

Review Application No.333 of 2017 in
Civil Writ Petition No.15401 of 2013

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.A.No.333 of 2017 in
Civil Writ Petition No.15401 of 2013
Date of Decision: July 28, 2017

Prithvi Singh

...Applicant/Petitioner

Versus

The Divisional Canal Officer & others

...Non-applicant/Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.Ashok Kumar Verma, Advocate &
Mr.Parmender Singh, Advocate,
for the applicant-petitioner.

AMIT RAWAL, J.

Applicant-petitioner has chosen to file the present review application under Order 47 Rule 1 read with Section 114 of the Civil Procedure Code for review and recalling of the order dated 11.4.2017 passed by this Court on the basis of the per pleadings and the material placed on record upholding the order of the Chief Canal Officer, who has set-aside the orders of the Divisional Canal Officer and the Superintending Canal Officer.

Mr.Ashok Kumar Verma, learned counsel appearing on behalf of the applicant-petitioner has drawn the attention of this Court to the observations made in second paragraph of the judgment (at internal page 6) to contend that the factum of lodging of the FIR by the private respondents against the petitioner is a factual error, much less the applicant-petitioner

did not indulge into damaging the watercourse and repairing of the same was found by this Court to be a coined story. He submitted that the Superintending Canal Officer and the Divisional Canal Officer accepted the application of the petitioner for transfer of an area of 34.18/34.18 acres from the Chak of Outlet R.D.140578-L, Pabra Disty.to the Chak of Outlet R.D.134266-L, Pabra Disty.of Village Nandhri, Tehsil and District Hisar, but the Chief Canal Officer committed illegality and perversity in setting-aside the order and the reasons assigned are alien to the record, much less erroneous.

He further submitted that this Court had dismissed the writ petition on the premise that the petitioner had attempted to dismantle the watercourse and an FIR was lodged against him by the private respondents, whereas it is other way round. The petitioner has lodged FIR No.193/2010 at Police Station Agroha against the private respondents. The petitioner is a retired HCS Officer and responsible citizen and had never attempted to take law in his own hands. The watercourse running in between Killa Nos.14 and 15 is a kacha watercourse without any culvert thereon and the petitioner is to cross his tractor from Killa No.15 to Killa No.14 because about 7-8 acres land comprised in Killa Nos.1, 2 and 9 to 14 of Rect.No.81 falls on the western side of his field, which is surrounded by lined watercourse from three sides. This Court had not appreciated that Ziledar and the Divisional Canal Officer recommended the case of the petitioner. The Chief Canal Officer has held that the area in question was getting 63% irrigation from the existing source against the authorised intensity of 62% and the cultivator is the best judge to choose the source of irrigation unless some real prejudice is caused to the shareholders from the existing source or

proposed source and, therefore, there is error apparent on the face of record and the order under challenge is liable to be re-called.

I have heard the learned counsel for the applicant-petitioner and appraised the paper book.

In order to substantiate the points taken, it would be apt to go through the written statement filed on behalf of respondent No.10 and in ground (B) of Para 11 on merits, it has been mentioned that the FIR was lodged against the petitioner for dismantling the watercourse and there is no rebuttal in the replication and, therefore, the observation of mine is on the basis of the un-rebutted and un-refuted pleadings and, therefore, it does not lie in the mouth of the applicant-petitioner to seek review of the order. Para (B) reads thus:-

“That the contents of this sub para are wrong and denied. It is submitted that the report of the local commissioner dated 21.8.2010 appointed by the Civil Judge, Hisar in a civil suit filed by one of the private respondents clearly shows that the petitioner had dismantled the existing and running water course through his fields by a tractor. Even the FIR was also lodged against the petitioner for dismantling the running watercourse through his fields by him. All these documents clearly reflect the intention of the petitioner that with the transfer of his land he will dismantle the running watercourse as he is not permitting to construct the watercourse which is clear from the report of XEN, C.A.D.Division, Hisar vide letter dated 3.9.2010.”

As regards dismantling of the watercourse, the aforementioned fact has also been taken from the report of the Local Commissioner appointed by the Civil Judge in a civil suit, wherein it has been stated that the applicant had refused to sign the attendance sheet and it was found that

the Khal DE had been demolished afresh by plying the Tractor bearing No.HR26-AL-5172 owned by the applicant-petitioner. Thus, there cannot be any factual error enabling the applicant-petitioner to invoke the jurisdiction of this Court under the aforementioned provisions seeking review of the order. However, there has been certain spelling mistakes. Instead of word “coined” in paragraph second at page 6 of the judgment, it has been typed as “conned”. The same is corrected. The other grounds taken tantamount to re-agitate the issue, which is not maintainable in view of the ratio decidendi culled out in **Tamilnadu Terminated Full Time Temporary LIC Employees Association Versus S.K.Roy, The Chairman, LIC of India and another, 2016 AIR SC 3964.**

No ground for review is made out. Resultantly, by upholding the order and with the correction of certain words, the application is dismissed.

July 28, 2017
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No