

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

**RSA-2929-2013 (O&M)
Date of decision : 18.10.2016**

Niranjan Singh and others

... Appellants

Versus

Superintending Canal Officer Sirhind Circle Ludhiana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. G.S. Punia, Senior Advocate with
Ms. Harveen Kaur, Advocate
for the appellant(s).

Mr. Amit Chaudhary, Addl. A.G. Punjab.

Mr. Sherry K. Singla, Advocate
for respondent Nos.4 to 6.

AMIT RAWAL, J. (ORAL)

The appellants-plaintiffs are aggrieved of the dismissal of the suit seeking the following relief:-

“A) Suit for declaration to the effect that order dated 29.05.2007 passed by defendant No.2 in case No.11-B/05 titled as for restoration of canal water channel in the fields of plaintiffs, is illegal, null and void and is liable to be set aside and is without jurisdiction and not as per law, and order dated 27.08.2007 passed by defendant No.1 in appeal case No.63 Div/A/Ropar/2/07 is also illegal, null and void and is liable to be set aside and is without jurisdiction and not as per law of Northern Indian Canal and Drains Act No.8 of 1873.

B) Suit for issuance restraining the defendants from dispossessing the plaintiffs from their land measuring 18B-15-

B bearing Khewat Khatanuni No.2/2/6 Khasra Nos.305/5-11, 307/4-0, 309/3-5, 310min/5-19, situated in the revenue estate of village Jitwal Khurd, tehsil Malerkotal, District Sangrur and also restraining the defendants from digging any khal or new canal water channel out of the above said land for discharging the canal water illegal, forcibly and without due course of law or any other relief.”

Mr. G.S. Punia, learned Senior Counsel assisted by Ms. Harveen Kaur, learned counsel appearing on behalf of the appellants-plaintiffs submits that the order dated 27.08.2007 passed by the Authority under the Northern India Canal and Drainage Act, 1873 (for short 'the 1873 Act') was without jurisdiction and not as per the law and consequential relief of injunction was sought, but the Courts below non-suited the appellants by taking the aid of the provisions of Section 30-G of the 1873 Act. He further submits that there is already decree of possession of the property in his favour as canal already existing at birm of road i.e. on corner of his land. The order under challenge is totally vague, much less, without jurisdiction. In such a situation, the jurisdiction of the Civil Court under Section 9 of the Code of Civil Procedure can always be invoked, thus, there is illegality and perversity and the findings under challenge are liable to be set aside.

Per contra, Mr. Sherry K. Singal, learned counsel appearing on behalf of respondent Nos.4 to 6 submits that the order purported to have been passed under Section 30 FF of the 1873 Act is barred and all measures taken therein are as per Section 30-G of the 1873 Act, thus, urges this Court for affirming the findings under challenge.

I have heard the learned counsel for the parties and appraised

the paper book and of the view that the view expressed by the Courts below with regard to the jurisdiction of the Civil Court is perfect, legal and justified.

For the sake of brevity, the provisions of Section 30-FF and 30-G of the 1873 Act read thus:-

“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 along with 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 it were an arrear of land revenue.

30-G Bar of jurisdiction of the Civil Court -

Notwithstanding anything contained in this Act or any other law for the time being in force no Civil Court shall have jurisdiction to entertain or decide any question relating to matters falling under Section 30-A to 30-FF.”

On conjoint reading of the aforementioned provisions of law, in case, any order has been passed under Section 30-FF of the 1873 Act, the view expressed therein is barred to the jurisdiction of the Civil Court. The remedy, if any, to the appellants-plaintiffs lied elsewhere.

For the sake of brevity, I do not intend to differ with the findings rendered by both the Courts below which are based upon the appreciation of oral and documentary evidence, much less, no substantial question of law arises for determination and accordingly, the appeal is dismissed.

18.10.2016

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

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Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**