

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Sr. No.119

Civil Writ Petition No.18905 of 2021
Date of Decision : September 22, 2021

Murti Devi

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Prateek Gupta, Advocate with
Mr. Alankar Narula, Advocate and
Mr. Prashant Puri, Advocate, for the petitioner.

SUDHIR MITTAL, J. (ORAL)

Challenge in this writ petition is to orders dated 16.06.2021 and 28.11.2019 passed by the Superintending Canal Officer and Divisional Canal Officer respectively. The private respondent had filed a petition for restoration of a demolished watercourse which was allowed by the DCO vide order dated 28.11.2019. Appeal against the said order has been rejected vide order dated 16.06.2021.

Learned counsel for the petitioner has submitted that a demolished watercourse can be ordered to be restored in exercise of powers under Section 30-FF of the Northern India Canal and Drainage Act, 1873 (hereinafter referred to as the Act) only if the watercourse is a (i) sanctioned watercourse, (ii) watercourse running by way of agreement or (iii) watercourse established by way of prescription. For this purpose, he places reliance upon *Joginder Singh vs. The Sub Divisional Canal Officer, Ghaggar Water Services Sub Division, Tohana and others, 2003 (2) RCR (Civil) 768*. The concerned watercourse allegedly demolished does not fall

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within either of these classifications and thus, order for restoration was without jurisdiction. It is further submitted on the basis of site plans Annexure P-11 & P-12 that the alleged watercourse ABC shown in the site plan (Annexure P-11) could not have been in existence as the same is at variance with the site plan (Annexure P-12). The revenue record admittedly does not show that the watercourse was in existence. Under the circumstances, the authorities below were in error in concluding that watercourse ABC was in existence and had been demolished.

A perusal of the impugned order shows that the authorities below have determined the existence of the Khal ABC on the basis of spot inspection and statements recorded at site. Learned counsel for the petitioner has not even argued that no statements were recorded or that the finding could not be supported by the statements recorded. Thus, there is no challenge to the finding of fact. An inference is sought to be drawn regarding non-existence of the concerned Khal on the basis of an alleged contradiction between the site plans Annexures P-11 & 12. In fact, there is no contradiction at all. Site plan Annexure P-11 clearly shows that Khal flowing towards the killa line of Khasra Nos. 217-218 flows along the killa line of Khasra Nos.233-231 and 234-230. On reaching the junction with Killa No.217 it moves upwards through Killa No.216 and then onwards to Killa No.212. Annexure P-12 shows a Khal flowing upto the junction of Killa Nos.217, 234 and 230 but doesn't reflect the turn upwards through Killa No.216. That by itself does not lead to the conclusion that site plan Annexure P-11 is erroneous. Under the circumstances and keeping in view the oral evidence on record, it has to be held that Khal ABC was in

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existence. Once it is held so, the necessary corollary is that it was either running by way of prescription or by way of agreement because had it been a sanctioned watercourse it would have definitely found mentioned in the revenue record.

In view of the aforementioned reasons, the arguments raised by learned counsel for the petitioner cannot be accepted. The writ petition is accordingly dismissed.

September 22, 2021

Ankur

**(SUDHIR MITTAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No