

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No. 895 of 2019 (O&M)
Date of decision: 09.05.2019

Subhash Chander

... Appellant

Versus

Superintending Canal Officer, Bhakra Water Service Circle, Sirsa and others

... Respondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI, JUDGE**

Present: Mr. Surinder Garg, Advocate, for the appellant.

ARUN PALLI, J.

This is an *intra Court* appeal under Clause-X of the Letters Patent, against an order and judgment dated 04.04.2019, vide which the writ petition preferred by the appellant against the order dated 20.02.2019, passed by respondent No.1, whereby the revision appeal No.102-R/2018 filed by the appellant was dismissed, whereas the cross-appeal No.105-R/2018, filed by respondent No.6 was accepted, has since been dismissed.

The appellant/petitioner moved an application before the Deputy Collector, Rori Water Service Division, Sirsa (respondent No.3), to fix his nakka at point-E i.e. rectangle No.108 killa No.16/25 (eastern side) from point-A i.e. rectangle No.108 killa No.5. Further his turn of water, for land situated in rectangle No.188, 189, be fixed at the end and he be accordingly given *bharai-jharai*. However, vide order dated 13.08.2018, respondent No.3, rejected demand No.1, fixing the nakka at rectangle

No.108 killa No.16/25. Being dis-satisfied with the said order the appellant filed a revision appeal No.102-R of 2018, before the Superintendent Canal Officer, whereas even respondent No.6, to the extent he was aggrieved filed a revision petition No.105-R of 2018. And, upon a consideration of the matter, the Superintendent Canal Officer (respondent No.1), vide order dated 20.02.2019, dismissed the revision appeal filed by the appellant, whereas the revision appeal filed by respondent No.6, was allowed. As a result, Jhara (residue) was permitted to respondent Raja Ram son of Ram Narain, and accordingly the order dated 6.11.2018, was modified. Being aggrieved, the appellant assailed the said order vide a writ petition, referred to above, which has since been dismissed. Thus, this appeal.

We have heard learned counsel for the appellant and perused the records.

Before we proceed further, it would be apposite to refer to the conclusion arrived at by the learned Single Judge after due and thorough analysis of the matter in issue:-

“2) I have considered the submissions made by the learned counsel for the petitioner and with his assistance, have gone through the records of the case as well as the impugned order dated 20.02.2019 (Annexure P-4) but do not myself in agreement with the claim of the petitioner as the Superintending Canal Officer has gone into the matter in detail and dealt with each and every aspect while dealing with the revisional appeal which was preferred by him. The relevant operative part of the order as regards the claim of the petitioner in the Revision Appeal No.102-R/2018 reads as follows:-

“DECISION:-***Revision Appeal No.102-R/2018***

The arguments of both the parties have heard in detail. The case file, site plan and all other relevant documents placed on record also perused properly. In site plan submitted, the holding of revisionist Subhash has shown in pigeon colour while the holding of the respondent Uday Pal has shown in yellow colour. No doubt that the lined water course also passes along the holding of respondent Uday Pal but the other water course also running on patthar line between rect. no.103 and 108 and on eastern line of rect/killla no.108//1-10-11, and southern side of second water course. His holding falls after the holding of Dharam Pal and wari is fixed correctly after wari of Dharam Pal. Moreover if the wari of area of respondent Uday Pal is fixed on lined water course, in that case the appellant Subhash is not entitle to take naka at demanded site i.e. 108//16-25 because generally the naka for taking water, to any shareholder, is fixed at starting point of land of previous land owner. In that circumstance the appellant will have to fill the one killa more length of water course. The Divisional Canal Officer has already granted four minutes special bharai for holding of the appellant Sh. Subhash s/o Ram Narayan. The area of revisionist is being irrigated through lined water course passing in between rect. no.108 and 109. Thus the wari of the revisionist is fixed correctly after wari of Smt.Roopa Rani khata no.17.”

Under the circumstances, mention above, I do not found any solid reason to allow the application. Thus the revision application No.102-R/2018 is dismissed.”

3) This Court does not find any illegality in the order which has been impugned by the petitioner as the same is based upon proper appreciation of the principles as

applicable to the irrigation.”

Ex facie, upon a due analysis of the factual position obtaining on the spot the Superintendent Canal Officer concluded that the area of the appellant was being irrigated through lined water course passing in between rectangle No.108 and 109. Therefore, his *wari* was appropriately fixed after *wari* of Smt. Roopa Rani (khata No.17). But, as holding of Subhash son of Ram Narain fell first than the holding of Raja Ram son of Ram Narain, accordingly, Subhash was entitled to a *wari* first whereafter *wari* of Raja Ram son of Ram Narain was fixed. Which is why, in the given situation the revision appeal filed by Raja Ram son of Ram Narain was accepted and he was found entitled to *jhara* (residue).

Upon being pointedly asked, learned counsel for the appellant could not refer to anything on record to show if the conclusions recorded by the Superintendent Canal Officer as also the learned Single Judge were either contrary to the record or suffered from any material illegality.

In the wake of the above, the appeal being devoid of merit and is accordingly dismissed.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

09.05.2019

Manoj Bhutani

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