

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

**LPA-1112-2022 (O&M)
Decided on: 27.01.2023**

Fauja SinghAppellant(s)

Versus

State of Punjab & othersRespondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MS.JUSTICE HARPREET KAUR JEEWAN**

Present:- Mr.Raj Kumar Kakkar, Advocate, for the appellant.

G.S. Sandhawalia, J.

CM-2698-LPA-2022

Application for condonation of delay of 14 days in refiling
the appeal is condoned, in view of the averments made in the application.

CM stands disposed of.

LPA-1112-2022 (O&M)

The present Letters Patent Appeal, filed by the writ petitioner/appellant is directed against the order of the learned Single Judge dated 08.08.2022 passed in CWP-17317-2022 titled *Fauja Singh Vs. State of Punjab & others*, whereby the writ petition was dismissed. The learned Single Judge, finding no merit in the same, declined to interfere in the orders of the Divisional Canal Officer dated 10.06.2022 (Annexure P-1) and the order dated 19.07.2022 (Annexure P-2) whereby the appeal of the present appellant had been dismissed. Resultantly, no interference was made in the directions issued to restore the water-course at point C-D of the land of the appellant.

The learned Single Judge found that the report of the Zildar on which reliance had been placed was in existence upto point C and the water-course C-D was not in existence as ambiguous. It was noticed that

the said water-course lies between the lands owned by the appellant and the land of the private-respondents and on account of the concurrent findings recorded by the authorities, there was no reason to interfere as the same was not perverse. The argument raised that there was no warabandi (turn of water) prescribed was held not to be evidence of existence of a water-course.

Counsel for the appellant has submitted that the learned Single Judge was not justified in dismissing the writ petition. It was thus argued that on account of the non-existence of the water-course, directions should not have been issued by the authorities below which has wrongly been upheld by the learned Single Judge.

We have perused the paperbook and found that respondents No.4 to 6 filed the application for restitution of the water-course. The site was got inspected and statements of the authorities were recorded and forwarded to the Deputy Divisional Officer for restoration which was further sent to the Divisional Officer, keeping in view the recommendations. Resultantly, notice had been issued under Section 30-FF(2) of the Northern India Canal & Drainage Act, 1873. Parties had put in appearance and the present appellant had opposed the same that he was not demolishing the water-course and accordingly, fresh report was called for. It was noticed that there was report submitted on 25.07.2019 wherein there was recommendation for restoration of the water-course at point C-D and it is the case of the private-respondents that the same was in existence in 1995 and the same had been demolished by the present appellant. The applicants claimed that they were badly affected as the water from the tube-well was not of good quality and loss was being caused to them. Resultantly, keeping in view the recommendations of the

authorities below, directions had been issued for restoration of the water-course at point C-D as per the site-plan.

The said order was subject matter of appeal before the Superintending Canal Officer and it was noticed after examining the site-plan that the parties were closely related as Balvir Chand was grandson of Pehlwan Ram, Pritam Lal was also the grandson of the said person whereas Krishan Lal was son of Pehlwan Ram. A finding was recorded that wara-bandi was done at the spot and the turn of the applicants would come after the turn of Fauja Singh, the present appellant and therefore, the land of the appellant and respondents had been irrigated through a common water-course. Resultantly, the appeal was dismissed and the order for restoration of the water-course was upheld which order has not been interfered with by the learned Single Judge.

We have also examined the report the Zileदार wherein a finding had been recorded that the site-plan issued by the Ahlmed of the Canal Department cannot be ignored and on the other hand, he reported that the water-course does not exist on the spot. In such circumstances, a recommendation had been made which has been acted upon though there were observations that there was water-course which was allegedly running but the details on which murabba and on which crease of which killa had not been mentioned.

Resultantly, keeping in view the above, we are of the considered opinion that the learned Single Judge was well justified in upholding the findings recorded by the authorities below while exercising its extraordinary jurisdiction under Article 226 of the Constitution of India. It has been time and again held that unless there is legal lacuna, the

Writ Court would not interfere in the orders passed by the statutory authorities.

In view of the above discussion, the present appeal is dismissed in limine. All civil.misc. application(s) also stands disposed of.

(G.S. SANDHAWALIA)
JUDGE

27.01.2023

Sailesh

(HARPREET KAUR JEEWAN)
JUDGE

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