

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

2024:PHHC:092833-DB



(131)

LPA-984-2024(O&M)

Date of Decision: 23.07.2024

Ajmer Singh & others

--Appellants

Versus

State of Punjab & others

--Respondents

**CORAM:- HON'BLE MR. JUSTICE G.S. SANDHAWALIA.
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA.**

Present:- Mr. S.S. Rang, Advocate for the appellants.

Ms. Arundhati Kulshreshtha, AAG, Punjab.

Mr. S.S. Siwach, Advocate for

Mr. H.S. Aujla, Advocate for the caveator/respondent no.5.

G.S. SANDHAWALIA.J (Oral)

1. Challenge in the present appeal is to the order dated 18.01.2024, passed by learned Single Judge in CWP-11803-2021, whereby the petition filed by the appellants has been dismissed and the orders passed by the authorities under the Amended Northern India Canal & Drainage Act, 1873 (for short the 1873 Act) has been duly upheld.

2. Learned Single Judge came to the conclusion that the shareholders were called by the officials and their statements were recorded and proposal for the new outlet was presented before the Sub Divisional Officer. The applicants/private respondents had not been provided the irrigation for the last about 30-35 years as there was no watercourse at that point of time and therefore it had been contended that though the scheme was not published, however, it cannot be denied by the appellants that they

were party before both the authorities below. Learned Single Judge

has dismissed the writ petition and has not interfered in the discretionary jurisdiction under Article 226 of the Constitution of India.

3. Learned counsel for the appellants has submitted that the prescribed procedure under Section 30-A of the 1873 Act was not adhered to and therefore the orders of the learned Single Judge and the authorities below have to interfere.

3. On the other hand, learned counsel for the private respondents no.5 to 19, while referring to Annexure P-2 has pointed out that application was moved by large number of applicants and vide order dated 03.06.2020 the Divisional Canal Officer had granted the relief after hearing all the persons including the present appellants in appeal and instead of all the 42 persons only 16 were impleaded and therefore for the balance 26 persons the order had become final. It is pointed out that the appeal was dismissed on 02.02.2021 (Annexure P-9) and thereafter the writ petition was filed with the same legal lacuna by never impleading the balance 26 persons out of the 42 persons and therefore the order cannot be partly interfered with as it has become final qua the said co-sharers.

4. The factual matrix is not disputed as specific objection had been taken in paragraph 11 of the written statement filed by respondents no.5 to 19 to the averments made in the writ petition. The said paragraph reads as under:-

“11. That the averments made in para no.11 of the writ petition are matter of records. It requires to mention here that in the appeal all the co-sharers who applied for the sanctioning of new outlet were not impleaded, meaning thereby the petitioners have no objection qua sanctioning of new outlet qua those co-sharers and the impugned orders have attained finality qua said co-sharers.”

5. In contrast, in replication which was filed by the present appellants, the said paragraph is stated to be a matter of record and that there is a clear cut admission regarding the legal lacuna.
6. In such circumstances, when the same orders passed by the authorities below have become final qua a certain set of persons, we are of the considered opinion that the legal objection, which is now raised is liable to be kept in mind. In the peculiar facts and circumstances of the case, thus, we do not find any ground to interfere with the order passed by learned Single Judge. Accordingly, the present appeal is dismissed.
7. Pending Civil Misc. applications, if any, shall also stand disposed of.

(G.S. SANDHAWALIA)
JUDGE

23.07.2024
lucky

(MEENAKSHI I. MEHTA)
JUDGE

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