

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

LPA-332-2020

Date of Decision: 28.05.2020

Satbir

. Appellant

Vs.

State of Haryana and others

. Respondents

**CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN
HON'BLE MR.JUSTICE ASHOK KUMAR VERMA**

Present: - Mr.S.S. Goripuria, Advocate,
for the appellant.

Mr.Shalender Mohan, Advocate,
for respondents No.4 to 6.

RAKESH KUMAR JAIN, J.

This appeal is directed against the order dated 19.2.2020 by which the writ petition filed by the appellant was dismissed.

In brief, the appellant herein had assailed the validity of the orders dated 21.6.2016 passed by the Sub Divisional Canal Officer, Hansi, Water Services Sub Division, Hansi No.2 [hereinafter referred to as 'SDCO'] and order dated 27.9.2016 passed by the Divisional Canal Officer, Water Services Division, Hansi [hereinafter referred to as 'DCO'] by which appeal filed by the appellant was dismissed. An application under Section 24 of the Haryana Canal and Drainage Act, 1974 [for short 'the Act'] was filed by the private respondents for the restoration of kacha khal passing through Rect. No.13/1-2, 9-10, dismantled by the appellant herein. The said application was allowed by the SDCO vide his order dated 21.6.2016 with the following observations: -

*“I, myself inspected the spot and went
through the documents and heard the*

applicant and respondent. On the basis of above facts and site inspection there is a dismantle watercourse shown in the map as mark A B which is in rectangle No.13/1-2, 9-10. Signs of that were visible so on the basis of these facts I Divisional Officer, Hansi today on 21.6.2016 ordered to open the watercourse shown as Mark A B in the map between Killa No.13/1-2, 9-10 temporarily for six months. If respondent after information of the order did not open the watercourse shown as A B in the map then police assistance will be taken and expenses will be charged from the respondent.”

This order was challenged by both the private respondents and the appellant herein as the present appellant was aggrieved against the restoration even for six months whereas the private respondents were aggrieved against the restoration only for six months though according to them it was not a temporary watercourse but a watercourse which should have been restored permanently. Both the appeals were heard together by the appellate authority i.e. DCO, Hansi. The appeal filed by the present appellant was dismissed whereas the appeal filed by the private respondents was allowed with the following observations: -

“I have carefully examined the record and heard the parties at length. From the report of Zildar it is clear that running water was

dismantalled and recommended to restore the dismantalled watercourse after site inspection. SDCO, Hansi W/S S/Division NO.1, Hansi has cleared in his decision that running watercourse has been dismantalled & restored of the same for the period of six months middle line 13//1-2x9-10 from the Naksha produced by cross appellant, it is clear that despite watercourse was running before 5.8.1981. It is settled law that running watercourse more than 20 years should be restored permanently.

As narrated above appeal was not found in order, hence the decision of SDCO, Hansi W/S S/Division No.1, Hansi is modified that restoration of same watercourse is allowed as permanent & appeal rejected. Any hindrance create by the appellant in his fields should be removed alongwith restoration.”

Aggrieved by the aforesaid two orders, the appellant herein filed writ petition which was dismissed by the learned Single Judge vide his impugned order dated 19.2.2020.

Counsel for the appellant has vehemently argued that the Courts below have been biased against the appellant in passing the impugned order because another watercourse going from the land of Sarup Singh and passing through the land of the respondents, after having been dismantled, has not been

restored whereas the watercourse passing through the land of the appellant has been ordered to be restored and that on permanent basis. It is also submitted that since the respondents had an alternate watercourse, therefore, the authorities below as well as learned Single Judge have committed an error of law in passing the order of restoration of watercourse passing through the land which is causing bifurcation of their land.

On the other hand, counsel for the respondents has submitted that the issue involved in this case is not regarding bifurcation of land or the availability of an alternate watercourse but the issue in the case is as to whether the appellant herein had actually dismantled a running watercourse which was in existence for more than 20 years and therefore, falls within the definition of watercourse and not in the definition of temporary watercourse as provided in Section 2(12) of the Act. In support of his submission, he has relied upon a Division Bench judgement of this Court rendered in ***“Gulab Singh Vs. Divisional Canal Officer, Bhiwani”*** 1996 (1) RRR 533.

We have heard both the counsel for the parties and perused the record with their able assistance.

The issue involved in this case is *“as to whether the authorities below as well as learned Single Judge have committed an error of law in passing the impugned orders in restoration of the watercourse that too on permanent basis?”*

There is no dispute that the watercourse was in existence which was dismantled by the appellant herein. The SDCO, while allowing the application filed under Section 24 of the Act, had restored the watercourse considering it to be a temporary watercourse on the premise that it was not running for more than 20 years whereas the appellate authority had restored it permanently. The learned Single Judge, while appreciating the rival contentions

of both the parties, has rightly come to the conclusion that the watercourse was an old one and does not fall within the definition of temporary watercourse and thus directed that it should be restored permanently. The issue raised by the appellant that the respondents herein have alternate watercourse cannot be a subject matter of this litigation as the appellant has separate cause of action for that purpose. In this regard we have relied upon the decision of Division Bench of this Court rendered in the case of ***Gulab Singh (Supra)*** in which similar controversy was involved and was decided holding that the scope of Section 24 of the Act is limited to the extent that the authorities have to find out as to whether there was a watercourse which has been dismantled and whether the watercourse was temporary or permanent.

With these observations, we do not find any merit in the present appeal and thus the same is hereby dismissed though without any order as to costs.

(RAKESH KUMAR JAIN)
JUDGE

(ASHOK KUMAR VERMA)
JUDGE

28.05.2020
Vivek

Whether speaking /reasoned : *Yes/No*
Whether Reportable : *Yes/No*