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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-23762-2021 (O/M)

Date of decision : 26.03.2025

Sukhpal Kaur and another

..... Petitioners

Versus

Superintending Canal Officer, Sirhind Canal Circle, Ludhiana
and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Ravish Bansal, Advocate
for the petitioners.

Mr. Nirmaljit Singh Diwana, Senior DAG Punjab.

Mr. Amarpreet Singh, Advocate
for respondents No. 3 to 5 and 7 to 14.

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HARSH BUNGER, J. (ORAL)

1. Prayer in the instant civil writ petition filed under Articles 226/227 of Constitution of India is for issuance of a writ in the nature of certiorari for setting aside order dated 27.11.2019 (Annexure P-4), passed by learned Divisional Canal Officer, Faridkot (in short 'DCO') and order dated 07.01.2021 (Annexure P-5), passed by learned Superintending Canal Officer (in short 'SCO').

2. Briefly, private respondents filed an application before canal authorities below for restoration of watercourse, which came to be allowed by learned DCO, vide order dated 27.11.2019 (Annexure P-4). An appeal filed by the petitioners against said order dated 27.11.2019 was also dismissed by learned SCO, vide order dated 07.01.2021 (Annexure P-5).

3. In the aforementioned circumstances, the petitioners have filed the instant civil writ petition before this Court.

4. Learned counsel for petitioners, inter alia, submits that the canal authorities below have erred in law and facts in passing the impugned orders whereby the restoration of watercourse has been ordered without recording positive finding as to whether the watercourse, regarding which the restoration has been sought, is either sanctioned by law or by way of prescription or by way of an agreement. In this regard, he has placed reliance upon a Division Bench judgment rendered by this Court in **Jagar Singh Versus Superintending Canal Officer and others, 1972 PLJ 147**, wherein it was held as under :-

*"The view we have taken on the matter finds support from the decision of the Lahore High Court in **Hukman v. Emperor, AIR 1921 Lahore 327**. This decision has held the field and reference need only be made to **Moola Singh v. Surendra Singh, AIR 1960 Allahabad 656**, wherein a large number of decisions taking the same view have been collated. It is true that the Lahore decision dealt with the provisions of section 70, but broadly speaking the ambit of that section and section 30FF is pare materia. For instance, section 70(1) Talks of alteration, enlargement or obstruction whereas section 30FF(1) also talks of alteration, enlargement, and obstruction. Section 70 fell for interpretation as early as 1921 in the Lahore High Court and it was ruled that it only contemplates three types of watercourses, that is, -*

(a) sanctioned by law;

(b) sanctioned by agreement between the parties; and

(c) which have been prescribed by way of easement.

It was also held that if any person takes water through another man's land, the other man has the right to stop the flow of water through his land thereby committing no offence within the meaning of section 70. It is only when water is stopped in the case of watercourse of the three types already

mentioned, that section 70 will come into play. Therefore, a watercourse which does not answer the description of the watercourse set out above would surely fall outside the ambit of section 70 and so also section 30FF. Section 30FF has been brought on the statute book long after section 70 was judicially interpreted and we must proceed on the basis that the farmers of section 30FF knew how section 70 had been interpreted and wherever they have used the same language in section 30FF, that must bear the same interpretation and none other.

7. The correctness of the above view can further be demonstrated by referring to an instance where an unauthorised watercourse is dug by a party and he draws water from the canal in that watercourse. Surely, it cannot be countenanced that such a watercourse would fall within the ambit of section 30FF. If that be so, we do not see where to draw the line, for in that event, all illegal watercourses would fall within the ambit of Section 30FF and there would be no way out to curb that illegality because the illegality would have the sanction of law inasmuch as it can be perpetuated by resort to section 30FF."

5. On the other hand, learned counsel for private respondents has opposed the submission made on behalf of the petitioners by submitting that there is sufficient material on record to conclude that the watercourse in question has been demolished at the spot and there is no error in the findings returned by the canal authorities below. However, during the course of hearing, learned counsel for private respondents has very fairly submitted that indeed the authorities below have not returned any positive finding as to whether the watercourse, regarding which the restoration has been sought, is either sanctioned by law or by way of prescription or by way of an agreement and, therefore, he has no objection if the impugned

orders (Annexure P-4 and Annexure P-5) are set aside and the matter is remanded to Divisional Canal Officer for deciding the same afresh in a time bound manner.

6. Learned counsel for petitioners does not oppose the aforesaid course of action being adopted.

7. In view of the above, the instant civil writ petition is partly allowed; the impugned orders dated 27.11.2019 and 07.01.2021 (Annexure P-4 and Annexure P-5, respectively), passed by learned DCO and learned SCO are set aside and the matter is remanded to learned Divisional Canal Officer, Faridkot for deciding the matter afresh keeping in view the observations made in the judgment rendered in ***Jagar Singh's*** case (supra), after affording due opportunity of hearing to all the parties in accordance with law.

7.1 Let the aforesaid exercise be carried out within a period of three months from the date of appearance of the respective parties before the Divisional Canal Officer. The parties are directed to appear before Divisional Canal Officer on 17.04.2025.

8. The instant civil writ petition is accordingly disposed of in the aforestated terms.

9. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

26.03.2025
sjks

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No