

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

CWP No.23059 of 2014
Date of decision : 02.03.2017

Jagteshwar Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. J.S. Brar, Advocate for the petitioner.

Mr. Yatinder Sharma, Addl. A.G. Punjab.

Mr. R.S. Rangpuri, Advocate for respondent No.5.

AMIT RAWAL, J. (Oral)

The petitioner is aggrieved of the impugned order dated 09.05.2006 (Annexure P-9), whereby syphon has been restored without following the procedure as prescribed under Section 30-A of the Northern India Canal and Drainage Act, 1873.

Mr. J.S. Brar, learned counsel appearing on behalf of petitioner submits that as per Section 30-A of the Act, notwithstanding anything contained to the contrary in this Act and subject to the rules prescribed by the State Government in this behalf the Divisional Canal Officer may on his own motion or on the application of a shareholder prepare a draft scheme to provide for all or any of the following matters:-

“(a) the construction, alternation , extension and alignment of any watercourse or re-alignment of any existing watercourse :

(b) realotment of areas served by one watercourse to another :

- (c) the lining of any watercourse ;
- (cc) the occupation of land for the deposit of soil from watercourse clearances;
- (d) any other matter which is necessary which is necessary for the proper maintenance and distribution of supply of water from a watercourse.”

The site plan has been prepared without following the procedure. The aforementioned order was assailed by filing the suit on 25.06.2006 which was dismissed and appeal was filed in 2010 which was also dismissed. Thereafter regular second appeal bearing No.3375 of 2014 was withdrawn on 19.09.2014 with a liberty to avail alternative remedy. It is in this aspect of the matter, order has been challenged, thus, there is no delay or laches. The writ petition cannot be held to be affected by delay and laches as the petitioner has been diligent in pursuing the remedies and period spent therein is liable to be condoned as per Section 14 of the Limitation Act, objection of delay according to him was nothing but fallacious.

On the contrary, Mr. R.S. Rangpuri, learned counsel appearing on behalf of respondent No.5 submits that aforementioned syphon is in existence for the last more than 11 years. No prejudice has been caused to the petitioner. The petitioner could have availed the remedy of revision before Chief Engineer as order is passed by the Executive Engineer. Similar is the arguments of Mr. Yatinder Sharma, Addl. A.G. Punjab.

Mr. Yatinder Sharma, Addl. A.G. Punjab submits that syphon has been installed on the Government land.

I have heard learned counsel for the parties and appraised the paper book.

The factum of forming of the syphon has not been disputed in the written statement filed on behalf of the State. Specific procedure has been laid down for the purpose of scheme. If syphon is restored, any of the parties aggrieved can avail the remedy to challenge the same, thus in my view objection of the respondents in availing the alternative remedy is misplaced, much less, not tenable. No doubt, the syphon erected on land of Government is in existence for the last so many years but the fact remains that as per the site plan according to Mr. Brar, Advocate its opening is on the land of the petitioner, therefore, it may have some repercussions on the value of his land.

Resultantly, impugned order is set aside.

Matter is remitted back to the authorities to pass the fresh order in pursuance to the provision of Section 30-A of the Act. This order will not prevent to the closure of the syphon.

Let this exercise be done within a period of five months from the date of receipt of certified copy of the order.

With the aforementioned observations, present writ petition stands disposed of.

02.03.2017

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No