

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

R.S.A.No.431 of 2017 (O&M)

Date of Decision: November 01, 2018

Tarsem Lal & others

...Appellants

Versus

Lal @ Rakha Ram & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. Sandeep Bansal, Advocate,
for the appellants.

AMIT RAWAL, J. (Oral)

Appellant-plaintiffs have not been successful in seeking injunction against the private respondents and as well as defendant No.5- Punjab State Tubewell Corporation Limited from interfering into peaceful possession and digging/carving out any drain without proper acquisition through the land bearing Khewat No.160, Khatauni No.194, Khasra Nos.28//1/1 (3-0), 10(8-0), 11(7-11), 12 (8-2), 18 (5-0), 19 (8-0), Khewat No.81, Khatauni No.82, Khasra No.28//9/2 (4-4), situated in the area of Village Adamwal H.B.No.370, Tehsil and District Hoshiarpur on the premise that they are owners of the land and if at all defendants wanted to carve out the drain for the purpose of irrigation of the land in the vicinity of various landowners, proper procedure was required to be followed.

Defendant Nos.1 to 4 contested the suit by filing joint written statement, whereas respondent No.5 filed separate written statement and pleaded that the Divisional Canal Officer, vide order dated 26.04.2004, had

notified a scheme and in this regard, notice was served to all the landowners to file objections, if any. On 18.05.2004, the aforementioned scheme was passed as no objections were received.

The trial Court, on the preponderance of the evidence, dismissed the suit and the appeal laid before the Lower Appellate Court also met with the same fate.

Mr. Sandeep Bansal, learned counsel representing the appellant-plaintiffs submitted that it has been proved on record that the drain was never dug from the land of the appellant-plaintiffs, but as regards the promulgation of the notification/scheme, defendant No.1 candidly admitted that no such notices were sent to the landowners but only to the Sarpanches and Panches. Brought on record photocopies of the documents which were not proved on record and rightly so they were marked. Defendant No.5 did not lead any evidence. The un rebutted evidence has erroneously been brushed aside, therefore, there is gross illegality and perversity. The courts below have also erroneously non-suited by invoking the provisions of Section 30-G of the Northern India Canal & Drainage Act, 1873 (for short, the Act).

I am afraid, the aforementioned argument is not sustainable as there is a categoric pleading with regard to the scheme. To belie the same, plaintiffs could have summoned the record from the concerned department, but no effort was made. Private respondents would not be knowing about these provisions. They may have supported the case of the plaintiffs. Plaintiffs were also not prevented to seek information under the Right to Information Act with regard to the promulgation. A complete procedure for publication and promulgation of the scheme, much less invitation of the

objections has been provided commencing from Section 30(a) to (cc) of the Act. The remedy lied elsewhere, particularly when no land of the appellant-plaintiffs was ever dug for the purpose of drainage.

In view of what has been observed above, the findings of both the courts below, in my view, do not suffer from any illegality or perversity. No ground for interference is made out, much less involvement of any substantial question of law.

November 01, 2018
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned **Yes/No**

Whether Reportable: **Yes/No**