

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

**CWP No.26043 of 2016
Date of decision: 16.12.2016**

Kashmir Singh

... Petitioner

Vs.

Superintending Canal Officer, Amritsar and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr. Inderjit Sharma, Advocate
for the petitioner.

RAMESHWAR SINGH MALIK, J. (ORAL)

Instant writ petition is directed against the impugned appellate order dated 14.09.2010 (Annexure P-4), whereby the appellate authority dismissed the appeal of the petitioner and the order dated 30.12.2009 (Annexure P-3) passed by Divisional Canal Officer, Gurdaspur, directing restoration of watercourse in question, demolished by the petitioner, was upheld.

Heard learned counsel for the petitioner.

Briefly put, facts necessary for disposal of the present writ petition are that when respondents No.3 and 4 had been irrigating their land from the watercourse in question, it was abruptly demolished by the petitioner, forcing the private respondents to approach the respondent canal authorities for restoration of the watercourse. On the application having been moved by the private

respondents, site inspection was conducted by the Divisional Canal Officer himself. Accordingly, the case was prepared. Relevant procedure was strictly followed. Proper notices were issued to the shareholders, including the petitioner. Parties were granted opportunity of being heard. Subordinate canal authorities recommended restoration of watercourse, because respondents No.3 and 4 were found irrigating their land from this very watercourse in question, which was found running at the site for more than 30 long years. Grievance raised by the private respondents was found genuine and accordingly, the impugned order dated 30.12.2009 (Annexure P-3) was passed by Divisional Canal Officer, ordering the restoration of watercourse in question, under Section 30 F.F. of the Northern India Canal and Drainage Act, 1873.

Petitioner filed his appeal, which came to be dismissed by the appellate authority vide impugned order dated 14.09.2010 (Annexure P-4). Before arriving at a just conclusion, appellate authority recorded cogent findings, which have been found based on sound reasons and both the impugned orders deserve to be upheld.

The operative part of the impugned appellate order (Annexure P-4), which deserves to be noticed here, reads as under: -

“Sh. S.P. Singh Pahwa counsel for appellant Sh. Kashmir Singh and opposite party Sh. Dalbir Singh are heard carefully. Missle and map are perused. According to assertions made by appellant, watercourse links opposite party area from upside and his client has not demolished watercourse. Opposite party alleged that watercourse boundary is proved from girdawari and warabandi:

Court has perused missle and map: It is observed that lower court Division Officer Canal, Madhopur Division, UBDN, Gurdaspur has himself inspected the spot on dated 18.11.2009 and District Collector had also inspected spot and District Collector report has also perused. They have mentioned in their decision dated 30.12.2009 that it is proved after watching spot that E.F. part of A.B.C.D.E.F. watercourse which is proved as demolished because back side and front side of watercourse is in standing manner on spot. Court has concluded that appellant assertions are baseless. Demolished watercourse is attached to opposite party area. Therefore in light of better irrigation and more production of grain, Division Officer Canal, Madhopur Division, UBDN, Gurdaspur decision dated 30.12.2009 about Mogha Burji 3650 left Rajbah Pajochak Miner for demolished watercourse from south side of killa No.20/2 of 16 murabbas, which is showed as point E.F. in the map, decision of restoration of demolished watercourse is kept restored and appellant appeal has been dismissed under Section 30 F.F. (4) Northern India Canal and Drainage Act 8 of 1873.”

Instead of challenging the abovesaid order before the Chief Canal Officer or before this Court, petitioner filed a suit for permanent injunction against the canal authorities and also against respondents No.3 and 4. Said civil suit No.103 of 2010 came to be partly decreed vide judgment and decree dated 04.10.2016 (Annexure P-6). Operative part of the judgment dated 04.10.2016 passed by learned Additional Civil Judge (Sr. Divn.), Batala, reads as under: -

“RELIEF

In view of above stated findings of this court on the issues, I am of the considered opinion that the partial relief to both the parties can be granted. Accordingly, it is ordered that the defendants shall not interfere into peaceful possession of the plaintiff over the suit property being owner except under the circumstances, if the defendants No.3 and 4 on the application/petition/claim of the defendant No.1 opted to restore the alleged old Khal/watercourse or opted to carve out a new Khal/watercourse that too after adopting the legal process and the defendants are ordered to be restrained not to carve out a new Khal/watercourse or to restore the old alleged demolished Khal/watercourse in the suit property illegally and forcefully. However, the defendants are at liberty to install a new Khal/watercourse or to restore the old alleged demolished Khal/watercourse in the suit property after adopting the legal procedure as per rules. Accordingly, the plaint is ordered to be decreed partially as per above stated observation, with no order as to costs. Decree sheet be drawn and file be consigned to the record room, Batala.”

At this stage, petitioner tried to take a complete somersault. Instead of filing appeal against the abovesaid judgment and decree, he turned around and without taking the civil litigation to its logical end, filed the present writ petition after a period of more than six years of passing the abovesaid impugned

appellate order dated 14.09.2010 (Annexure P-4). Such a course of action cannot be permitted to be adopted by the petitioner. Once he has challenged these very impugned orders before the learned Civil Court by way of abovesaid civil suit, he should have taken that civil litigation to its logical end, else he should have challenged the impugned appellate order dated 14.09.2010 (Annexure P-4) immediately after passing of the same before this Court. In fact, petitioner has been found misusing the process of law, which is not permissible.

Moreover, when the case of the petitioner is considered on merits as well, abovesaid impugned appellate order has not been found suffering from any patent illegality or perversity. During the course of hearing, learned counsel for the petitioner failed to point out any illegality in the impugned orders passed by the canal authorities. In compliance of the impugned appellate order dated 14.09.2010 (Annexure P-4), the arrangement for irrigating their land, is going on between the parties at the site, for the last more than six long years. Nobody can put the clock back. Further, neither learned counsel for the petitioner could point out that ongoing arrangement for irrigation, in compliance of the impugned orders, was not workable at the site nor he could point out any prejudice, which might have been caused to the petitioner by passing the impugned orders, warranting interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India.

It goes without saying that the canal authorities are experts in their line. This Court would be slow to exercise its extraordinary writ jurisdiction to interfere in the orders passed by the expert canal authorities, unless the impugned orders are found suffering from patent illegality or perversity. As noticed

heerinabove, learned counsel for the petitioner could not point out any patent illegality or perversity in either of the impugned orders. Having said that, this Court feels no hesitation to conclude that the respondent canal authorities committed no error of law, while passing their respective impugned orders and the same deserve to be upheld, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders passed by the respondent canal authorities have not been found suffering from any patent illegality, the same deserve to be upheld. The writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, present writ petition stands dismissed, however, with no order as to costs.

[RAMESHWAR SINGH MALIK]
JUDGE

16.12.2016

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No