

**LPA No.2143 of 2014 (O&M)****1****In the High Court of Punjab and Haryana at Chandigarh****LPA No.2143 of 2014 (O&M)****Date of decision: 5.1.2015****Lakhwinder Singh****.....Appellant****Versus****State of Punjab and others****.....Respondents****CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE RAJ MOHAN SINGH****Present: Mr.Ashok Goel, Advocate,
for the appellant.*************Raj Mohan Singh, J.**

1. This Letters Patent Appeal is directed against the decision dated 20.11.2014, passed by the learned Single Judge in CWP No. 7504 of 2013, whereby the orders passed by the authorities in hierarchy in restoration of dismantled watercourse by the appellant-petitioner have been passed.

2. Brief facts are noted here as under:-

Pargat Singh and others filed an application before the Divisional Canal Officer, Devigarh Division, Patiala-respondent No.3, alleging that water channel, running on the spot since 50 years, has been dismantled by the appellant and Gurpreet Singh. Resultantly, their irrigation has been stopped. Respondent No.3 assigned inquiry to Sub Divisional Canal Officer, Karhali-respondent No.4, who in turn sent the case to Zildar- respondent No.5, for conducting investigation. Zildar-respondent No.5 got the spot sketch prepared from respondent No.6- Halqa Patwari and inspected the site himself and collected evidence in the form of statements of the co-sharers.

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Zildar recommended the restoration of dismantled watercourse to the Sub Divisional Officer, who after scrutinising the same, recommended the restoration to Divisional Canal Officer-respondent No.3.

3. Appellant along with respondent No.7 and others are co-sharers in the jamabandi for the year 2006-07 and they have irrigation facility through watercourse outlet No.14452-L Rajwaha Rasoli Minor.

4. On receipt of recommendations from the lower staff, respondent No.3 took cognizance of the issue and called upon the appellant side to explain their position. The contention of the complainant was sought to be refuted by alleging that the proposed water channel in question, at the time of consolidation in the year 1962, was never dug at the spot due to inhabitation of the people of the village. Appellant alleged that he has not dismantled any water channel and a wrong statement of claim has been mooted by the complainant.

5. Respondent No.3 scrutinised the statements of shareholders recorded by Zildar, Dedna and the reports submitted by the Zildar and the Sub Divisional Officer. The report of the Zildar **dated 19.9.2012** submitted to Sub Divisional Officer, Karhali revealed that *khal* 'ABCD' was functional at the site and the portion of *khal* 'DE' at Murabba No.12 Killa No.13 was dismantled at the site. The report further revealed that *khal* 'D' to 'E' was in accordance with revenue record and was installed in consolidation as '*chak bandi khal*'. The Sub Divisional Officer, on the basis of aforesaid fact finding

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report, recommended the restoration of dismantled water channel to respondent No.3 by endorsing that water channel was running on the spot for the last many years and was dismantled. The said *khal* was earmarked in consolidation as '*chakbandi khal*'. The recommendations of Sub Divisional Officer also came on 21.9.2012 and fully concurred with the report of the Zileadar.

6. The Divisional Canal Officer ordered restoration of dismantled water channel, while exercising powers under Section 30-FF of the Northern India Canal and Drainage Act, 1873 (for short 'the Act'), vide order dated 17.1.2013.

7. Feeling dis-satisfied, the appellant preferred appeal before respondent No.2 under Section 30-FF (3) of the Act. During the proceeding before the Appellate Authority, appellant appeared before the Court on 5.3.2013 but at the time of hearing of the main case, appellant was conspicuous by his absence. The Appellate Authority recorded in the order that revenue missal and reports were scrutinised. Shareholders were present and they were heard in consultation with field staff. The appellant did not make himself present at the time of hearing despite calling the case. The Appellate Authority found that the watercourse 'ABCD' was in existence since consolidation and the water channel 'DE' was demolished by the appellant side in rect. No.12 and khasra No.13 and 14 at the spot resulted in stoppage of irrigation facility to the complainant-respondent No.7. The conclusion based on facts was drawn and the appeal was dismissed by respondent No.2, vide order dated 5.3.2013.

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8. Appellant ventured to file CWP No.7504 of 2013 in this Court against the orders passed by the authorities under the Act. During the proceedings before the learned Single Judge, parties were directed to produce relevant revenue record, vide order dated 13.10.2014 to show that the water channel was left at the time of consolidation and the same bears specific khasra number. The complainant as well as Zildar produced the relevant record. Learned Single Judge in the order observed that according to jamabandi the watercourse was left during consolidation at the place starting from killa No. 18/1 and, thereafter, it goes along side the abadi shown in khasra No.134. The watercourse in question has been assigned khasra No. 204 and the total area of this watercourse from its starting point till the end has been shown as 21 kanal 18 marla, which is a *gair mumkin khal* in the revenue record i.e. jamabandi for the year 2011-2012. The watercourse in question was carved out after deducting area from adjoining killa numbers and, thereafter, it runs straight which can be visualised in the site plans. The dismantled part of the watercourse is depicted by letters 'DE' shown in the site plan.

