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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH****CWP-14576-2017**

Reserved on: 30.04.2024

Pronounced on : 10.05.2024

Rakesh Godara

..... Petitioner

Versus

Chief Canal Officer and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. S.S.Sahu, Advocate, for the petitioner.

Mr. Rajneesh Chadwal, Assistant Advocate General, Haryana.

Mr. J.S.Thind, Advocate and

Mr. Bikramjit Singh, Advocate, for
respondent No.6.**Rajesh Bhardwaj, J.**

1. Prayer in the present petition is for quashing the order dated 04.05.2017 (Annexure P-11) passed by SCO, order dated 20.02.2017 (Annexure-10) passed by DCO and also order dated 8.11.2016 (Annexure P-9) passed by respondent No. 4 being illegal, unjust, contrary to the provisions of law vide which the application moved by the private respondents to restore the water course after three years has been allowed without assigning any findings to the effect that as to whether the alleged water course falls in one of three types of categories of water course i.e. (a) sanctioned by law (b) sanctioned by agreement between the parties and (c) which has been prescribed by way of easement and no finding has also been given whether it is a temporary one or otherwise. Therefore, a non-speaking order has been passed without application of mind and the findings assigned by the canal authorities is contrary to the earlier findings of DCO assigned while deciding this case vide order dated 18.05.2010 (Annexure P-5) and



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the same was upheld by the Hon'ble High court in CWP No. 3062 of 2011 decided on 14.08.2012 (Annexure P-6). The issue involved in this case has already been decided by the Hon'ble Division Bench in case of Joginder Singh Vs Sub-divisional Canal Officer, Ghaggar, Sub-division Water Services, Tohana and others reported as 2003 Vol. 2 R.C.R (Civil) and in case of Jagar Singh Vs Superintendent Canal Officer and others 1972 PLJ 147" wherein the Hon'ble Division Bench has specifically held that the Canal Authorities have no jurisdiction to restore the water course beyond the aforementioned three types category of water courses. Thus, the impugned orders being illegal, null and void and against the provisions of law as contemplated under the relevant law are liable to be set aside.

2. It has been contended by learned counsel for the petitioner that private respondents filed an application for permanent restoration of watercourse through Rec. No.176/8-13. He submits that in the land of the petitioner as well that of private respondents, there is already a running watercourse from Killa No.162/1, 2 and this is running and sanctioned watercourse since long which is clear from the site plan annexed with the petition. However, private respondents filed an application by concealing this fact. He submits that the application filed by the private respondents was allowed by Sub Divisional Canal Officer by invoking Section 24 of the Haryana Canal and Drainage Act, 1974 (for short, 'the Act') vide order dated 10.07.2009 while restoring the watercourse for a period of one year. He submits that the order dated 10.07.2009 was assailed by the petitioner before the Divisional Canal Officer, who vide order dated 07.12.2009 remanded the case to learned Sub Divisional Canal Officer for decision



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afresh and thereafter, again the Sub Divisional Canal Officer without appreciating the evidence on record, restored the watercourse for a period of one year vide his order dated 11.02.2010, however, the claim of the private respondents for restoration of watercourse permanently was rejected. It is submitted that two appeals were filed against order dated 11.02.2010, one by the petitioner against the temporary restoration of watercourse and other appeal was filed by the private respondents for restoration of watercourse on permanent basis. He submits that both the appeals filed by the private respondents as well as by the petitioner were rejected by learned Divisional Canal Officer vide order dated 18.05.2010 observing that the demand raised by the private respondents was not genuine, as no authentic proof was given showing the existence of the watercourse for twenty years. He submits that aggrieved by the same, the petitioner filed CWP-11296-2010 and private respondents filed CWP-3062-2011 before this Court, the writ petition filed by the petitioner was dismissed as infructuous, whereas, writ petition filed by the private respondents was disposed of with liberty to file fresh application before the Canal authorities for restoring the watercourse permanently vide order dated 14.08.2012. It is further submitted that thereafter again, the private respondents filed second application before the Sub Divisional Canal Officer praying for restoration of watercourse permanently and learned Sub Divisional Canal Officer without considering the fact that the second application qua the same watercourse is not maintainable, ordered for restoration of the watercourse on permanent basis vide order dated 09.09.2015. He further submits that thereafter, learned Divisional Canal Officer in the appeal filed by the petitioner upheld the



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same vide order dated 15.12.2015. He has submitted that the petitioner approached the Superintending Canal Officer and the matter was remanded to Sub Divisional Canal Officer, who vide impugned order dated 08.11.2016 restored the watercourse permanently. It is submitted that aggrieved by the same, the petitioner filed an appeal against the same before the Divisional Canal Officer, who without taking into consideration the facts on record, dismissed the same vide his order dated 20.02.2017. He submits that still aggrieved by the same, the petitioner filed a revision petition before learned Superintending Canal Officer on the grounds taken herein, however, learned Superintending Canal Officer as well, has miserably failed to appreciate the evidence on record and the law settled and thus, illegally dismissed the same vide his order dated 04.05.2017. It is submitted that all the three authorities have illegally accepted the prayer made by the private respondents. He submits that on the appreciation of the record, it could not be proved that the watercourse restored was a permanent watercourse. He further submits that all the authorities have restored the watercourse only on the finding that it was a lined watercourse, which is unsustainable in the eyes of law. He submits that as per the statutory provisions, the proper course for the restoration of the watercourse was to adopt the prescribed procedure under Section 17 of the Act for which the scheme was to be sanctioned and thereafter, was to be published under Section 18 of the Act. However, no such procedure was adopted. He has submitted that earlier the watercourse was restored for one year by the Sub Divisional Canal Officer, whereas, claim of the private respondents for restoring the same on permanent basis was declined, which was also



