

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

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**CWP-23155-2018 (O&M)
Date of Decision: 06.09.2022**

Ramesh and another

...Petitioners.

Versus

Superintending Canal Officer and others

....Respondents.

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. V.D. Sharma, Advocate for the petitioners.

Mr. Rajneesh Chadwal, Assistant Advocate General, Haryana.

Mr. R.N. Lohan, Advocate for respondents No.4 to 6.

Sudhir Mittal, J. (Oral)

Respondents No. 4 to 6 filed an application for restoration of a demolished water course. The application was allowed vide order dated 13.11.2017. Appeal and revision filed against the same have been dismissed. Thus, the present writ petition has been filed.

Learned counsel for the petitioner has made submissions with reference to site plan Annexure P-7. According to him, water course shown in red colour and depicted by letters 'OP' was left at the time of consolidation. However, the same was never put to use as an alternate water course shown in green color and depicted with the letters 'CD' was functional since 1940. The said water course was lined in the year 1987 and was remodelled in the year 2012. Application filed by respondents No. 4 to 6 for closing the said water course and for re-aligning it as water course 'OP'

was dismissed by the competent authority vide order dated 05.01.2012. Appeal there against was also dismissed vide order dated 15.06.2012. Thereafter the private respondents attempted to make the water course 'OP' functional leading to filing of a civil suit for injunction. Decree dated 29.09.2017 (Annexure P-9) was passed in favour of the petitioners but appeal there against is still pending.

In view of the aforementioned facts it has been argued that water course 'OP' did not fall within the definition of term 'water course' as mentioned in Section 2(15) of the Haryana Canal and Drainage Act, 1974 (hereinafter referred to as 'the Act'). It is also evident that the said water course has been in disuse since prior to consolidation and, thus, it can not be termed as temporary water course also. Only 'a water course' or 'a temporary water course' can be ordered to be restored under Section 24 of the Act. Since OP does not fall within description of either terms it could not have been ordered to be restored. Thus, the orders passed by the authorities below deserve to be set aside.

Learned counsel for respondents No.4 to 6 submits that admittedly water course 'OP' was left at the time of consolidation. A perusal of the written statement filed on behalf of respondents No.1 to 3 shows that the said water course was in running condition and in case it is not ordered to be restored, it would deprive the private respondents of irrigation. The site plan Annexure R-4/2 annexed with the written statement is sufficient evidence of the fact that water course 'OP' was in a running condition. Thus, there is no error in the orders passed by the Canal Authorities. In the alternative, it is submitted that in case, it is found that the impugned orders

are not based on sufficient evidence, the matter be remanded for a fresh decision.

Both parties agree that water course 'OP' was left at the time of consolidation. The point of difference is whether the same was running or not. According to the petitioners, it was never made operational, whereas according to the private respondents, it was in running condition prior to its demolition. A perusal of the written statement filed by respondents No.1 to 3 shows that the said water course was allegedly running for the last six years. This averment has been made without referring to any evidence. Apart from this averment, there is no evidence on record which may show that the water course 'OP' was in a running condition. The impugned orders also do not refer to any evidence while returning the finding that water course 'OP' was functional. On the contrary existence of a parallel water course 'CD' is an indicator of non-functionality of the water course 'OP'.

Learned counsel for the private respondents has not denied the fact that the said water course was running in the year 1987 when it was lined. Had the water course 'OP' been in existence and functional at that point of time, logic dictates that the said water course would have been lined being a water course left at the time of consolidation.

In my considered opinion, the above facts are sufficient to conclude that water course 'CD' was in a running condition and in use by the parties concerned and that water course 'OP', although left at the time of consolidation, was in a state of disuse.

Section 2(15) of the Act, defines 'a water course' as one sanctioned under the Act, in existence under an agreement or one by

prescription. Water course 'OP' does not answer any of the above descriptions. A water course left at the time of consolidation cannot be held to be a sanctioned water course. Under Section 24 of the Act, restoration can be ordered of 'a water course' or 'a temporary water course'. The water course 'OP' is not covered by the definition of 'water course'; and it cannot be held to be a temporary water course, as it was not in a running condition. Thus, no order of restoration could have been passed.

Learned counsel for the private respondents has also argued that no other source of irrigation is available and, thus, the impugned orders be upheld.

Assuming that the submission is factually correct, the remedy does not lie in seeking restoration of a demolished water course.

The writ petition is allowed. Impugned orders dated 22.02.2018 passed by respondent No.3; order dated 08.06.2018 passed by respondent No.2 and order dated 24.08.2018 passed by respondent No.1 are quashed.

(SUDHIR MITTAL)
JUDGE

06.09.2022

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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No