

LPA No.116 of 2015 (O&M) etc.

-1-

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

LPA No.116 of 2015 (O&M)

Dhanwant Singh (since deceased) through LRs
and others

...Appellants

Versus

Chief Engineer Canal, Punjab and others

....Respondents

LPA No.117 of 2015 (O&M)

Navjot Singh Sidhu and others

...Appellants

Versus

Chief Engineer Canal, Punjab and others

....Respondents

LPA No.118 of 2015 (O&M)

Randhir Singh

...Appellant

Versus

Chief Engineer Canal, Punjab and others

....Respondents

Date of Decision: September 18, 2015

**CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL
HON'BLE MR.JUSTICE MAHAVIR S. CHAUHAN**

Present: Mr. J.S. Brar, Advocate,
for the appellants.

Mr. Vinod S. Bhardwaj, Addl. A.G., Punjab.

Mr. Sunny K. Singla, Advocate,
for the private respondents.

..

SATISH KUMAR MITTAL, J.

This order shall dispose of LPA Nos.116, 117 and 118 of 2015 filed by various appellants against the order dated 29.09.2014 passed by the learned Single Judge, whereby three writ petitions filed by the appellants challenging the orders of the canal authorities withdrawing the extra supply of canal water from the garden of the appellants, have been dismissed.

In all the appeals, the identical question of facts and law is involved. Therefore, we propose to dispose of all these appeals by common order.

Though these appeals are barred by limitation, and along with the appeals, the appellants have filed applications for condonation of delay in filing the appeals, yet without taking into consideration the said delay, after notice we have heard the learned counsel for the parties on merits and gone through the impugned order passed by the learned Single Judge as well as the canal authorities.

For facility of reference, the facts have been taken from LPA No.116 of 2015.

In all the appeals, in the year 1965, the extra supply of canal water was sanctioned for respective agricultural lands of the appellants under Rule 9 of the Rules for Extra Supply of Canal Water for Gardens and Orchards, 1946 (hereinafter referred to as 'the Rules').

On 4.11.2008 the Deputy Collector issued notice to the appellants as they were misusing the extra supply of canal water sanctioned for irrigation of the garden as no proper garden was maintained and they were using the said water for cotton crops. The Deputy Collector after

holding an enquiry found that only few plants were planted at the spot, and in most of the land cotton crops were cultivated by the extra supply of canal water. The Deputy Collector after hearing the parties, recommended to the Executive Engineer, Mansa Division I.B, Jawaharke (respondent No.3 herein) to withdraw the extra supply of water to the garden of the appellants. The Superintending Canal Officer vide order dated 5.8.2010 (Annexure P5) after hearing the parties and making the spot inspection, ordered for withdrawing the extra supply of canal water from the garden of the appellants on the ground that the garden maintained by the appellants was not in proper condition and they have been misusing the extra supply of canal water for cultivating the cotton crops.

Feeling aggrieved against the aforesaid order, the appellants preferred CWP No.17305 of 2010 and the same was dismissed as withdrawn with liberty to the appellants to approach the Chief Engineer, Canal and Irrigation Department, Punjab. Thereafter, the appellants came to know that the Chief Engineer, Canal (Irrigation Branch) had already granted approval to cancel the extra supply of water to the garden of the appellants vide order dated 23.11.2010 (Annexure P6). Subsequently, respondent No.4 vide order dated 29.5.2012 (Annexure P7) ordered for amendment in turn of water under Section 68 of the Northern India Canal & Drainage Act, 1873 so as to implement the withdrawal of extra supply of canal water to the garden of the appellants. Thereafter, the appellants filed the aforesaid writ petition challenging the orders of the Chief Engineer, Superintending Canal Officer and Deputy Collector.

In this case the canal authorities have recorded a finding of fact

that the appellants are not using the extra supply of canal water for garden/orchards as on the spot it was found that the appellants were using the extra supply of canal water for cultivation of the cotton crops. It was further found that on the spot only few plants were planted and no proper garden was maintained.

Learned counsel for the appellants argued that this finding recorded by the canal authorities is not correct, and secondly sufficient time was not given to the appellants to completely establish the garden, therefore, the canal authorities were not justified in withdrawing the extra supply of canal water.

In our opinion, both the contentions raised by the learned counsel for the appellants cannot be accepted. Undisputedly, in this case the said finding of fact was recorded by the canal authorities not only after hearing the parties but also after making the spot inspection. The spot inspection was also made by the Superintending Canal Officer before accepting the recommendations made by the Deputy Collector. Now in this Letters Patent Appeal there is no scope for interference in the said finding of fact. As far as the second contention of the appellants is concerned that the appellants were not given the sufficient time to establish the garden, also cannot be accepted. The extra supply of canal water for plantation of garden in the agricultural land of the appellants was sanctioned in the year 1965 and from the last 45 years they could not establish a regular garden/orchard. It was found as a fact that actually the appellants were misusing the extra supply of canal water, which was meant only for plantation of garden/orchard, by cultivating the cotton crops, which was not

the object for supplying the extra canal water. Under Rule 12 of the Rules, the canal authorities have been given power to withdraw the extra supply of canal water, if the same is not being used for maintaining the garden. Therefore, in our opinion, the canal authorities while exercising the said power were fully justified in withdrawing the extra supply of canal water from the garden of the appellants. Thus, there is neither any jurisdictional error nor illegality in the orders passed by the canal authorities.

In view of the aforesaid, we do not find any merit in the appeals and the same are hereby dismissed.

(SATISH KUMAR MITTAL)
JUDGE

September 18, 2015
vkg

(MAHAVIR S.CHAUHAN)
JUDGE