

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

LPA No. 1663 of 2015 (O&M)

DATE OF DECISION : 19.11.2015

Kulwinder Singh

.... APPELLANT

Versus

Superintending Canal Officer, Patiala Circle IB Patiala and others

.... RESPONDENTS

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

HON'BLE MR. JUSTICE SHEKHER DHAWAN

Present : Mr. Amit Jain, Advocate,
for the appellant.

Mr. Vijay Sharma, Advocate,
for the caveator/respondent No.4.

* * *

SATISH KUMAR MITTAL, J.

This intra-court appeal under Clause X of the Letters Patent has been filed against the order dated 23.09.2015 passed by the learned Single Judge, whereby the writ petition (CWP No. 21030 of 2014) filed by Bharpur Singh (respondent No.4 herein) has been allowed and the order dated 10.12.2013 (Annexure P-3) passed by the Divisional Canal Officer, Mansa Division IB Jawaharke (respondent No.2 herein), as well as two separate orders dated 17.09.2014 (Annexures P-4 and P-5) passed by the Superintending Canal Office, Patiala Circle, IB Patiala (respondent No.1 herein), dismissing the appeals filed by Bharpur Singh (respondent No.4 herein) and Chanan Singh (respondent No.5 herein) challenging the

aforesaid order, have been set aside; and the order dated 06.11.2013 (Annexure P-2) passed by the Deputy Collector, Mansa Division, IB Jawaharke (respondent No.3 herein), has been restored.

After hearing learned counsel for the appellant and learned counsel for the caveator/respondent No.4, we are not inclined to interfere with the impugned order passed by the learned Single Judge.

The dispute in the present case is regarding amendment of the warabandi under the Northern India Canal & Drainage Act, 1873 (hereinafter referred to as 'the Act'). The appellant moved an application before respondent No.3 seeking amendment of the warabandi. Respondent No.3, after considering the claim of the appellant and getting the site plan prepared from Circle Canal Patwari; recording statements of the concerned co-sharers; calling report of the Zildar; and also after hearing all the concerned parties, vide order dated 06.11.2013, recommended that application of the appellant be filed, while holding that the existing 'wari' is correct and the same does not require any amendment. Aggrieved against the said order, the appellant filed appeal before respondent No.2, who vide order dated 10.12.2013 set aside the aforesaid order of respondent No.3. Against the said order, respondents No.4 and respondent No.5 preferred two separate appeals before respondent No.1, which were dismissed by him vide two separate orders dated 17.09.2014. On writ petition (CWP No. 21030 of 2014) filed by respondent No.4, the learned Single Judge, vide the

impugned order dated 23.09.2015, set aside the order dated 10.12.2013 (Annexure P-3) passed by respondent No.2 as well as two separate orders dated 17.09.2014 (Annexures P-4 and P-5) passed by respondent No.1, after coming to the conclusion that the orders passed by both the authorities are non-speaking and cryptic, as without properly appreciating the matter, they have illegally set aside the order dated 06.11.2013 (Annexure P-2) passed by respondent No.3. In this regard, the following observations have been made :-

“Perusal of the warabandi (Annexure P-9) reveals that petitioner is having separate khatas and for each separate khata warabandi was earlier existing in the name of petitioner. The part of land has been sold by the petitioner for which a separate khata was carved out. The khata of the father of the petitioner is 47 and 49 and khata of the petitioner is 48. Perusal of site plan Annexure P-8 shows that the land of the petitioner and his family, which is shown in Pink colour, falls at the end of the watercourse ACD. Earlier Nakka of the petitioner was at Rect. No. 118, killa Nos. 8, 12 and khata of father of the petitioner was at Rect. No. 73, killa Nos. 3 and 7. The land of the petitioner and his parents shown in Pink colour comes at the fag end i.e. point D, where watercourse end. The land of respondent No.4 shown in yellow colour is prior to the land of the petitioner.

The turns of water are fixed following the principle of first come first serve. The land of respondent No.4 comes first, hence, its turn of water will come first. The land of petitioner and his family is at the fag end of watercourse.

The residue water is to be given to the petitioner as his land is at the fag end of watercourse. The turns of water can be alternative, only if both the parties have their lands together at the end of the watercourse. In the present case, this is not the situation. Accordingly, the impugned orders dated 17.09.2014 (Annexures P-4 and P-5) and 10.12.2013 (Annexure P-3) are set aside. The order passed by the Deputy Collector dated 06.11.2013 (Annexure P-2) is restored.”

Before us, learned counsel for the appellant argued that when the learned Single Judge arrived at the conclusion that the orders passed by the Divisional Canal Officer and the Superintending Canal Officer are non-speaking and cryptic, then he should have remanded the matter, instead of deciding the matter himself on merits. We do not find any substance in this argument. Since the matter remains pending before the canal authorities for a long time, therefore, we are of the opinion that the learned Single Judge rightly proceeded with the matter on merits, instead of remanding it to the canal authorities. As far as the factual issue is concerned, it has not been disputed that the land of the appellant comes prior to the land of respondent

No.4, whereas land of respondent No.4 is situated at the end of the watercourse. In view of this factual position, after applying the principle of 'first come first serve', the learned Single Judge has rightly come to the conclusion that the residue water is to be given to the land of respondent No.4 and his family, which is situated at the fag end of the watercourse. Faced with this situation, learned counsel for the appellant tried to show that some portion of the land of respondent No.4 is also falling on the watercourse prior to the land of the appellant, but this fact in our opinion will also not change the situation, because the fact remains that the major portion of the land of respondent No.4 and his family is situated at the fag end of the watercourse. Thus, we do not find any illegality or perversity in the impugned order passed by the learned Single Judge.

No merit. Dismissed.

(SATISH KUMAR MITTAL)
JUDGE

November 19, 2015
ndj

(SHEKHER DHAWAN)
JUDGE