

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

LPA No.607 of 2017 (O&M)

Date of Decision :21.04.2017

Ram Niwas and another

....Appellants

Versus

State of Haryana and others

....Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR.JUSTICE DR.SHEKHER DHAWAN

....

Present: Mr. V.K.Jindal, Sr.Advocate with
Mr. Maninder Singh Punia, Advocate
for the appellants.

Mr. R.N.Lohan, Advocate
for the caveator-respondent No.6.

....

MAHESH GROVER, J. (Oral)

This appeal is against the judgment of the learned
Single Judge dated 23.03.2017.

The dispute centers around the orders originating from
the Divisional Canal Officer which was subsequently upheld by
the authorities while answering the appeal.

Before the writ court where the controversy was
carried, learned counsel for the appellants had made a prayer that
the plea of respondent No.6 was under Section 13 of the Haryana
Canal and Drainage Act, 1974 (hereinafter called 'the Act'). The
prayer of respondent No.6 for restoration was allowed while

invoking the provisions of Section 13 of the Act but it could not have been answered unless two conditions were satisfied i.e. in case any accident happening implying actual damage or on an apprehension to that effect by the Divisional Canal Officer or any other person acting under him, he could order for repairing and preventing such accident. It was thus contended that in the absence of any apprehension or actual damage to the canal on account thereof the application for demand of water course as claimed was frivolous. It is further contended that new alignment could not have been ordered under Section 13 of the Act when the authorities themselves noticed that the disputed water course was demolished by the PWD authorities at the time of widening of the road. The learned Single Judge relied extensively on the affidavit filed by the Divisional Canal Officer, the relevant extract of which reads as under :-

“10. That the water course in dispute is a main water course which had been running at site since the outlet was installed at site and about 250 acres was receiving irrigation at site and after demolition of water course in dispute about 250 acres area has been deprived of getting irrigation at site.

11. That the water course AEF is a personal water course of the co-sharer of the holding of petitioners which is also sanctioned in warabandi and water course AEI is a water

course reserved by the Consolidation Department and after operating water course in dispute, the part of sanctioned water course A to E would not be in use after establishing the water course so sanctioned. The site plan showing the location of water course in dispute and location of personal water course sanctioned in warabandi is attached herewith as Annexure R-1 for kind consideration of this Hon'ble High Court.

12. That it is pertinent to mention here that water course from point E to G has been dug by the petitioners and other co-sharer which links another water course KG at point G to carry water in their area situated in rectangle 106 and in case the water course in dispute is not allowed to be established at site about 250 acres area would be deprived of getting canal irrigation at site”

The learned Single Judge accepted this to note that at least 250 acres were deprived of irrigation after demolition.

We have perused the site plan and find that the proposed alignment of water course A to C and D to E in the width of one karam is sanctioned against compensation to be paid by the beneficiaries. The right of the appellants has further been protected as compensation is to be determined under the provisions of the new Land Acquisition Act of 2013 known as 'The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013'. We are

further of the opinion that mere technical plea of the application being maintainable under Section 13 would be irrelevant to the present case for the simple reason that the Divisional Canal Officer has ensured the interest of irrigation. It has to be understood that every such technical objection should not necessarily be given weightage unless a prejudice manifests itself to the cause of the appellants. Irrigation is the lifeline of an agriculturist and if substantial justice has been done to ensure the interest of irrigation while ensuring adequate compensation to the appellants who would have to lose a miniscule portion of their land. We are thus of the opinion that it can hardly be a cause to be accepted as a justification for interference in the impugned order.

Dismissed.

(MAHESH GROVER)
JUDGE

21.04.2017
dss

(SHEKHER DHAWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No