

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

CWP-2324-2017

Date of decision: 14.09.2023

Wazir Singh and another

... Petitioners

Versus

Superintending Canal Officer and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Jagjeet Beniwal, Advocate for
Mr. Harish Nain, Advocate, for the petitioners.
Ms. Upasana Dhawan, Assistant Advocate General, Haryana.
Mr. Amit Prashar, Advocate, for respondent No.4.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the order dated 20.07.2016 (Annexure P-3) passed by respondent No.2, whereby, the order dated 04.04.2016 (Annexure P-2) passed by respondent No.3 has been set aside and quashing the order dated 28.10.2016 (Annexure P-4) passed by respondent No.1, whereby, the petition challenging the order dated 20.07.2016 has been dismissed and further to restore the dismantled watercourse sanctioned at the time of consolidation of the common line of Rectangle No.14 and 15 as directed by respondent No.3 vide order dated 04.04.2016.

Learned counsel for the petitioners has contended that respondent No.4 filed an application for restoration of the alleged dismantled watercourse at point BCD as shown in the map annexed as Annexure P-1. He has submitted that a parallel watercourse shown in the yellow colour in the map was sanctioned more than 50 years ago by the Consolidation Department for the irrigation of the land of respondent No.4. He has submitted that respondent No.3-Sub Divisional Canal Officer issued notice in the application filed by

respondent No.4 to the petitioners and enquiry was conducted regarding contentions raised by respondent No.4 in respect of dismantling the watercourse. It is submitted that it was found that the watercourse shown in the yellow colour in the map had been reserved by the Consolidation Department on the common line of Rectangle No.14 and 15 which links with the lined watercourse at point 3//25x9//1 and the same could be used at site properly and thus, respondent No.3 dismissed the application vide order dated 04.04.2016 (Annexure P-2). He submits that aggrieved by the same, respondent No.4 filed an appeal before respondent No.2-Divisional Canal Officer. He has submitted that respondent No.2 without appreciating the evidence on record accepted the appeal merely on the basis of conjunctures and surmises and hence, illegally set aside the well reasoned order dated 04.04.2016 passed by respondent No.3 vide impugned order dated 20.07.2016 (Annexure P-3). He further submits that aggrieved by the same, the petitioner assailed the same by way of filing a revision before respondent No.1-Superintending Canal Officer, however, respondent No.1 without appreciating the enquiries conducted and thus ignoring the record of the case, illegally rejected the same vide impugned order dated 28.10.2016 (Annexure P-4). It is submitted that it has been established during the enquiry conducted by the Revenue authorities on the application filed by respondent No.4 that there exists a parallel watercourse shown in yellow colour which had been reserved by the Consolidation Department and there was no merit in the application filed by respondent No.4, hence, the same was rightly dismissed by respondent No.3 vide order dated 04.04.2016, however, respondents No.1 and 2 have failed to appreciate the same and thus, have drawn wrong conclusion in accepting the application filed by respondent No.4. He has submitted that sanctioned watercourse was running from the last

50 years and respondent No.4 by way of filing the application made an attempt to make the *Pucca* watercourse with brick line on the land of the petitioners at Point BCD as shown in the map without acquiring the land of the petitioner. It has been submitted that the watercourse at point ABC was never existed and the same was never sanctioned by the Canal authorities, whereas, the watercourse in yellow colour as shown in the site map was duly sanctioned at the time of consolidation. It is submitted that respondents No.1 and 2 have exceeded their jurisdiction while restoring the temporary watercourse for the unlimited period, thus, the same is violative of Section 24 (2) of the Haryana Canal and Drainage Act, 1974. He has submitted that the impugned orders being against the evidence on record and statutory provisions, deserve to be set aside.

On the other hand, learned State counsel has opposed the submissions made by learned counsel for the petitioner. She has submitted that reply to the petition has been filed by Ram Kumar Nain, Sub Divisional Canal Officer, Narwana Water Services Sub Division, Narwana on behalf of respondents No.1 to 3. She has submitted that as per the revenue record, the watercourse in dispute was lined by the HSMITC and the petitioners had demolished the same illegally due to which irrigation of large area in chak of outlet at RD299110/L Sirsa Branch had been stopped at site and therefore the submissions made by counsel for the petitioners are contrary to the record of the case. She has submitted that the watercourse in dispute was running at site for more than last 20 years, which had been demolished by the petitioners illegally. She submits that the impugned orders suffer from no illegality whatsoever.

Learned counsel for respondent No.4 on the line of State counsel has opposed the submissions made by learned counsel for the petitioners. He has submitted that the sanctioned watercourse existed from the last more than 20 years and the same was illegally demolished by the petitioners and hence, respondents No.1 and 2 have rightly restored the same by reversing the order passed by respondent No.3.

Heard.

After hearing learned counsel for the parties and perusing the record, it is apparent that respondent No.4 filed an application praying for restoration of the watercourse at point BCD as shown in the map, which had been demolished by the petitioners illegally. The application filed by respondent No.4 was declined by respondent No.3 vide order dated 04.04.2016, however, respondent No.4 filed an appeal against the same before respondent No.2. Both the sides were heard and record was perused. The learned Divisional Canal Officer-respondent No.2 perused the Khaka plan and other relevant record for the appreciation of the controversy involved. Despite the notices having been issued to the petitioners, they did not appear before respondent No.2 and it was found from the record that watercourse in dispute was running at site from the last many years and was lined by the HSMITC authorities much earlier. It was found that the disputed watercourse falls within the purview of Section 2(15) of the Haryana Canal and Drainage Act, 1974 and thus, finding opinion of respondent No.3 as illegal, the order dated 04.04.2016 was set aside and appeal filed by respondent No.4 was accepted. In the revision filed by the petitioners again notices were issued, both the sides were heard and the record was re-appreciated. It was again found that the watercourse had been running since more than 20 years and it was sanctioned and lined by HSMITC

authorities, which was later on dismantled by the petitioners. Thus, it is apparent that the impugned orders were passed after inspecting the record and it was found that the watercourse was in existence since the last more than 20 years, which was illegally demolished by the petitioners. Thus, this Court finds no infirmity in the impugned orders passed, resultantly, the petition being devoid of any merit, is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

14.09.2023
sharmila

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No