

In the High Court of Punjab and Haryana at Chandigarh.

**CWP No.5906 of 2012
Decided on 30.11.2015**

Darbara Singh

--Petitioner

Vs.

Superintending Canal Officer, Patiala. and others

--Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr Vijay Sharma, Advocate, for the petitioner

Mr.V. Ramswaroop, Addl.A.G, Punjab

Mr. R.V.S.Chug, Advocate, for respondent
Nos. 6,8 to 12, 19,25,28,30,35,39,40 and 48

1. **Whether Reporters of local papers may be allowed to see the judgment?**
2. **To be referred to the Reporters or not ?**
3. **Whether the judgment should be reported in the Digest ?**

Rakesh Kumar Jain,J: (Oral)

The petitioner has challenged the order dated 22.9.2011 passed by the Superintending Canal Officer, Patiala Circle IB, Patiala.

In short, the petitioner is a co-sharer in outlet No. 22600/L Sandoha Branch. He filed an application for commanding his land measuring 64 kanal 3 marla, for getting canal water. The Sub Divisional Officer, Talwandi, recommended that land of the petitioner is already levelled and can be irrigated by lift. This order of the S.D.O, Talwandi

Sabo was subject to approval by the Superintending Canal Officer, Patiala Circle IB, Patiala. The Superintending Engineer, Patiala Circle IB, Patiala vide his order dated 07.1.2010 granted approval. Warabandi was fixed. Thereafter the respondents filed an appeal before the S.C.O. During the pendency of the appeal, S.C.O asked for the report from the S.D.O who gave his report dated 05. 9.2011 to the D.C.O in the following manner *“regarding the report sought vide letter under reference on above subject, it is submitted that the undersigned has inspected the spot in the presence of both parties and it is found that pucca water course FG is running at the spot, is sanctioned in warabandi, but it is broken at some places. Apart from this pucca water course ABCD as shown in the site map attached herewith is running at the spot, through this water course land of applicants is being irrigated. At spot both water course FG and ABCD are running. Report is sent for further action”*.

The S.C.O set aside the order passed by the D.C.O vide his impugned order dated 22.9.2011 only on the ground that pucca water course FG is broken at many points.

Learned counsel for the petitioner has argued that earlier the order passed by the D.C.O was approved by the Superintending Engineer vide his order dated 07.1.2010 but now in appeal filed by the respondents on the basis of report dated 05.9.2011, the said order was set aside only on the ground that the water course FG is broken at some places, whereas the later part of the said report has not been taken into consideration where the SDO has reported that apart from the water course FG, there is another water course ABCD running at the spot through which the land of the petitioner is being irrigated.

Learned counsel for the respondents has vehemently argued that there is no error in the order of the the Superintending Engineer which calls for no interference because land of the petitioner is at high level and is being irrigated by lift which will change the warabandi of the other co-sharers.

After hearing learned counsel for the parties and examining the record, I am of the considered opinion that the impugned order is devoid of application of mind inasmuch as the competent authority has not looked into the later part of the report dated 05.9.2011 submitted by the S.D.O, wherein he had observed that apart from this, pucca water course ABCD as shown in the site map attached herewith is running at the spot, through which land of the applicants is being irrigated and both water course FG and ABCD are running at the spot.

In view of the above, this petition is allowed. The order dated 22.9.2011 is hereby set aside and the matter is remanded back to the S.C.O,Patiala Circle IB Patiala, to take a fresh decision after taking into consideration the entire report dated 05.9.2011 submitted by the S.D.O, Patiala.

The parties are directed to appear before the S.C.O, Patiala Circle IB, Patiala on 21.12.2015 who shall decide the lis between the parties within a month thereafter.

30.11.2015
rr

(Rakesh Kumar Jain)
Judge