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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA-337-2018 (O&M)

Date of Decision: 29th July, 2025

DEVI LAL

.....Appellant(s)

V/s.

STATE OF HARYANA AND OTHERS

.....Respondent(s)

CORAM: **HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA**
 HON'BLE MR. JUSTICE KULDEEP TIWARI

Present Mr. Ajit Sihag, Advocate for the appellant.

Mr. Saurabh Mohunta, DAG, Haryana.

Mr. Ashok Kumar Verma, Advocate for respondent No.5.

ASHWANI KUMAR MISHRA, J. (Oral)

1. This is an intra Court Appeal against the judgment dated 19.12.2017 passed by the learned Single Bench vide which the Writ Petition filed by the appellant i.e. CWP No.28005 of 2017 has been dismissed.

2. Learned Single Judge by the impugned order, has refused to interfere with the revisional order passed by the authority under the Haryana Canal & Drainage Act, 1974 (hereinafter referred to as “the Act”). It has been observed that so long as compensation is not deposited by the petitioner/appellant under Section 17 of the Act, the prayer of appellant for construction of canal cannot be considered.

3. In order to appreciate the controversy in the matter, certain facts are required to be noticed.

4. The appellant is a recorded tenure holder and has his agricultural fields in Village Dhukra, Tehsil and District Sirsa, Haryana. He moved an application before the authorities under Section 24 of the Act stating that the existing water course has been demolished by the

respondents. This application of the appellant was considered by the Sub Divisional Canal Officer, Baruwali Water Services Sub Division, Sirsa and his prayer was allowed by the competent authority vide order dated 23.08.2013. An appeal was preferred by the respondent No.5-Mohar Singh which was rejected. Revision filed in the matter also met the same fate. These three orders were challenged by respondent No.5-Mohar Singh in a Writ Petition filed before this Court i.e. CWP-4624-2014. The Writ Petition aforesaid has been allowed by the learned Single Judge of this Court on 27.01.2015 with the following observations:-

“Limited plea of the petitioner is that in case water course in question has to be restored, adequate compensation is required to be paid to petitioner under Section 17 of the Haryana Canal and Drainage Act, 1974. However, this issue has not at all been considered by the authority. According to him, the order needs to be set aside and matter be remitted to the same authority for a decision afresh.

Prayer is not opposed by learned counsel representing private respondents. In view of the above, orders, Annexure P-6 to P-8 are hereby set aside and matter is remitted to the Divisional Canal Officer, Nehrana-respondent No.2, for decision afresh after hearing the parties.

Allowed in these terms.”

5. Before proceeding further, it would be necessary to refer to provisions of the Sub Sections (1) and (2) of Section 24 of the Act, invoked by the appellant, which reads as under:-

“24. Restoration of demolished or altered etc. watercourses. -

(1) If a person demolishes, alters, enlarges or obstructs a watercourse or a temporary watercourse or causes any damage thereto, any person affected thereby may apply to the Sub-

Divisional Canal Officer for directing the restoration of the same to its original condition.

(2) On receiving an application under sub-section (1) the Sub Divisional Canal Officer may, after making such enquiry as he may deem fit, require, by a notice in writing served on the person found to be responsible for so demolishing, altering , enlarging, obstructing or causing damage, to restore, at his own cost, the watercourse or temporary watercourse to its original condition within such period not exceeding twenty-one days, as may be specified in the notice : Provided that in case of a temporary watercourse its restoration shall not be for a period exceeding one year.”

6. As against the restoration of demolished or altered water course, the provision under Section 17 of the Act deals with the case where a fresh water course is to be made. Section 17 of the Act talks of preparation of draft scheme as per which, where any fresh water course is to be laid, the person who loses his land, on account of construction of new water course, has to be compensated.

7. In the facts of the case, it is apparent that the claim of appellant before the authorities was under Section 24 of the Act which was with regard to restoration of demolished water course. The authorities had come to the conclusion that there existed a water course which had been demolished. This finding was returned by all the three authorities. The only ground on which this order was set aside was that the claim of the respondent No.5-Mohar Singh for compensation under Section 17 of the Act, had not been accorded consideration.

