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Sulakhan Singh and Others Vs Union of India (UOI) and Others

Civil Writ Petition No. 13633 of 2000

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: April 28, 2003

Acts Referred:
Northern India Canal and Drainage Act, 1873 â€" Section 30FF

Citation: (2003) 3 CivCC 570 : (2003) 135 PLR 36

Hon'ble Judges: Satish Kumar Mittal, J

Bench: Single Bench

Advocate: Rajesh Garg, AAG, for the Appellant; Swati Gupta and B.R. Mahajan, for the Respondent

Final Decision: Dismissed

Judgement

Satish Kumar Mittal, J.
In the instant writ petition, the petitioners have impugned the orders dated 2nd June, 2000 (Annexure P.6) and

22nd August. 2000 (Annexure P.9) passed by the Divisional Canal Officer, Gurdaspur arid Superintending Canal Officer Amritsar, respondent

Nos. 3 and 2 respectively, vide which the demolition of water course by the petitioners has been restored u/s 30FF of the Northern India Canal

and Drainage Act, 1873.

2. Before the canal authorities, an application was field by the private respondents for restoration of the water course in question by alleging that

the water course marked at A, B, C and R was in working condition for the last many years and the same was being used for canal irrigation. The

petitioners illegally and without any authority demolished the water course from mark A, B, Q1, Q2 and Q3 and stopped the canal irrigation which

has caused substantial damage to their crops. On the said application, a report of the Ziledar was called, in which he reported that the alleged

water course was being utilised for canal irrigation for the last so many years and the same was illegally demolished by the petitioners. It was

recommended that the said water course, which is an old one should be restored at points A, B, Q1, Q2 and Q3. The Divisional Canal Officer,

after providing opportunity of hearing to both the parties and after recording their statements, came to the conclusion that the water course

described with mark A, B, Q1, Q2, Q3 and CP. at outlet No. 57050 -m Fateh Nangal-Distributory was in use and was being utilised by the

private respondents for canal irrigation for several years. It was further found that a portion of the said water course mark A, B, Q1, Q2 and Q3

was illegally demolished by the petitioners. After recording the said finding, the said demolished water course was ordered to be restored. Feeling

aggrieved against the said order, the petitioners filed an appeal (Annexure P.8) u/s 30FF(4) of the Act, which was also dismissed by the

Superintending Canal Officer. The petitioners have challenged both the aforesaid orders in this writ petition.

3. Learned counsel for the petitioners submitted that the private respondents are getting their land irrigated from scheme water course in field No.

18 R/2 and 3 alongwith Dalip and another co-sharer. The water course in question which has been ordered to be restored was neither a

sanctioned water course nor it was existing at the spot and the canal authorities have acted illegally and without jurisdiction while restoring the said

water course in spite of the fact that it was not a sanctioned water course. Learned counsel, while referring to the Division Bench decision of this

Court in Jagir Singh v. Super-intending Canal Officer and Ors., 1972 PLJ 147 has submitted that u/s 30FF of the Act only an authorised water

course which is duly sanctioned cat) be restored and a water course which has been used through another man''s land without his permission will

not fall within the ambit of Section 30FF of the Act.

4. The contention of learned counsel for the petitioners is not acceptable. So far as the provisions of the Act are concerned, these deal with both

(authorised and unauthorised) water courses. The water course in dispute was a water course which was being used by the private respondents for

a long time. The finding has been recorded by the canal authorities that the water course was existing and the same was being used by the private

respondents. It was also found that the said water course was illegally demolished. Therefore, it was ordered to be restored. I find no infirmity or

illegality in the orders passed by the canal authorities.

5. Learned counsel for the petitioners further submitted that on an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure,

filed by the petitioners in a suit for permanent injunction, vide order dated 18th August, 1999 (Annexure P.4), the Civil Judge. Batala, issued

injunction in their favour, while holding that no water course is existing. The perusal of this order reveals that only ah order of status quo was

passed in the interest of justice, which was ordered to be not disturbed except in due course of law. It was also observed that in case any of the

party approaches to the canal authorities regarding adjudication of this water course, that order of status quo will not be any bar to invoke the

jurisdiction of the canal authorities. In my opinion, the aforesaid order does not establish that the water course in question was existing or not. Only

the parties were directed to maintain status quo with liberty to approach the canal authorities to get the dispute determined according to law.

Admittedly, private respondents filed an application for restoration of the water course before the canal authorities and their application was

allowed and the water course in question was ordered to be restored under the Act after providing opportunity of hearing to both the parties.

Therefore, I do not find any jurisdictional error or illegality in the orders passed by the canal authorities.

6. In view of the aforesaid discussion, there is no merit in the instant writ petition and the same is hereby dismissed with no order as to costs.