

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

133

**LPA-467-2022 & CM-1118-LPA-2022
DATE OF DECISION: JUNE 02, 2022**

Biyas Chander and another

.....Appellants

VERSUS

Chief Canal Officer and others

....Respondents

**CORAM:- HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR.JUSTICE SANDEEP MOUDGIL**

**Present: Mr. R. N. Lohan, Advocate,
for the appellants.**

AUGUSTINE GEORGE MASIH, J.

Challenge in this appeal is to the judgment dated 19.05.2022 passed by learned Single Judge, whereby the writ petition preferred by the appellants (petitioners in the writ petition) stands dismissed.

Briefly, the facts are that respondent Nos.5 to 8 filed an application for restoration of the demolished water course depicted in the site plan as points A, B and C. The said application was allowed by the Sub Divisional Canal Officer, appeal against which preferred by the appellant-petitioners succeeded, which resulted in a challenge by the private respondents by way of revision petition before the Superintending Canal Officer, where they succeeded. The appellant-petitioners, thereafter, preferred a revision before the Chief Canal Officer, where they were

unsuccessful, leading to filing of the writ petition, which has been dismissed by the learned Single Judge.

It is the contention of learned counsel for the appellants that the learned Single Judge has failed to appreciate that there was no water course running at the spot. He asserts that while returning a finding with regard to there being a water course in existence, which is alleged to have been demolished, the nature of the said water course has not been mentioned nor a finding given in this regard. Unless the kind of the water course, which is in existence, is spelt out, it cannot be said that there was ever a water course existing at Points A, B and C. Therefore, there is no question of restoration of water course. He, on this basis, asserts that the impugned orders of the Canal authorities as also the learned Single Judge cannot sustain and deserve to be set-aside and the application of the private respondents for restoration of demolished water course deserves to be dismissed.

We have considered the submissions made by learned counsel for the appellants and with his assistance have gone through the pleadings and the orders passed by the Canal authorities as also the learned Single Judge, which have been impugned herein but find no merit in the contentions as have been raised by the counsel.

As regards the existence of the water course at points A, B and C, as per the site plan, (Annexure P-6) is concerned, the Zildar, on instructions of the Sub Divisional Canal Officer, Deosar Water Services Sub Division, Hisar-respondent No.4, had inspected the spot and submitted his report, where he had mentioned that remains of the demolished water course were in existence at the spot. Similarly, the Superintending Canal Officer, when directed the Sub Divisional Canal Officer to inspect the spot

and submit a report, the said Authority again found the same position at the spot. In the light of the above, the findings of the Canal authorities, that too on the basis of the spot inspection, cannot be faulted with and the stand of the appellants that there was no water course in existence at points A, B and C as per the site plan, cannot be accepted. The findings, as have been returned, being based upon proper analysis of the evidence, do not call for any interference by a writ Court as there is no perversity.

That apart, as per the admitted position, lined water course upto point A and thereafter from Point C to D, as per the site plan, Annexure P-6 is in existence. Had there been no water course in between points A, B and C, there was no question of there being a lined water course from Point C to D. It is, thus, apparent that there was a water course in existence at points A, B and C, which ended at Point D. Counsel for the appellants failed to cause or create any dent to the reasoning and logic given by the learned Single Judge in the impugned judgment and, therefore, the said conclusion is upheld.

Another aspect, which has been pointed out by learned counsel for the appellants, is that neither the revenue authorities have returned a finding with regard to the nature of the water course nor has the learned Single Judge opined on this issue. Suffice it to say that in the order dated 28.11.2013 (Annexure P-2) passed by the Sub Divisional Canal Officer, Deosar Water Services Sub Division Hisar-respondent No.4, it is clearly mentioned that not only the records indicated dismantling of the running water course lined at the site since long but on the spot inspection also lined water course has been found to be dismantled. It has also been mentioned that there was no source of irrigation for the private respondents except for

the said water course. Therefore, it being a lined water course in existence, as per the spot inspection, the same would be a permanent water course.

In view of the above, the present appeal stands dismissed being devoid of merit.

As the main appeal stands dismissed, no orders are required to be passed on CM-1118-LPA-2022, where the prayer is for stay of the judgment of the learned Single Judge.

(AUGUSTINE GEORGE MASIH)
JUDGE

June 02, 2022
khurmi

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No