

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

LPA No.1231 of 2015(O&M)

Date of decision: 28.8.2015

Ram Kumar and another

....Appellants

VERSUS

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA

HON'BLE MRS. JUSTICE RAJ RAHUL GARG

Present: Mr. Raman Goklaney, Advocate for the appellants.

HEMANT GUPTA, J.

The present Letters Patent Appeal under Clause X of the Letters Patent is directed against an order passed by learned Single Bench of this Court on 30.04.2015 whereby the writ petition against the order passed by the authorities under The Northern India Canal & Drainage Act, 1873 (for short 'the Act') for restoration of the demolished water course at point 'C' and 'D' was dismissed

Learned counsel for the appellants has vehemently argued that the order of restoration of demolished water course has been passed in respect of unsanctioned water course. He referred to the Division Bench judgments reported as Jagar Singh v. Superintending Canal Officer and others, 1972 PLR 315; Joginder Singh v. The Sub Divisional Canal Officer, Ghaggar Water Services Sub Division, Tohana and others, 2002(2)

PLJ 338 and Sube Singh and another v. Sh. R.S. Bamel, Sub Divisional Canal Officer Hisar Water Services Division and others, 2003(2) PLJ 236.

In Jagar Singh's case (supra), a Division Bench of this Court held that an order of restoration of water course under Section 30-FF of the Act can be passed in respect of only three types of water courses i.e. sanctioned by law, sanctioned by agreement between the parties and which have been prescribed by way of easement. It was held that no order of restoration of unauthorized water course can be passed under Section 30-FF of the Act.

After the aforesaid judgment, the Act was amended vide Punjab Act No.9 of 1987 when Section 3(1-A) was inserted and also Section 30-FF was amended so as to include a 'temporary watercourse' to be covered by Section 30-FF of the Act. The amended provisions read as under:-

“3. Interpretation clause – In this Act, unless there be something repugnant in the subject of context :-

(1) xx xx xx

(1-A) “temporary water-course” means a watercourse which has been in existence for a continuous period of not less than six months prior to the date of its demolition, alternation, enlargement or obstruction, but which may not be a recognised watercourse as hereinafter defined.

xx xx xx

30-FF. – (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 Divisional Canal Officer for directing the restoration of the watercourse or the temporary watercourse to its original condition.

(2) On receiving an application under sub-section (1) the 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 the temporary watercourse to its original condition within such period as may be specified in the notice.

(3) If such person fails, to the satisfaction of the Divisional Canal Officer, to restore the watercourse or the temporary watercourse to its original condition within the period specified in the notice served on him under sub-section (2) the Divisional Canal Officer may cause the watercourse or the temporary watercourse to be restored to its original condition and recover the cost incurred in respect of such restoration alongwith a penalty not exceeding one thousand rupees as may be imposed by the Divisional Canal Officer from the defaulting person.

(4) Any person aggrieved by the order of the Divisional Canal Officer, may prefer an appeal within thirty days of the passing of such order to Superintending Canal Officer whose decision on such appeal shall be final.

(5) Any sum which remains unpaid within a period to be specified for this purpose by the Divisional Canal Officer may be recovered by the Collector from the defaulting person as if it were an arrear of land revenue.”

The said amended provisions were examined by Division Bench of this Court in a judgment reported as Gian Singh v. Superintending Engineer (Canals), (1994) 1 RRR 1, wherein considering the Division Bench judgment in Jagar Singh's case (supra), the Court held to the following effect:-

“4.....The effect of these amendments is that if a temporary watercourse as defined in sub-section (1-A) of Section 3 of the Act has been demolished, the aggrieved party can seek its restoration under Section 30-FF of the Act. These provisions were not in existence earlier. The Bench in *Jagar Singh's case* (supra) was interpreting the un-amended provisions of the statute. It was on that basis that the Bench came to the conclusion that under the Act no one could ask for restoration of an unauthorised watercourse. The Bench interpreted the term ‘unauthorised watercourse’ which has not been legally sanctioned. By virtue of the amended provisions, if a temporary watercourse has been in existence for a continuous period of not less than six months prior to the date of its demolition and it is demolished, the aggrieved party can move an application under Section 30-FF(1) of the Act, as amended by Act No.9 of 1987, to the Divisional Canal Officer for its

restoration. If the Divisional Canal Officer, after enquiry and hearing the persons who have allegedly demolished the watercourse, finds that the temporary watercourse has been demolished, he can order its restoration. This is what precisely has been done in the instant case. No fault can be found with the action taken by the Canal Authorities.”

The attention of the Court in the Division Bench judgments relied upon by the appellant was not been drawn towards judgment in Gian Singh’s case (supra). The distinction by subsequent amendment has not been noticed. Therefore, the judgments referred to by learned counsel for the appellants without taking note of the amendments made in the provisions of the Act, cannot be said to be a binding precedent. In fact, we are bound by the judgment of Division Bench in Gian Singh’s case (supra) which has noticed the earlier judgment in Jagar Singh’s case (supra) and also the subsequent amendments in the Act.

In view of the fact that the water course in question is proved to be in existence for more than 6 months, the restoration of such watercourse falls within the scope of Section 30FF of the Act. Thus, we do not find any merit in the present appeal.

Dismissed.

(HEMANT GUPTA)
JUDGE

AUGUST 28, 2015
‘D. Gulati’

(RAJ RAHUL GARG)
JUDGE