

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

CWP No.14547 of 2014
Date of decision : 19.01.2017

Harbans Singh and another

...Petitioners

Versus

Superintendent Canal Officer and others

..Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

Present: Mr. C.S. Jattana, Advocate for the petitioners.

Mr. Yatinder Sharma, Addl. A.G. Punjab.

Mr. J.K. Singla, Advocate for respondent No.3.

AMIT RAWAL, J. (Oral)

The petitioners are aggrieved of the order of SCO dated 06.06.2013 (Annexure P-2), whereby on appeal filed by the private respondent No.3 after 12 years of the order of DCO dated 29.08.2001 (Annexure P-1), has been set aside.

Mr. C.S. Jattana, learned counsel appearing on behalf of petitioners submits that remedy of the appeal under the Northern Indian Canal Drainage Act, 1873, is 30 days. As per the record of the authority, the munadi was effected. However, while conducting the proceedings by Zildar, spot inspection and as well as on receipt of report by the DCO, Rupinder Singh-respondent No.3 did not appear. The petitioners grievance was for shifting the water course from the RD60760-L to 65202-L field

water channel as previous one had been closed owing to the expansion of abadi. No explanation has come forth, in the order of SCO, as to how and in what manner respondent No.3 would be effected. In fact the petitioners are using the water course for the last 12 years. He even did not call for the file of the DCO in forming opinion while setting aside same. At the best, it could have remanded back the matter but the said procedure has also not been followed.

Per Contra, Mr. J.K. Singla, learned counsel appearing on behalf of respondent No.3 on instruction from his client submits that he has no objection for shifting of the RD Moga No.65202L but there are other co-sharers holders have also been effected as since water was derived by the petitioners, there is likelihood of the shortage of water to other co-sharers. The aforementioned outlet is required to be increased.

Mr. Yatinder Sharma, Addl. A.G. Punjab submits that munadi was effected in the Village despite that Rupinder Singh did not appear. No explanation has come forth in acquiring knowledge after lapse of 5 years as the factum of using water course was in the knowledge and he was aware of the aforementioned facts and thus urges this Court for dismissal of the present writ petition.

I have heard learned counsel for the parties and appraised the paper book and of the view that there is merit and force in the submissions of Mr. C.S. Jattana, Advocate for the petitioner. Arguments of Mr. Singla, Advocate is not able to cut an ice as no explanation, much less, cogent reasons have come forth in filing the appeal after lapse of 12 years. So called reasoning is nothing but an Act of browbeating and arm twisting. The

factum of using of the alternative water course i.e. 65202L field water channel was in the notice of respondent No.3, yet no action was taken. Even now they have no objection with regard to the usage. Appeal before the SCO could not have been entertained on the ground that other co-sharers had not approached or taken any action in law.

Resultantly, order of SCO dated 06.06.2013 (Annexure P-2), in my view does not stands on the touchstone of the reasonability. Same is hereby set aside as all the aforementioned factors have not been taken care.

Writ petition stands allowed.

19.01.2017

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**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No