

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

CWP-20210-2021

Date of Decision:04.10.2021

Visakha Singh

....Petitioner

VS

Superintending Canal Officer and others

....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Rajinder Singh Rangpuri, Advocate
for the petitioner

SUDHIR MITTAL, J. (Oral)

The petitioner has filed this writ petition challenging orders of the Divisional Canal Officer and the Superintending Canal Officer whereby his application for restoration of a demolished water course has been dismissed and appeal against order has also been dismissed.

Learned counsel for the petitioner submits that the petitioner and the private respondent had joint land which was being irrigated through the water course in question. Private partition took place about 10-15 years earlier and the parties continued to use the said water course for irrigating their respective lands. In the year 2016, the private respondent started attempting to demolish the water course and, accordingly, the petitioner filed a suit for injunction on 01.07.2016. In the said suit proceedings under Order 39 Rule 2A CPC were started wherein the private respondent filed her reply admitting the existence of a water course and that the same had been demolished by the revenue authorities. Thus, the authorities below were in error in rejecting the application for restoration on the ground that the petitioner had failed to prove the existence of a water course. Further, the

revenue authorities had no jurisdiction to demolish a water course. The petitioner is willing to give land in exchange for the water course.

Judgment and decree passed in the suit for injunction is on record as Annexure P-1. Perusal of the same shows that the civil Court has found as a matter of fact that existence of water course could not be proved. Consequently, the suit was dismissed and appeal was also dismissed. The finding of fact returned by the Civil Court has achieved finality and, thus, the petitioner can not argue that a water course was in existence. Offer of land in lieu of a water course also can not be accepted because such an offer can only be made if an application is filed for laying down a water course.

The orders passed by the revenue authorities directing demolition should have been challenged at the relevant time. Having not done so, no grievance can be raised at this stage.

In view of the above, the writ petition has no merit and is dismissed. The petitioner shall, however, be at liberty to apply for a fresh water course.

(SUDHIR MITTAL)
JUDGE

04.10.2021

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Whether speaking/reasoned
Whether Reportable :

Yes/No
Yes/No