
(2017) 01 P&H CK 0123
In the Punjab And Haryana At Chandigarh
Case No : CWP No.302 of 2017

Mohan Lal

APPELLANT

Vs

Superintending Canal Officer

RESPONDENT

Date of Decision : 12-01-2017

Acts Referred:

Haryana Canal and Drainage Act, 1974 — Section 20(3)

Citation : (2017) 1 LawHerald 257

Hon'ble Judges : Mr. Amit Rawal, J.

Bench : Single Bench

Advocate : Mr. J.S. Thind, Advocate, for the Petitioner

Final Decision : Allowed

Judgement

Mr. Amit Rawal, J. (Oral) - Learned counsel for the petitioner submits that the application (Annexure P-1) in the prescribed format was submitted to the authorities for restoring the water course running in killa No.125/11/2 allegedly destroyed by Dharampal-respondent No.4 on 03.07.2015. The Sub Divisional Canal Officer appointed the Tehsildar for spot inspection and as per Annexure P-4, he after inspecting the spot recorded the statement of Sarpanch and found claim of the petitioner to be justified. Resultantly, the SDCO vide order dated 5.10.2015/7.10.2015 ordered for restoration of the water course from point ABC temporarily for one year under Section 24(3) of the Haryana Canal and Water Drainage Act, 1974.

2. However, the aforementioned order was assailed by the private respondents before the Divisional Canal Officer, who vide impugned order dated 29.08.2016 (Annexure P-6) while relying upon the inspection report dated 27.05.2016 held that there was no sign found on the spot for dismantling of water course at the place of disputed water course.

3. Mr. Thind, learned counsel appearing for petitioner submits that inspection done on 27.05.2016 was immaterial as the contention of the petitioner in the

application was of demolition of the same in the month of July, 2015, therefore, subsequent inspection pales into insignificance. The aforementioned order was challenged before the Superintending Canal Officer, who vide impugned order dated 25.10.2016 dismissed the revision petition being not maintainable. He has drawn attention of this Court to the aforementioned order which reads as under:-

"This application for Revision Petition is filed by the petitioner in the present form, is not maintainable in this court and is beyond jurisdiction. Perusal of the record/order of the Divisional Canal Officer, Nehrana W/S Division, Sirsa reveals that there is no illegality and impropriety in this case as decided by the court of Divisional Canal Officer. The issue has rightly been decided by the Divisional Canal Officer, Nehrana W/S Division, Sirsa under Section 24 of the Haryana Canal and Drainage Act 29 of 1974 as a final appellate authority. Hence no further revision in this Court is maintainable as per provision of the Haryana Canal and Drainage Act 29 of 1974.

In view of the circumstances and facts as discussed above, this application for revision petition, being not maintainable, is hereby rejected."

4. In support of his contention, he has relied upon the ratio decidendi culled out from the judgment rendered by Co-ordinate Bench of this Court in CWP No.22108 of 2016 titled as "Sher Singh v. State of Haryana and others" decided on 21.12.2016 and other connected cases whereby this Court by noticing the provisions of Section 20(3) of the Haryana Canal Drainage Act, 1974 observed that the Superintending Canal Office is vested with suo motu powers to call for the record of any case pending before or disposed of by any subordinate authority, thus, the opinion of the Superintending Canal Officer having no jurisdiction is totally erroneous and capricious.

5. Resultantly, the impugned order (Annexure P-7) is hereby set aside and the matter is remitted back to the Superintending Canal officer to decide the revision petition afresh in accordance with law, particularly in terms of the direction given in the judgment cited supra. The revision petition bearing No.44-N of 2016 is restored to file and the Superintendent Canal Officer shall decide the same after affording opportunities to the parties as expeditiously as possible and preferably within a period of four months from the date of receipt of certified copy of this order.

6. With the aforementioned observations, the revision petition stands allowed.