8. The question as to whether it was a case of restoration of demolished water course or laying of a fresh water course was not accorded

consideration. The order of the writ Court in the previous round of litigation was merely intended to require the authorities to examine this aspect. The order of the learned Single Judge in the previous round of litigation, cannot be treated as adjudication on the question with regard to applicability of Section 17 of Act on the premise that a fresh water course was to be laid.

9. After the order was passed by the learned Single Bench on the previous occasion, the matter was remitted to the authorities.

10. The authority under Section 24 of the Act examined the claim and reiterated the previous order passed by it. For coming to such a conclusion, the authority inspected the spot and returned a categorical finding that a water course was in existence for the last 26 years before it got demolished. The consideration and order passed by the first authority reads as under:-

“Decision:- Statement of both the parties were recorded and case has been examined. On 06.05.2015, undersigned had inspected the spot. And at spot as shown in the site plan, watercourse has been found dismantled at point B to C and watercourse found present at spot from point A to B and from C to D. It appears that there is possibility of existence of watercourse from B to C, which is found dismantled. Record of Warabandi for year 1987, 1988, 1996, 2007 and 2011 were examined so that it could be found that how old that watercourse and since when it is running. Because, there is no change in the Bharai or Jharai of this nake has been found on this watercourse. From where it appears that this watercourse is running for the last 28 years. Dismantled watercourse already falls under the definition of permanent watercourse of Haryana Canal & Drainage Act, 29 of 1974, therefore, its demolition is illegal.

On the spot at eastern end of Killa No.2 of Murabba No.85 one room has been found constructed, from checking it appears that it is not older than 3-4 years and applicant is trying to mislead the department. From the circumstances found at spot, it appears that hindrance of room is not appropriate and for the purpose of irrigation of respondent land restoration of BC watercourse is necessary.

From the facts given above it clears that watercourse BC is running for 26 years before its demolition. Therefore, this water course falls under permanent watercourse under Haryana Canal & Drainage Act, 29 of 197. Therefore, this watercourse be restored permanent. Decision be intimated.”

11. An appeal was preferred by respondent No.5-Mohar Singh in the matter which also came to be rejected. The appellate authority also inspected the spot on 29.09.2015, and returned a categorical finding of facts with regard to existence of a water course for the last more than 20 years. The observations and findings of the appellate authority reads as under:-

“The record available in the case file examined. The site was inspected on 29-09-2015. During inspection at site the water course found existing downstream to demolished water course at this alignment nishans of dismantled water course was observed as depression. So certain by the water course was in existence before its demolition. At site the obstruction in the shop of 2 nos small temporary rooms at point A and B were also found, which reflects that the appellant wants to mislead the Department. To assess the duration of running water course the warabandi for the year 1987, 1988, 1994, 1996, 2007, 2011 examined from these warabandi there is no any change in bharai-jhaiai and taking delivering nakka points of canal water.

In view of above circumstances, it is clear that the alleged water course was in existence before its demolition and as per record & site condition it was in existence for the more than last

20 years. So it comes under the definition of permanent water course. The SCO has rightly decided to restore the water course permanently keeping in view all above factual position explained. The appeal of the Mohar Singh appellant is illegal without any facts misleading and is hereby dismissed and decision of SDCO dated 29-05-2015 is upheld Decision be conveyed.”

12. It is thereafter that the two orders, aforesaid, were reversed by the revisional authority on 30.05.2016. The reasonings contained in the order of the revisional authority are reproduced hereinafter

“The record was called to see the illegality and impropriety J/s 20(3) of the Canal Act. After careful consideration of the arguments put forth by the learned counsel of both the parties, going through the case file order of both the lower courts as well as orders of the Hon'ble Punjab & Haryana High Court Chandigarh given in CWP No. 4624 of 2014.

From perusal of orders of the Hon'ble Punjab & Haryana High Court given on this issue in CWP No. 4624 of 2014 titled as Mohar Singh S/o Surja Ram Versus Sub Divisional Canal Officer, Baruwali Sub Division, Sirsa and other is crystal clear as the learned counsel of Sh. Devi Lal S/o Bagrawat has also not opposed the issue of compensation. Thus the decision of the Divisional Canal Officer, Nehrana W/S Division, Sirsa is not according to order of Hon'ble High Court.

