

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP-7722-2022 (O/M)

Date of decision : 23.05.2025

Darshana Devi

..... Petitioner

Versus

Superintending Canal Officer, Bhakra Water Services  
Circle, Kaithal and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. R.N. Lohan, Advocate  
for the petitioner.

Mr. Rajneesh Chadwal, AAG Haryana.

Mr. Kuldip, Advocate for  
Mr. Rajesh Punj, Advocate  
for respondent No. 4.

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HARSH BUNGER, J.

1. Prayer in the instant civil writ petition filed under Articles 226/227 of Constitution of India, inter alia, is for issuance of a writ in the nature of certiorari for setting aside the order dated 31.01.2022 (Annexure P-3), passed by Superintending Canal Officer, Bhakra Water Services Circle, Kaithal (in short 'SCO').

2. Briefly, petitioner (Darshana Devi) submitted an application before the canal authorities for restoration of watercourse (AB) on outlet No. RD-1500-L Badsikri Minor on the plea that the watercourse in question was running for the last more than 40 years and that the same has been demolished by respondent No. 4 (Baljit) and resultantly, the irrigation to her land had stopped.

2.1 Upon receipt of the aforesaid application, the matter was got inquired into from the field staff. The concerned Zileadar carried out site inspection and also prepared khaka plan and thereafter submitted report for filing the application of the petitioner.

2.2 It appears that learned Sub Divisional Canal Officer, Shudkan W/S Sub Division, Narwana (in short 'SDCO'), vide order dated 05.08.2019 (Annexure P-1), ordered restoration of demolished watercourse to its original condition for an unlimited period under Section 24 of Haryana Canal and Drainage Act, 1974 (in short '1974 Act').

2.3 Feeling aggrieved against order dated 05.08.2019 (Annexure P-1), respondent No. 4 (Baljit) preferred an appeal before learned Divisional Canal Officer, Narwana (in short 'DCO'), however, the same was dismissed, vide order dated 11.03.2020 (Annexure P-2).

2.4 Still aggrieved, respondent No. 4 (Baljit) preferred a revision petition under Section 20(3) of 1974 Act before learned SCO, which came to be decided, vide order dated 31.01.2022 (Annexure P-3), whereby the order dated 11.03.2020 (Annexure P-2), passed by learned DCO, was modified to the extent that the watercourse in dispute ('AB') was ordered to be restored at site for a period of six months i.e. for Kharif 2022.

3. In the aforementioned circumstances, the petitioner has filed the instant civil writ petition before this Court, for the relief(s), as noticed hereinabove.

4. Heard.

5. In the present case, the petitioner approached the canal authorities seeking restoration of watercourse ('AB') in the chak of outlet RD-1500-L Badsikri Minor; which was allowed by learned SDCO, vide order dated 05.08.2019 (Annexure P-1) for an unlimited period by observing that he had inspected the site of the disputed watercourse on 05.08.2019 and during the site inspection, the traces of watercourse existed at site. It was further observed that the watercourse falls within the ambit of Section 2(15) of 1974 Act. The said order passed by learned SDCO was upheld by learned DCO, vide order dated 11.03.2020 (Annexure P-2) by observing that as per the official record, the watercourse in dispute is proved to be running at site since 1986. Apparently, a revision petition filed by respondent No. 4 came to be disposed of by modifying the orders passed by learned SDCO as well as learned DCO to the extent that the watercourse in question was ordered to be restored at site for a period of six months only by observing as under :-

*“ After perusal of the decision of the Divisional Canal Officer, Narwana W.S. Division, Narwana dated 11.03.2020 and the khaka plan duly prepared by concerned Canal Patwari and Ziledar, it is observed that the Divisional Canal Officer, Narwana W.S. Division Narwana has passed order to bring the demolished watercourse to its original condition for the unlimited period, but there is no finding that the watercourse in dispute was in existence for the period more than twenty years. In this regard a law also **has been settled by the Hon'ble High Court disposing of the case of Jagar Singh V/s SCO (1972) PLJ 315 (DB) that only watercourse which is being used as a matter of right either under some agreement or by prescription can be restored at site for the unlimited period.** However, no firm finding was recorded by*

