

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

108

LPA No.940 of 2022 (O&M)

Date of Decision: November 16th, 2022

Jarnail Singh and another

...Appellants

Versus

State of Punjab and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Mr. Inderjeet Singh, Advocate
for the applicant-appellants.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM No.2249-LPA of 2022

Prayer in this application is for condonation of delay of 12 days in filing the appeal.

For the reasons mentioned in the application, which is duly supported by an affidavit of applicant-appellant No.2, the same is allowed.

Delay of 12 days in filing the appeal stands condoned.

LPA No.940 of 2022

Challenge in this appeal is to the judgment dated 08.09.2022 passed by the learned Single Judge, whereby challenge to the order of the Superintending Canal Officer, Patiala, Circle IB, Patiala-respondent No.2 herein allowing the appeal of the private respondents vide order dated 20.06.2022 (Annexure P-7) has been dismissed upholding the said order.

2. Learned counsel for the appellants contends that the source from which the appellants intended to take the water was from R.D. No.55994 from which a portion of the land of the appellants is being irrigated. He contends that the remaining portion of the land as has been reflected in yellow colour in

the site plan (Annexure P-2) (page-84 of the paper book) is being irrigated from outlet No.49450. Counsel contends that when the watercourse through which the part of the land of the appellants is being irrigated from i.e. RD 55994 is neared to the remaining land of the appellants, the water can be granted through this watercourse for irrigation of the remaining land of the appellants. The prayer primarily is that the remaining land of the appellants may be irrigated not from RD 49450 but from RD 55994. Counsel contends that watercourse RD 49450 being at the tail end, the water does not reach the land of the appellants as it is not being maintained by the co-sharers leading to less water reaching the tail end causing loss to the appellants as the distance is 1.3 kilometres from the main outlet. Counsel has further contended that the report of the Zileदार as well as the Sub Divisional Officer were in favour of the appellants and, therefore, the said plea should have been accepted on the aspect of not only less availability of the water as also the distance from the outlet. He on this basis contends that the order passed by the Appellate Authority as has been upheld by the learned Single Judge deserves to be set aside.

3. We have considered the submissions made by the counsel for the appellants and with his assistance have gone through the pleadings, judgment passed by the learned Single Judge, the impugned order as also the site plan but do not find ourselves in agreement with what has been asserted by the counsel.

4. As regards the distance of the watercourse through which the water has to travel to reach the land of the appellants is concerned, which is pointed out as 1.3 kilometres, suffice it to say it has come on record that the watercourse is not being properly maintained by the co-sharers.

The responsibility and duty which has been cast under the Canal and Drainage Act is upon the co-sharer, which if they are so performing properly, the cause as is being sought to be projected by the appellants, would not be available to them. The inaction on the part of the co-sharers cannot in itself be a ground for changing the outlet for irrigation purposes. While sanctioning a watercourse, the availability of the water from a particular outlet, the area which is to be irrigated as also the fact as to how much water can be carried in a watercourse is taken into consideration. All these parameters, when taken into consideration, clearly lays down and points out on the basis of the records that the water for irrigating the land of the appellants is fully available as far as outlet RD 49450 is concerned. It is the maintenance factor which is causing loss, if any, of the water for proper irrigation of the land of the appellants. The factum with regard to the remaining land of the appellants being irrigated from RD 55994 is concerned, the said watercourse and the outlet takes care of not only the land of the appellants but the other co-sharers, whose land is being irrigated through this outlet and, therefore, in those factors, availability of water, the dimension of the watercourse as also the land to be irrigated has been taken note of, which takes care of the water being made available to the co-sharers. Nothing has come on record which would show that there is surplus water as far as outlet No.49450 is concerned, which can be utilized for irrigating the remaining land of the appellants. In the absence of such information and details, the plea as has been raised by the counsel for the appellants cannot be accepted.

5. Finding no merit in the present appeal, the same stands dismissed.

6. In the light of the dismissal of the appeal, CM No.2250-LPA of 2022 stands disposed of.

(AUGUSTINE GEORGE MASIH)
JUDGE

November 16th, 2022
Puneet

(VIKRAM AGGARWAL)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No