9. Learned Single Judge dismissed the writ petition vide judgment dated 20.11.2014 on the ground that watercourse was in existence and the same was dismantled by the appellant.

10. Learned counsel for the appellant stressed upon non existence of watercourse in question and alleged that he never interfered in the alleged watercourse nor dismantled the same as the same was never in existence. In a way the appellant pleaded that

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there was no such water channel in existence because it was never dug at the time of consolidation in the year 1962 due to inhabitation of people of the village. Impliedly, factum of carving out of watercourse during consolidation is admitted but according to the appellant it was never dug.

11. As per the reports of the lower staff in hierarchy based on spot inspection and spot sketch, the watercourse was found to be dismantled at the site 'DE' in Rect. No.12, Khasra No.13 and 14.

12. Section 30-FF of the Act provides that if a person demolishes, alters, enlarges or obstructs a watercourse or a temporary watercourse or causes any damage thereto, the effected person can approach to the Divisional Canal Officer for restoration of the same to its original condition. The Divisional Canal Officer is obligated to inquire into the matter and, thereafter, order for its restoration by serving notice upon the person found to be responsible for such demolition to restore at his own costs. If such person fails to restore the watercourse then Divisional Canal Officer may cause the same to be restored at its original condition and recover the cost incurred in such a restoration along with penalty.

13. The word 'watercourse' has been defined under Section 3 (2) of the Act. Section 30-FF of the Act prescribes watercourse as well as a temporary watercourse which means a watercourse which has been in existence for a continuous period of not less than six months prior to the date of its demolition, alteration, enlargement or obstruction but which may not be a recognised watercourse.

14. There are three types of water channels. Firstly, the

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water channel, which is sanctioned by law. Secondly, the water channel sanctioned by agreement between the parties and thirdly, the water channel by way of easement. The requirement of law under Section 33-FF of the Act is that there was a watercourse in existence and the same was dismantled. The powers under Section 33-FF of the Act are not restricted only to a sanctioned watercourse, rather it applies to all the three types of water courses i.e. sanctioned by law, sanctioned by agreement between the parties and the watercourse, which has been prescribed by way of easement. The authority, exercising powers under Section 30-FF of the Act, in any case, cannot provide any alternate arrangement or digging of new watercourse in place of dismantled one. In the instant case, existence of watercourse during consolidation was established on record. The watercourse in question was labelled as '*chakbandi khal*'. Even as per record produced before the learned Single Judge, the watercourse bears specific khasra No.204 in the revenue record and its total area has been shown to be 21 kanal 18 marla, which is further described as *gair mumkin khal*. The overwhelming evidence on record fully established that the watercourse 'ABCD' was earmarked in consolidation and was in working order. As per report of Zileadar and recommendations made by Sub Divisional Canal Officer, the watercourse was found dismantled at point 'DE'. Respondent No.3 was under legal obligation to restore the same by invoking powers under Section 30-FF of the Act. Since the watercourse in question is found to be one of the watercourse prescribed under the law, therefore, restoration of the same is fully in

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consonance with the requirement of law.

15. Learned counsel for the appellant cites **1984 PLJ 506** titled **Sajjan Singh vs. Mukand Singh and others** to contend that the reference of the judgment in question has been made by the learned Single Judge in the order which has no relevancy in the present context. The aforesaid judgment, even if, presumed to be having no relevance, the case of the appellant cannot be improved by its non consideration. The aforesaid judgment operates in the context where the land was demarcated during consolidation for being utilised as a watercourse for irrigation facilities. The Divisional Canal Officer asked the subordinate authorities to dig a watercourse in the area so demarcated during consolidation. In that context it was held that the Divisional Canal Officer, by exercising powers under Section 30-FF of the Act, cannot order for digging up of a watercourse. The analogy is that while exercising powers under Section 30-FF of the Act, the powers of restoration cannot be replaced by power to provide a new watercourse or alternate watercourse. Reference of the aforesaid judgment or otherwise does not improve the case of the appellant in any way. The impugned judgment is based on facts and does not call for any interference in appeal. Resultantly, the appeal is totally devoid of merits and the same is dismissed.

(SURYA KANT)
JUDGE

(RAJ MOHAN SINGH)
JUDGE

January 5, 2015
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