*the Divisional Canal Officer, Narwana W.S. Division Narwana in his decision dated 11.03.2020. The watercourse in dispute in the absence of any solid findings, falls under the definition of temporary watercourse. Hence the watercourse in dispute AB is hereby ordered to be restored at site for the period of six months i.e. for kharif 2022. The decision dated 11.03.2020 passed by Divisional Canal Officer Narwana W.S. Division Narwana is hereby modified to the extent as above.”*

5.1 A perusal of above extracted order passed by learned SCO would show that the watercourse in dispute has been considered to be temporary watercourse and not a permanent watercourse, by observing that the authorities below had not recorded any firm finding as regards existence of the watercourse in dispute for a period of more than 20 years.

6. Evidently, the existence of watercourse at the site is not disputed. The only dispute is as to whether the watercourse in question is a 'temporary watercourse' or a 'permanent watercourse'.

7. Here it is apposite to state that in 1974 Act, Section 2(12) defines “temporary watercourse” and Section 2(15) defines “watercourse”; which read as under :-

*“Section 2(12) “temporary watercourse” means a watercourse which has been running for a period of not less than six months prior to the date of its demolition, alteration, enlargement or obstruction, but which is not a water-course as hereinafter defined;*

xxxxxx                      xxxxxxxx                      xxxxxxxx                      xxxxxxxx

*Section 2(15) “watercourse” means any channel including all its subsidiary works which is supplied with water from a canal, but not maintained at the cost of the State*

*Government, and is sanctioned under this Act or is in existence under an agreement or by prescription.”*

7.1 In ***Jagar Singh Versus Superintending Canal Officer and others, 1972 PLJ 147***, a Division Bench of this Court 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.”*

8. Coming to case in hand, from a perusal of order dated 05.08.2019 (Annexure P-1), passed by SDCO, it is not forthcoming as to on what basis it has been observed that watercourse falls within ambit of Section 2(15) of 1974 Act.

8.1 Further, a perusal of order dated 11.03.2020 (Annexure P-2), passed by learned DCO would show that although it has been observed therein that as per official record, the watercourse is proved to be running at site since 1986, however, the details of such official record is not forthcoming.

8.2 On the other hand, learned SCO had modified the orders passed by authorities below i.e. learned SDCO and learned DCO by observing that there is no finding that the watercourse in dispute was in existence for a period of more than 20 years.

9. In my considered view, in case, learned SCO was of the view that the authorities below had not returned any firm finding as regards the nature of watercourse to be “temporary” or “permanent” and/or that the watercourse in question was in existence for more than 20 years, in that eventuality, learned SCO should have either called for a report from the canal authorities as regards the nature of the watercourse to be “temporary” or “permanent” or in the alternative, the matter should have been remanded to learned SDCO to re-examine the matter and return a firm finding after referring to the relevant documents/evidence/official record as to whether the watercourse in dispute is a 'temporary watercourse' or a 'permanent watercourse'. Apparently, such recourse was not taken.

10. In this view of the matter, I deem it appropriate to exercise power under Article 226 of Constitution of India and set aside all the orders passed by canal authorities i.e. order dated 05.08.2019 (Annexure P-1), passed by learned SDCO; order dated 11.03.2020 (Annexure P-2), passed by learned DCO and order dated 31.01.2022 (Annexure P-3), passed by learned SCO and remand the matter to SDCO for deciding the matter afresh in accordance with law, after returning a firm finding as regards the nature of watercourse in dispute by referring to relevant material/documents/official record (if any). It is further directed that learned SDCO shall decide the matter afresh, after affording due opportunity of hearing to all concerned parties, within a period of three months from the date of appearance of all the concerned parties before him. The concerned parties are directed to appear before learned

SDCO on 29.05.2025. It is further directed that till the decision of the case by learned SDCO, the parties shall maintain status quo as regards the watercourse in dispute is concerned.

11. Resultantly, the instant civil writ petition is allowed and disposed of in the aforestated terms.

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

(HARSH BUNGER)  
JUDGE

23.05.2025

sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No