No.15807 of 2021
Date of Decision:31.08.2021**

Dharamveer

....Petitioner

VS

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Ashok Paul Batra, Advocate
for the petitioner

Mr. Sandeep Khunger, Advocate with
Ms. Nitika Jaura, Advocate
for respondent No.4/Caveator

SUDHIR MITTAL, J. (Oral)

The private respondent filed application dated 08.03.2019 for restoration of a demolished watercourse. Vide order dated 28.11.2019, the Divisional Canal Officer has allowed the application and has directed restoration of the watercourse. The appeal of the petitioner has been dismissed vide order dated 16.06.2021 passed by the Superintending Canal Officer.

Learned counsel for the petitioner submits that existence of the watercourse could not be established and the authorities below were in error in relying upon the statements of witnesses. The said witnesses were never subjected to cross-examination and, thus, the finding of existence of watercourse on the basis of their statements is perverse. Site plan (Annexure P-6) annexed by respondent No.4 himself shows that no watercourse was in existence. One Murti Devi was co-owner of Khasra No.217 in which the watercourse was allegedly in existence. She has not been granted any opportunity of hearing and, thus, the impugned order deserves to be set aside.

A perusal of the application dated 08.03.2019 leave no doubt that the said application was for restoration of a demolished watercourse. Based upon this application, spot inspection was conducted by the Sub-Divisional Officer and his report dated 18.07.2019 is Annexure P-8 on the record. The said report states that the existence of the watercourse was established on the basis of statements of co-sharers and Chowkidar even though the revenue record and the record of the warabandi did not establish the existence of a watercourse. Photographs of the *khal* have also been relied upon. The said finding is a finding of fact based upon statements recorded at the time of spot inspection. The finding has been upheld by both the authorities below and is not liable to be interfered with unless the same is shown to be perverse. No perversity has been pointed out. The argument that the witnesses were not subjected to cross-examination is not acceptable as their statements were recorded at the time of spot inspection. It is not the case of the petitioner that he was not present at that time.

Reliance upon the site plan (Annexure P-6) is misplaced as the said site plan shows a watercourse running upto Khasra No.217. Further, if Murti Devi (co-owner of Khasra No.217) has not been heard, she would be aggrieved and would approach this Court. The petitioner is not entitled to hold the brief for her.

In view of the above, the writ petition has no merit and is dismissed.

(SUDHIR MITTAL)
JUDGE

31.08.2021
Poonam Negi

Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No