

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No. 1640 of 2013 (O&M)

DATE OF DECISION : 22.12.2015

Budh Singh

.... APPELLANT

Versus

State of Haryana and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present : Mr. Shalender Mohan, Advocate,
for the appellant.

Mr. Sudeep Mahajan, Addl. A.G., Haryana,
for respondents No.1 to 4.

Mr. Ajit Sihag, Advocate,
for respondents No.5 to 7.

* * *

SATISH KUMAR MITTAL, J.

This intra-court appeal under Clause X of the Letters Patent has been filed against the order dated 22.05.2013 passed by the learned Single Judge dismissing the writ petition (CWP No. 11212 of 2013) filed by the appellant challenging the order dated 10.04.2009 (Annexure P-7) passed by the Divisional Canal Officer; and the order dated 08.04.2013 (Annexure P-13) passed by the Superintending Canal Officer. The appellant has also challenged the order dated 06.08.2013 passed by the learned Single Judge, whereby the review application (R.A. No. 284 of 2013) filed by him was

also dismissed.

Though there is delay of 82 days in filing the appeal and the appellant has filed application (CM No. 4190-LPA of 2013) for condoning the said delay, yet we have heard learned counsel for the parties on merits and have gone through the impugned order passed by the learned Single Judge, as well as the orders passed by the canal authorities.

The dispute in the present case is regarding restoration of a demolished water course. Under Section 24 of the Haryana Canal and Drainage Act, 1974 (hereinafter referred to as 'the Act'), the canal authorities have been empowered to restore a demolished water course on an application filed by the aggrieved person. In the instant case, the private respondents moved an application before the Sub Divisional Canal Officer, alleging that the appellant has illegally demolished the existing water course, through which they were irrigating their fields and prayed that the demolished water course be ordered to be restored. Initially, vide order dated 14.07.2008 (Annexure P-4), the said application was dismissed by the Sub Divisional Canal Officer, on the ground that the demolished water course does not fall under the definition of temporary water course, therefore, the same cannot be ordered to be restored. On appeal filed by the private respondents, the Divisional Canal Officer vide order dated 29.09.2008 (Annexure P-5) set aside the said order and ordered for restoration of the demolished water course, after coming to the conclusion

that in the published scheme, the proposed new outlet RD 101469-L Pabra Distributory was shown to be completed head to tail from linked water courses and was shown to be in running condition and it was held that without linking water courses splitting was not possible. Therefore, the demolished water course was essential for irrigation and the same has to be restored. A contention of the appellant that no water course was existing before demolition was negated and it was held that the appellant has miserably failed to prove the said fact.

The above said order was challenged by the appellant before the Superintending Canal Officer, who vide order dated 06.01.2009 (Annexure P-6) remanded the matter back to the Divisional Canal Officer with a direction that the parties may be heard again and the case be decided afresh after conducting the site inspection. Thereafter, the Divisional Canal Officer vide order dated 10.04.2009 (Annexure P-7), after conducting spot inspection, maintained the order order dated 29.09.2008. The above said finding of fact was affirmed by the Superintending Canal Officer vide order dated 08.04.2013 (Annexure P-13), while observing as under :-

“In light of the above facts it has been confirmed that the water course in question was in existence and dismantled. The restoration of same is necessary to regulate the irrigation of the respondents area. The Divisional Canal Officer Adampur Water Services Division, Hisar has rightly decided the case. I find no justification in

the revision petition, hence rejected. The decision of the Divisional Canal Officer Adampur Water Services Division, Hisar dated 10.4.2009 is upheld.”

While dismissing the writ petition filed by the appellant against the aforesaid orders of the Divisional Canal Officer and the Superintending Canal Officer, the learned Single Judge affirmed the aforesaid view taken by the canal authorities, while observing as under :-

“During the course of arguments, learned counsel for the petitioner failed to point out any patent illegality in either of the impugned orders passed by the respondent canal authorities. The Superintending Canal Officer has passed the impugned order, Annexure P-13, after due application of mind. He has examined the record of the case, factual position obtaining at the site as well as the technical aspect of the matter. A definite finding of fact has been recorded about the existence of the dismantled water course. It was rightly felt necessary to order restoration of the dismantled water course, so as to provide the source of irrigation to the private respondents. This Court has not found any patent illegality or perversity in the orders passed by the respondent canal authorities and the same deserve to be upheld.”

Learned counsel for the appellant though could not point out

any jurisdictional error or perversity in the orders passed by the canal authorities, but he argued that the private respondents were having an alternative water course available to irrigate their fields, therefore, there was no justification for the canal authorities to order restoration of the demolished water course. This argument was also raised before the learned Single Judge. While rejecting this contention, the learned Single Judge observed that availability of an alternate water course cannot be an absolute bar to the restoration of a demolished water course. It depends upon facts and circumstances of each case. In our view, this contention has rightly been rejected by the learned Single Judge. Under the provisions of the Act, no person has a right or liberty to demolish an existing water course. If any person demolishes such water course, the aggrieved person has a right to get it restored by moving an application before the canal authorities. If a person has some grouse with regard to an existing water course, or he wants that the same should be changed or closed, or its alignment be changed, he has liberty to move to the canal authorities for the same, but he has no right to demolish the existing water course himself, merely on the ground that the aggrieved person may irrigate his fields from an alternate water course. In our opinion, to maintain the discipline in the fields, no body can be permitted to demolish an existing water course himself. He can avail his remedy before the canal authorities. In the present case, a finding of fact has been recorded by the canal authorities that an existing water course was

demolished by the appellant, which was ordered to be restored by the canal authorities after providing an opportunity of hearing to both the parties. The question as to whether a water course was existing or not is a question of fact, which has to be decided by the canal authorities. Once the canal authorities have recorded a finding of fact, the same does not require any interference either in the writ jurisdiction of this court or in the Letters Patent Appeal.

We do not find any illegality in the observation recorded by the learned Single Judge to the effect that in view of the pure finding of fact recorded by the canal authorities with regard to demolition of the existing water course, they have rightly ordered for restoration of the demolished water course.

In view of the above, we do not find any merit in the instant appeal and the same is, accordingly, dismissed.

(SATISH KUMAR MITTAL)
JUDGE

December 22, 2015
ndj

(SHEKHER DHAWAN)
JUDGE