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

CWP No.25209 of 2014

Date of decision : 27.07.2023

Mangat Ram

..... Petitioner

Versus

Chief Canal Officer Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Onkar Chauhan, Advocate
for the petitioner.

Mr. Rajneesh Chadwal, AAG, Haryana.

Mr. Surjit, Advocate for
Mr. Vikram Singh, Advocate
for respondent No.5.

RAJESH BHARDWAJ, J. (Oral)

Present writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of orders dated 21.10.2014 (Annexure P-5), 05.06.2014 (Annexure P-4), 03.04.2014 (Annexure P-2) and 30.01.2014 (Annexure P-1), passed by respondents No.1 to 4, respectively.

It has been contended by learned counsel for the petitioner that during consolidation, respondent No.5 and other co-sharers had the sanctioned water course from outlet No.34750-R and this water course was being used for irrigation purposes since consolidation. To harass the

petitioner, petition was filed by respondent No.5 for restoration of water course. Respondent No.4 vide his order dated 31.07.2013 had ordered for restoration of water course under Section 24(2) of Haryana Canal and Drainage Act, 1974 (for short 'the 1974 Act') for a period of one year. Aggrieved by order dated 31.07.2013, the petitioner as well as respondent No.5 both filed their separate appeals before respondent No.3. On hearing both the appeals, respondent No.3 passed the order after taking into consideration the water course allotted to respondent No.5 and other co-sharers from Killa No.98//1-2-3-4. Thus, the case was taken up by respondent No.4 and vide order dated 30.01.2014, the petitioner was directed to restore the water course situated along with eastern line of killa No.98//24 on the basis of prescription as defined under Section 2(15) of the 1974 Act. Aggrieved by this, the petitioner filed an appeal before respondent No.3, however, the same was dismissed by Divisional Canal Officer vide his order dated 03.04.2014. The petitioner further challenged the same by way of filing revision before the Superintendent Canal Officer. However, the same was declined by learned Superintendent Canal Officer vide his order dated 05.06.2014. The petitioner further approached respondent No.1 for assailing the order dated 05.06.2014, however, the same was again challenged but declined by Chief Canal Officer vide impugned order dated 21.10.2014.

It has been submitted by learned counsel for the petitioner that the authorities have miserably failed in appreciating the contentions of petitioner simply on the ground that the water course existed as per record

of Khasra Girdawaris. However, it is apparent that this water course never existed as there is no revenue record in support of the contention of respondent and thus, restoration of water channel simply on the basis of the prescription is totally in violation of Section 24 of the 1974 Act. He has submitted that perusal of the statutory provisions of Section 24 of the 1974 Act and Section 15 of the Easement Act, 1882 would show that the right of prescription would arise only if the water course was being used by respondent No.5 and other co-sharers from the eastern side of Killa No.98//24 for a period of more than 20 years before filing of the application on 25.06.2013. He has submitted that revenue record produced by respondent No.5 refers to a period between 77 to 1993 and the khasra girdawaris were also changed without issuing any notice to the petitioner. He has submitted that respondents-authorities have failed to appreciate that water course which was allotted in consolidation from killa No.98//1-2-3-4 was sufficient enough for being used by respondent No.5 and other co-sharers for irrigation. He submits that the impugned orders suffer from patent illegalities and thus, the same be set aside.

Learned counsel for respondent No.5 has vehemently opposed the submissions made by learned counsel for the petitioner. He submits that the existence of water course is duly proved from the revenue record. He submits that the revenue record was appreciated and the site was inspected. He submits that there are specific findings by the Sub Divisional Canal Officer that on the spot inspection, it was found at the spot on eastern line of Killa No.98//24 canal water course had been closed by

petitioner, namely, Mangat Ram. It was further established that water course had been running from last about 50 years and hence, the water course was covered under Section 2(15) of the 1974 Act, and therefore, this water course was ordered to be restored permanently on eastern side of killa No.98//24 vide order dated 30.01.2014. He submits that thereafter petitioner filed the appeal and revision before the higher authorities, and the submissions and record were appreciated at every stage and finding no merits in the submissions of petitioner, the existence of water channel was duly proved from last more than 20 years and hence, there is no illegality in the impugned orders passed by the respondents-authorities.

Learned State counsel has supported the impugned orders passed. He has submitted that both the sides were duly heard by the respondents-authorities. The record was duly perused and the case was decided on merits as in accordance with law. He submits that water course was covered under Section 24(3) of the 1974 Act as it remained in existence by means of prescriptions and thus, the impugned orders suffers from no illegality. Hence, the petition deserves to be dismissed.

After hearing learned counsel for both the parties and perusing the record, it is apparent that respondent No.5-Banarsi Dass filed an application before the Sub Divisional Canal Officer for restoration of water course at the outlet of 34750-R. Notice was issued in the same and both the sides were heard at length. The record was perused and site was also inspected. On the basis of the same, it was found that water course had been running there from the last more than 50 years and thus, case of

both the sides was appreciated at the Appellate and Revisional stage as well and no illegality was found in restoring the water course. It was duly proved from the khasra girdawaris as well as prescription that permanent water course existed. There was a record of warabandi. Water course was found in existence by prescription as per sanctioned warabandi for the year 1970 as verified from the warabandi case. It was evident from the warabandi record that warabandi was approved on 30.08.1993 in which nakka had been provided for this water channel and thus, it proved the existence of water channel from the last more than 20 years.

Thus, from the submissions made by learned counsel for both the parties and the record perused, this Court does not find any perversity in the impugned orders passed by the authorities. There are concurrent findings by all the authorities below and hence, this petition being devoid of any merit, is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

27.07.2023
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No