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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-24804-2023 (O/M)

Date of decision : 07.03.2025

Sukhdev Singh and another

..... Petitioners

Versus

Superintending Canal Officer 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. Sandeep Khunger, Advocate
for respondents No. 3 to 6.

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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 quashing the order dated 24.04.2023 (Annexure P-4), passed by Divisional Canal Officer, Mansa Canal and Ground Water Division, Water Resources Department, District Mansa (in short 'DCO') and order dated 26.06.2023 (Annexure P-5), passed by Superintending Canal Officer, Patiala Canal Circle, Water Resources Department, Patiala, Punjab (in short 'SCO').

2. Learned counsel for the petitioners submits that respondents No. 3 to 6 applied to the canal authorities for restoration of the watercourse. While deciding the aforesaid matter, learned DCO, vide impugned order dated 24.04.2023 (Annexure P-4), ordered restoration of

the watercourse without recording any positive finding as to whether the watercourse in question was either a sanctioned one or by way of prescription or by way of an agreement.

2.1 Learned counsel for the petitioners places reliance upon the judgment rendered by the Division Bench of this court in “**Jagar Singh v. Superintending Canal Officer and others, 1972 PLJ 147**”. The relevant observations there, read 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.”

2.2 It is further submitted that the law laid down in ***Jagar Singh's*** case (supra) has been consistently followed by this Court including in the case of ***Joginder Singh Versus The Sub Divisional Canal Officer, Ghaggar Water Services, Sub Division Tohana, 2003 (2) RCR (Civil) 768.***

3. Learned counsel appearing for respondents No. 3 to 6 does not dispute the aforesaid legal position and very fairly submits that indeed in the order passed by learned DCO as well as learned SCO, no finding has been returned as to whether the watercourse in question is a sanctioned one or by way of prescription or by way of agreement. He further submits that the petitioners would have no objection if the impugned orders are set aside and the matter is remanded to learned DCO for fresh decision;

however, he submits that appropriate directions be issued to the concerned Officer/Authority for deciding the remand matter, in a time bound manner.

4. Learned counsel for the petitioners does not raise any serious objection to the aforesaid course of action being adopted.

5. Keeping in view the judgment rendered in case of ***Jagar Singh and Joginder Singh (supra)*** and also the aforesaid statements made by the respective parties, the present petition is partly allowed and order dated 24.04.2023 (Annexure P-4) and order dated 26.06.2023 (Annexure P-5) are set aside. The matter is remitted to learned DCO with a direction to consider and decide the matter afresh after returning a clear finding as to whether or not the watercourse regarding which restoration is sought, is a sanctioned one or by way of prescription or by way of agreement. Let the aforesaid exercise be carried out within a period of three months from the date of receipt of certified copy of this order.

6. The present petition is disposed of accordingly.

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

(HARSH BUNGER)
JUDGE

07.03.2025

sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No