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

CWP No.1746 of 2024

Date of Decision: 25.01.2024

Baljit Singh and others

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Sandeep Goyat, Advocate
for the petitioners.

RAJESH BHARDWAJ, J. (ORAL)

Petitioners have approached this Court praying for quashing the impugned order dated 07.09.2022 (Annexure P-1) passed by respondent No.4, impugned order dated 22.02.2023 (Annexure P-2) passed by respondent No.3 and impugned order dated 27.12.2023 (Annexure P-3) passed by respondent No.2 by non-appreciating the facts and circumstances of the case and totally misleading of documentary evidence available on the record and also against the settled law of the land.

It has been contended by learned counsel for the petitioners that respondent No.5 filed an application for restoration of the water course running over Murabba No.70, Killa No.3-8 before the learned Sub Divisional Canal Officer, Mamarkhera, Water Services Sub Division,

Sirsa which was allowed vide impugned order dated 07.09.2022. He submits that being aggrieved the petitioners filed an appeal against the impugned order dated 07.09.2022 before the learned Divisional Canal Officer, Sirsa which was dismissed vide impugned order dated 22.02.2023. He submits that again being aggrieved by this order passed by the learned Divisional Canal Officer, Sirsa, the petitioners filed the revision petition before the learned Superintending Canal Officer i.e. respondent No.2 which was also dismissed vide impugned order dated 27.12.2023. It has been submitted by learned counsel for the petitioners that the learned Sub Divisional Canal Officer had wrongly ordered to restore the water course on permanent basis at point PQ, Murabba/Killa No.70//2-3 and 70//12-13 from north to south towards eastern line whereas the prayer of the petitioners was for restoring the water course over the Murabba No.70//3-8. Thus, the petition filed by the respondents was illegally accepted by the learned Sub Divisional Canal Officer vide impugned order dated 07.09.2022. He submits that the Zildar gave his report without inspecting the site and thus, illegally recommended for restoration of the water course. He submits that in the appeal filed by the petitioners before the Divisional Canal Officer, the petitioners were not heard and thus, the impugned order dated 22.02.2023 was passed *ex parte*. It has been submitted that the water course demanded by the respondents runs in the land of the petitioners and hence the same could not have been directed to be restored from the personal land of the petitioners as has been done by the respondents authorities. He submits that the existence of the water course is not substantiated from the

Jamabandi, Aksh Sijra and Khasra Girdawari and thus, once the existence of the water course to be restored is not proved from the revenue record, the impugned orders passed are totally being against the revenue record and are not sustainable in the eyes of law. He submits that name of the respondents was not found mentioned in the Parat Warabandi. He has vehemently contended that the respondents authorities have restored the water course on the basis of warabandi which is not a conclusive proof of existence of the water course. Thus, he submits that all the authorities below have miserably failed to appreciate the evidence on record and the law settled. He submits that the impugned orders being unsustainable in the eyes of law deserve to be set aside.

Heard.

On hearing learned counsel for the petitioners and perusing the record, it is revealed that the application for restoration of the demolished water course was filed by the respondents under Section 24(3) of the Haryana Canal and Drainage Act, 1974 (hereinafter referred to as 'the Act'). On filing of the application, the necessary procedure was followed and notice was issued to be petitioners. Both the sides were heard and report of the investigation; site plan and other relevant record was perused. On perusal of the same, it was found from the site plan that water course from point Rectangle No.70 Killa No.2-3 and rectangle No.70 Killa Nos.12 to 13 was in running condition since 19.09.2000 and through this disputed water course, the irrigation of the area of the respondents remained continued. It was found that the water course was running from last more than 20 years. As per settled law, the water

course which was running from the last 20 years do fall in the category of the permanent course. Thus, the Sub Divisional Canal Officer had accepted the petition filed by the respondents. In the appeal filed before the Divisional Canal Officer, the parties were heard again and the relevant record was re-appreciated. It was found that the Sub Divisional Canal Officer inspected the spot on 06.09.2022 and the water course was found to have been demolished. It was reflected from Parat Warabandi dated 19.07.2000, the turns for the account No.26 to 29 were approved on this water course point PQ. Thus, the existence of the water course at PQ was established since the year 2000. Thus, finding the water course falling in the category of permanent course after this long period of 20 years, the Divisional Canal Officer, Sirsa found no infirmity in the order passed by the Sub Divisional Canal Officer and hence the same was affirmed vide his impugned order dated 22.02.2023. Still aggrieved the revision was preferred before the learned Superintending Canal Officer, Hisar, who again heard both the sides and re-appreciated the record as well. The revenue record along with Parat Warabandi were re-appreciated and it was found that these warabandis was never challenged by the petitioners and hence, finding no merit in the revision filed, the same was dismissed. Thus, it is evident that all the three Revenue Authorities have given a concurrent findings on the matter in issue. The existence of the water course had been duly established which was found to have been dismantled. Thus, there is nothing on the record to substantiate the arguments raised by learned counsel for the petitioners. The impugned orders have been passed by duly providing the

opportunities of being heard to the affected parties and on the basis of the revenue record.

Thus, this Court does not find any infirmity in the concurrent findings arrived at by the authorities below. Hence, the present petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

25.01.2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No