

**IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH
117 (PROCEEDINGS THROUGH V.C.)**

LPA-900-2021

Date of decision:04.10.2021

BALVIR SINGH

...APPELLANT

V/S

STATE OF PUNJAB AND ORS

...RESPONDENTS

***CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA***

**Present: Mr. P.K.S.Phoolka, Advocate,
for the appellant.**

**Mr. Jagtar Singh Sidhu, Advocate,
for the caveator/respondent No. 5.**

AUGUSTINE GEORGE MASIH, J.

Challenge in this appeal is to the order dated 09.08.2021 passed by the learned Single Judge whereby writ petition preferred by the appellant stands dismissed wherein a writ in the nature of certiorari was sought for setting aside the order dated 21.08.2017 (Annexure P-6) passed by the Divisional Canal Officer, Mansa Canal Division, IB Jawaharke-respondent No. 3 allowing the appeal of Mithu Singh son of Teja Singh-respondent No. 5 by setting aside the order dated 11.08.2015 (Annexure P-5) passed by the Deputy Collector, Jawaharke Canal Division, IB Jawaharke-respondent No. 4 and the order dated 25.02.2020 (Annexure P-8) passed by the Superintending Canal Officer, Patiala Division IB, Patiala-respondent No. 2 rejecting the revision petition of the appellant.

2. Learned counsel for the appellant has asserted that the learned Single Judge has proceeded on a wrong assumption that respondent No. 5 was entitled to the benefit which has been claimed by him for clubbing up of his turns for irrigation at Khata No. 1 instead of keeping it at two different stages which was continuing for the last more than 30 years on the principle of 'first come first get', which principle would not be applicable to the case in hand. He asserts that the onus was upon respondent No. 5 to project any prejudice having been caused to the said respondent as he wanted change in the turn for water for irrigation purposes. The learned Single Judge has put the onus upon the appellant and, therefore, the said approach of the learned Single Judge is not sustainable. Prayer has, thus, been made for setting aside the judgment and order passed by the learned Single Judge dated 09.08.2021 as also the impugned orders in the writ petition by allowing the present appeal.

3. We have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the orders which have been impugned by the appellant but do not find ourselves in agreement with his contentions.

4. The factum that the land of the private respondents falls prior to the land of the appellant has not been disputed by the counsel for the appellant on being specifically called upon to respond to the same. It may be correct that the initial onus was upon the respondents to discharge with regard to the prejudice having been caused to them by not clubbing up of the turn of their irrigation but that being a technical issue where the authorities are required to assess and take decisions keeping in view the best interest of irrigation, the said decision has been taken by the competent

authority in favour of the private respondents by clubbing up their turn at No. 1.

5. The principle of 'first come first get' is in accordance with the provisions of Section 68 of the Canal and Drainage Act, 1873 which further finds support in the instructions issued at Para No. 8 of Appendix 'E' of the Revenue Manual of Public Works Department, Punjab (Irrigation Branch) as well as the order dated 07.03.2012 passed by this Court in CWP No. 4145 of 2009 titled as Bahadur Ram vs. Superintending Canal Officer, Ferozepur and others. The land of the private respondents falls on the water channel prior to the land of the appellant which stands accepted by the counsel for the appellant in Court as well. Vide order dated 21.08.2017, the Divisional Canal Officer, Mansa Division, I.B. Jawaharke keeping in view this principle and in better interest of irrigation had accepted the request of the private respondents which order has been upheld by the Appellate Authority as well as the Revisional Authority. The basic principle, for which the Canal and Drainage Act, 1873 was enacted, having been fulfilled, we do not find any justification for accepting the contentions of the counsel for the appellant.

6. On being called upon by this Court, counsel for the appellant has not been able to demonstrate, on the basis of the records, any prejudice having been caused to the appellant by way of clubbing up of the turn of the private respondents at No. 1 especially when the total time for irrigation by clubbing up of two turns into one turn remains the same. It is also admitted by the counsel for the appellant that the time for irrigation qua the appellant on the turn assigned to him remains the same. Therefore, no prejudice whatsoever has been actually caused to the appellant.

7. Keeping in view the above, both on law and on equity, we do not find any ground for accepting the appeal of the appellant and, therefore, order dismissal of the same.

8. Caveat stands discharged.

**(AUGUSTINE GEORGE MASIH)
JUDGE**

**(ASHOK KUMAR VERMA)
JUDGE**

October 04, 2021

pj

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No