

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

LPA-1764-2019 (O&M)

Date of decision:- 03.12.2019

Shishpal

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJIV SHARMA

Present:- Mr. Rajesh Sethi, Advocate,
Mr. Arun Biriwal, Advocate,
for the appellant.

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RAVI SHANKER JHA, C.J. (ORAL)

This appeal has been filed by the appellant being aggrieved by an order dated 08.08.2019 passed by the learned Single Judge dismissing the writ petitions filed by the petitioner as well as respondent No. 4 and affirming the order dated 09.06.2016 passed by the Superintending Canal Officer, Bhakra Water Services Circle, Sirsa.

The contentious issue between the parties was the existence and continuance of a water-course that ran through the land of the appellant as well as respondent No. 4 who are relatives. It is submitted by learned counsel for the appellant that the said water-course was in existence since several years may be five to six decades and was being used by both the parties. It is stated that the said water-course was dismantled by respondent No. 4 which led to a dispute between the parties and which was ultimately resolved by passing an order for restoration of the water-course which admittedly has been restored. It is submitted that the learned Single Judge while affirming all the aforesaid aspects has also affirmed that part of the impugned order dated 09.06.2016, wherein the restoration

water-course was not existing since last forty-fifty years and was not a sanctioned water-course.

Learned counsel for the appellant submits that the land in question belonged to a common ancestor and the water-course was constructed by him and has been in existence since then. It is submitted that both the parties are availing of the benefit of the water-course. However, on account of partition and subsequent dispute between them, the water-course was dismantled by respondent No. 4. Learned counsel for the appellant submits that once the learned Single Judge recorded a finding affirming the existence of the water-course, its permanent restoration should have been ordered rather than ordering restoration for one year.

We have heard learned counsel for the appellant at length.

We have also perused the findings recorded by the learned Single Judge in paragraphs 8 and 9 of the impugned order, wherein the learned Single Judge, while affirming the finding recording existence of the water-course on the spot, has also held that the water-course is not a sanctioned water-course and had been running only for the last ten years and, therefore, is required to be restored temporarily for one year. On a specific question and query being put to the learned counsel for the appellant as to whether there is any document on record indicating existence of the said water-course since the time of the common ancestor or since last forty-fifty years, the learned counsel for the appellant has failed to show any documentary evidence or records of the revenue or irrigation authorities in that regard. He has, however, submitted that the existence was shown in the record of proceedings that were taken up in the year 2005-2006.

Apparently, the learned Single Judge has taken into consideration the aforesaid aspects and has recorded a finding that the water-course had been running for the last about ten years and on that ground has ordered temporary restoration for

one year. It is also evident in view of the non-existence of any evidence to indicate that the water-course was in existence for the last forty-fifty years. The finding recorded by the learned Single Judge does not suffer from any perversity or illegality warranting interference.

At this stage, learned counsel for the appellant submits that the revisional authority had infact no jurisdiction or power to entertain revision under the provisions of Section 20(3) of the Haryana Canal and Drainage Act, 1974.

It is, however, observed that an objection was never taken by the appellant either before the revisional authority or before the learned Single Judge and, therefore, it cannot be permitted to be taken up by the appellant, at this stage, after having submitted to the jurisdiction of the revisional authority without raising any objection or protest. It is also observed that the learned Single has recorded a finding that is based on record regarding the existence of the water-course for ten years and on that ground has ordered temporary restoration.

In the circumstances, the aforesaid challenge to the jurisdiction of the revisional authority becomes meaningless in view of the findings recorded aforesaid.

The appeal filed by the appellant being meritless is accordingly dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(RAJIV SHARMA)
JUDGE

03.12.2019
Amodh

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