

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

SR. No.225

CWP-6913-2017

Date of Decision:19.05.2022

Biyas Chander 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. Rajneesh Chadwal, AAG, Haryana,
for respondents No.1 to 4.

Mr. Ajit Sihag, Advocate
for respondents No.5 to 8.

SUDHIR MITTAL, J. (Oral)

An application was filed by respondents No.5 to 8 for restoration of a demolished watercourse depicted as 'ABC' on site plan (Annexure P-6). Vide order dated 28.11.2013, the Sub Divisional Canal Officer allowed the application and ordered restoration of the demolished watercourse. Aggrieved, the petitioners filed an appeal in the Court of Divisional Canal Officer, which was allowed vide order dated 27.08.2014. Thereafter, respondents No.5 to 8 challenged the appellate order by way of a revision petition filed before the Superintending Canal Officer, which has succeeded. The appellate order has been reversed and the order of the Sub Divisional Canal Officer has been upheld. A further revision was preferred by the petitioners before the Chief Canal Officer but without success.

Learned counsel for the petitioners has argued that there is no evidence on record regarding the existence of watercourse 'ABC', thus, the authorities below were in error in allowing the application for restoration of a demolished watercourse. Further, no finding has been returned regarding the kind of watercourse that was allegedly in existence. In case a watercourse was in existence, it was essential to give a finding regarding its nature and in the absence thereof, order of restoration of a demolished watercourse is not sustainable in law.

Learned counsel for respondents No.5 to 8 supports the orders passed by the Sub Divisional Canal Officer and the Superintending Canal Officer. He submits that spot inspection was conducted by the Zileadar before the decision of the Sub Divisional Canal Officer and the said report found remains of a demolished watercourse. A similar inspection was done by the Sub Divisional Canal Officer on the directions of the Superintending Canal Officer and he also returned a similar finding. The order of the Divisional Canal Officer was illegal as issue regarding existence/non-existence of a watercourse cannot be decided on the basis of record of Warabandi. A finding of fact has been returned on the basis of evidence and the same cannot be interfered with in exercise of writ jurisdiction unless and until it is shown to be perverse. There is no perversity in the finding, thus, the present writ petition is liable to be dismissed.

Learned State counsel submits that the dispute is *inter se* the petitioners and the private respondents and the State has no role to play.

Site plan (Annexure P-6) shows a lined watercourse in existence up-to point 'A'. It also shows the existence of a lined

watercourse between points 'C' and 'D'. In view of the position existing at the spot, reasonable question which comes to mind is, "why did the watercourse end at point 'A' and then start at point 'C' up-to point 'D'. The logical response that one gets is that a watercourse existed between points 'A' and 'C' but the same cannot be found at the spot. Obviously, the conclusion is that it must have been demolished. This conclusion is supported by the report of spot inspections done by the Zileदार as well as the Sub Divisional Canal Officer. The spot inspection reports have not shown to be erroneous in any manner. In fact, no argument has been raised regarding their validity and thus, the finding based thereupon cannot be said to be perverse. No other procedural illegality or irregularity has been pointed out and thus, the instant writ petition has no merit and accordingly, the same is dismissed.

19.05.2022
mks

(SUDHIR MITTAL)
JUDGE

Whether Speaking/Reasoned: YES / NO

Whether Reportable: YES / NO