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rejected by learned Divisional Canal Officer. He submits that the said claim was also rejected by this Court vide order dated 14.08.2012 and thereafter, the private respondents filed another application for restoration of the watercourse, and this time the authorities have changed their earlier view and thus, illegally restored the watercourse on permanent basis, which is unsustainable in the eyes of law. It is submitted that respondent-authorities have not conducted any spot inspection and proper opportunity of hearing was not given to the petitioner and the orders have been passed in a mechanical manner, which are totally cryptic and arbitrary and thus, the same deserve to be set aside.

3. Per contra, learned counsel for respondent No.6 has vehemently opposed the submissions made by counsel for the petitioner. He has submitted that the petitioner had demolished the watercourse and part of the same is still in existence. He has submitted that the petitioner after demolishing the watercourse had taken away the bricks of the watercourse as well. It is submitted that the watercourse falls well within the definition of a sanctioned watercourse as defined in Section 2(15) of the Act. He has submitted that the contention of the petitioner regarding watercourse in Killa No.162/1, 2 is factually incorrect as there is no watercourse in this Killa number and it does not touch the land of the petitioner. He has submitted that respondent-authorities had wrongly restored the lined watercourse only for one year, whereas, the same was to be restored permanently. He submits that it is because of the same, this Hon'ble Court had granted liberty to the private respondents to file fresh application for restoration of the watercourse on permanent basis and hence, after filing the



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fresh application, the spot was inspected, *warabandi* and *nehri girdawari* were also perused and finding the application filed by the private respondents to be genuine, the watercourse was rightly restored on permanent basis. He has submitted that demolished watercourse was a part of the lined watercourse and watercourse at AB is lined watercourse prior to the part of the watercourse demolished i.e. BC. He submits that on the perusal of the site plan, it is evident that after the demolished part of BC of the lined watercourse, the watercourse CD also goes upto the land of the other co-sharers. He submits that the existence of the watercourse was duly established from the record and thus, the same was rightly restored on permanent basis as the same was examined under the lined watercourse as per Section 2(15) of the Act. It is further submitted that there being no infirmity in the impugned orders, the same deserve to be upheld by dismissing the present petition.

4. Heard.

5. The Court has heard learned counsel for the parties and perused the record with their able assistance. It is evident that the private respondent had filed earlier application where the disputed watercourse was restored for just one year and this decision was upheld by the Divisional Canal Officer vide his order dated 18.05.2010 and thereafter, both the parties approached this Court by way of filing of two writ petitions i.e. CWP-11296-2010 filed by the petitioner and CWP-3062-2011 filed by the private respondents. The writ petition filed by the petitioner was rendered infructuous and that of private respondents was disposed of by granting them liberty to file fresh application for restoration of watercourse on permanent basis. Resultantly,



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the private respondents filed fresh application for the restoration of the watercourse on permanent basis. The case was investigated and statements of the relevant party/co-sharers were recorded and the site was inspected. On the appreciation of the overall facts and record, it was found that watercourse used to run in the alignment ABCD and part BC of the same as depicted in the same had been found to be demolished by the petitioner in the year 2009 and thus, demolished part BC was found to be permanent watercourse. Thus, the same was restored by the Sub Divisional Canal Officer vide his order dated 08.11.2016. In the appeal filed before learned Divisional Canal Officer, parties were again heard and record was re-appreciated. The existence of the watercourse was duly established since long from the record produced. The watercourse was found to be covered under the definition of Section 2 (15) of the Act and thus, finding no merit in the appeal filed by the petitioner, the same was dismissed. It was further assailed before the Superintending Canal Officer, who after hearing both the parties and perusing the record found that though the watercourse was lined during 2000-01 but was running since 1979. From the report received from the Sub Divisional Canal Officer, it was found that lining for this watercourse under Section 18 (2) of the Act was ordered on 25.08.2015. Thus, there being no *iota* of doubt regarding the existence of the watercourse as lined watercourse since long, thus there is no infirmity in the impugned orders passed by the Sub Divisional Canal Officer, Divisional Canal Officer and Superintending Canal Officer. There is no gainsaying that there are concurrent findings by the authorities below in favour of the private respondents. A Co-ordinate Bench of this Court in **Satinder Pal**



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Singh Vs. State of Punjab and others, 2009 SCC OnLine P&H 11188

has held that *the findings of the authorities below cannot be interfered unless perverse, it is settled law that this Court while exercising the jurisdiction under Article 226 cannot sit as a Court of appeal over the findings recorded by the authorities below. Both the Courts below have recorded their detailed findings.*

On the appreciation of the facts and circumstances of the case on the anvil of law, this Court finds no patent illegality in the impugned orders passed and thus, the present petition being devoid of any merit is hereby dismissed.

10.05.2024

sharmila

Whether Speaking/Reasoned
Whether Reportable**(RAJESH BHARDWAJ)
JUDGE**: Yes/No
: Yes/No