Under the circumstances, the case is remanded to Divisional Canal Officer, Nehrana W/S Division, Sirsa to take up the matter as per directions of the Hon'ble Punjab & Haryana High Court given in CWP No. 4624 of 2014. The revision petition is disposed off accordingly. Decision be conveyed.”

13. It is this order of the revisional authority which has been affirmed with the dismissal of the Writ Petition by the learned Single Judge.

14. Learned counsel for the appellant contends that the learned Single Bench has failed to examine the grievance of the appellant in correct perspective inasmuch as the basic issue with regard to restoration of demolished water course has been lost sight of by the revisional authority as well as by the learned Single Judge, and the concurrent findings by the authorities on facts, has been omitted from consideration.

15. Learned counsel for the respondent No.5-Mohar Singh, on the other hand, contends that the water course available was adjoining the plot of the appellant, and such land was transferred by him. It is submitted that in the previous round of litigation, the challenge to the previous orders was not pressed, as the necessity of a water course was realized and therefore, respondent No.5-Mohar Singh had confined his case to a direction for payment of compensation. Learned counsel for the respondent No.5-Mohar Singh, therefore, submits that the order passed by the learned Single Judge, refusing to interfere with the order of the revisional authority, merits no consideration.

16. We have heard Mr. Ajit Singh, learned counsel for the appellant, Mr. Ashok Kumar Verma, counsel for respondent No.5 and perused the material available on record.

17. We have already noticed that the proceedings herein were initiated on an application filed by the appellant for restoration of water course. Such application was clearly referable to Section 24 of the Act. The concurrent finding by the authorities with regard to the existence of a water course for the last more than 20 years, and its demolition by respondent

No.5-Mohar Singh has not been reversed. Pursuant to the remand order passed on the previous occasion, the first two authorities have inspected the spot and returned a categorical finding that a water course did exist as was alleged by the appellant. This finding has not been reversed by anyone. The revisional authority has however interfered with the orders of the first authority and the appellate authority on the premise that the claim of respondent No.5-Mohar Singh for compensation was accepted by the appellant and therefore the direction of the revisional authority is correct. This finding of the revisional authority is absolutely perverse and contrary to the admitted material available on record.

18. The two authorities have returned a categorical finding regarding existence of a water course for the last more than 20 years. The claim of the appellant for restoration of water course had been allowed by the fact finding authorities. Without upsetting such finding, it was not open for the authorities to presume it to be a case of erection of a new water course. Unless, it was a case of construction of a new water course, no compensation was required to have been paid by the appellant. The revisional authority, therefore, misconstrued the previous order of the writ Court whereby the proceedings were remitted back for fresh consideration. Pursuant to the remand also, no finding has been returned that it was a case of laying of fresh water course. The revisional authority presumed it to be a case of construction of a new water course merely on the strength of observations made by this Court in the previous round of litigation.

19. We have carefully perused the previous order of the learned Single Bench dated 27.01.2015 reproduced above, which does not hold that the claim of respondent No.5-Mohar Singh for construction of a fresh canal was accepted. The writ Court had merely directed this aspect of the matter to be considered. Unless a finding on fact was returned that this was not a case of restoration of demolished water course, and was rather a case of laying a fresh water course, no question arose for payment of any compensation by the appellant. Revisional authority as also the learned Single Judge have failed to examine the issue in correct perspective and their orders, accordingly could not be sustained.

20. In that view of the matter, this appeal succeeds and is allowed. Judgment and order passed by the learned Single Judge is set aside. The order passed by the revisional authority dated 30.05.2016 is quashed. The order dated 23.08.2013 passed by the fact finding authority, as affirmed in appeal restoring the demolished water course, is restored. The consequential order dated 03.10.2016 is also quashed.

21. All pending applications in this case are disposed of accordingly.

[ASHWANI KUMAR MISHRA]
JUDGE

[KULDEEP TIWARI]
JUDGE

July 29, 2025
Ess Kay

<i>Whether speaking / reasoned</i>	:	<i>Yes</i>	/	<i>No</i>
<i>Whether Reportable</i>	:	<i>Yes</i>	/	<i>No</i>