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THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM No.8056-CWP of 2024 in/and
CWP No.7863 of 2024
Date of Decision: 15.05.2024

Sushma Devi

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present:- Mr. Deepak Choudhary, Advocate
for the applicant-petitioner.

Ms. Upasna Dhawan, AAG, Haryana with
Mr. Sanjay Kumar, Zileadar.

Mr. R. N. Lohan, Advocate
for respondents No.5 and 6.

RAJESH BHARDWAJ, J. (ORAL)

On oral request made by learned counsel for the parties, the
main case is taken up on Board today itself for consideration.

CWP No.7863 of 2024 (O&M)

1. Present writ petition has been filed for setting
aside/quashing the orders dated 12.12.2022 (Annexure P-3) passed by
respondent No.4 whereby the application filed by respondent No.5 for
restoration of dismantled water course has been illegally allowed and
order dated 21.03.2023 (Annexure P-4) passed by respondent No.3,



whereby appeal of the petitioner was illegally rejected, order dated 06.07.2023 (Annexure P-5) passed by respondent No.2 and order dated 14.12.2023 (Annexure P-6) whereby respondent No.2 has illegally reviewed its own order dated 06.07.2023 (Annexure P-5).

2. It has been submitted by learned counsel for the petitioner that Brahma Devi wife of Gauri Shankar filed an application dated 29.09.2022 through respondent No.5 for restoration of the dismantled water course over the Muraba/Killa No.428//3/2-4 situated at village Bhattu Kalan, District Fatehabad. He submits that on filing of the application, the Ziledar concerned recommended respondent No.5 for restoration of kacha water course vide his order dated 12.10.2022. He has submitted that respondent No.4 had illegally ordered for restoration of the alleged dismantled water course for a period of six months on northern dole of Muraba/Killa No.428//3/2-4 vide his order dated 12.12.2022. Being aggrieved, the petitioner and respondent No.5 assailed the order dated 12.12.2022 before respondent No.3 by filing their respective appeals. He has submitted that respondent No.3 has illegally accepted the appeal filed by respondent No.5 whereby he modified the order dated 12.12.2022 and ordered for restoration of the water course for one year and appeal filed by the petitioner was illegally dismissed by respondent No.3 vide his order dated 21.03.2023. He has submitted that being aggrieved, both the parties had assailed the order dated 21.03.2023 before respondent No.2 by way of filing their respective revision petitions. He has submitted that respondent No.2 while accepting the



revision petition of respondent No.5 and dismissing the revision petition of the petitioner has ordered for permanently an underground pipeline on permanent basis 3 feet below the ground level at the cost of respondent No.5 vide his order dated 06.07.2023. It has been submitted by learned counsel for the petitioner that respondent No.6 filed an application/appeal under Rule 119 of Haryana Canal & Drainage Act, 1974 (hereinafter referred to as 'the Act') for reviewing/recalling the order dated 06.07.2023 before respondent No.2. He has submitted that respondent No.2 vide order dated 14.12.2023 has reviewed its own order dated 06.07.2023, which is totally illegal and unsustainable in the eyes of law.

3. It has been submitted by learned counsel for the petitioner that the order dated 12.12.2022 and 21.03.2023 being illegal and perverse deserve to be set aside. He has submitted that there is no evidence on record which would prove that the alleged dismantled water course was running for the last about 20 years. Thus he submits that once there was no water course over the land of the petitioner, the same could not have been restored for any period. He submits that the Revisional Authority has travelled beyond the pleadings as there was no prayer/submission regarding the restoration of dismantled water course on permanent basis. He submits that the order dated 14.12.2023 is unsustainable in the eyes of law as respondent No.2 has no authority to review its earlier order dated 06.07.2023. He has submitted that the impugned orders are violative of Rule 119 and Section 65(2)(f) of the Act. He submits that the water course restored does not fall within the provisions of Section 2(15) and



thus, he submits that the alleged dismantled water course never existed. However the same was restored initially for six months thereafter the same was restored permanently in violation of the evidence on record and the statutory provisions. Thus the impugned orders being unsustainable in the eyes of law deserve to be set aside.

4. *Per contra*, learned counsel for respondents No.5 & 6 on the other hand has submitted that the impugned orders suffer from no infirmity. He has submitted that respondent No.5 has no other source of water and on examining the case, the learned Superintending Canal Officer i.e. respondent No.2 had directed the underground pipeline to be embedded at 3 feet below ground and of appropriate size at the cost of beneficiary. He thus submits that no prejudice has been caused to the petitioner.

5. Learned State counsel has opposed the submissions made by learned counsel for the petitioner and has submitted that the impugned orders have been passed in due process of law and there being no illegality in the same, the present petition deserves to be dismissed.

6. Mr. Sanjay Kumar, Ziledar is present in person in Court today. He has assisted the Court that the water course is a sanctioned water course and respondent No.5 has no other water course except the water course restored. He submits that if the water course is not restored then respondent No.5 would be left with no source of water. Thus it is submitted that there is no illegality in the impugned orders.



7. This Court has heard learned counsel for the parties and officer concerned and perused the record with their able assistance. It has been found that on filing the application by respondent No.5, the dismantled water course was inspected on 26.11.2022. As per warabandi dated 22.11.2021, the water course was found to have been sanctioned. The water course was found to have been running since long and thus it was restored on northern dole of Muraba/Killa No.428//3/2-4 for six months by the Sub Divisional Canal Officer vide his order dated 12.12.2022. This was assailed by the petitioner before the Divisional Canal Officer, who after hearing both the sides and perusing the record, modified the order passed by the Sub Divisional Canal Officer by restoring it for one year. It was found that the water course in question falls in the ambit of sanctioned water course and thus, it was proved that the sanctioned water course A-B was demolished by the petitioner and irrigation of the holding of respondent No.5 was stopped. Thus the water course was restored on permanent basis but by embedding the underground pipes.

8. Learned counsel for the petitioner has failed to point out any prejudice caused to him by laying down the underground pipes by the respondents. The Zildar concerned, who is present in person in Court, has apprised the Court that respondent No.5 has no other source of water except the present water course. He submits that the pipes would be embedded in accordance with law.



9. On considering the over all facts and circumstances of the case, this Court does not find any infirmity in the impugned orders passed and thus the present petition being devoid of any merit is hereby dismissed. In view of the fact that the main case itself has been decided, the pending application, if any, also stands disposed of.

(RAJESH BHARDWAJ)
JUDGE

15.05.2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No