



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

LPA No.1733 of 2024 (O&M)
Reserved on:07.08.2024
Date of Decision:02.09.2024

Sanjay Kumar

...Appellant

Versus

State of Haryana and others

...Respondents

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

Argued by:- Mr. Vikram Singh, Advocate
for the appellant.

Mr. Saurabh Mago, DAG, Haryana.

MEENAKSHI I. MEHTA, J.

By filing the instant Letters Patent Appeal, the appellant has laid challenge to the order handed down by learned Single Judge on 12.07.2024, whereby the *Civil Writ Petition (CWP) No.14641 of 2024*, preferred by him for seeking the issuance of a writ in the nature of certiorari, quashing the Scheme dated 03.02.2020 (Annexure P-3) drafted for shifting of the head of the watercourse from Outlet RD 38550L to RD 38150L of Petwar Distributary and also the orders Annexures P-4, P-6 and P-11 passed by respondents No.4, 3 and 2 on 20.07.2020, 02.02.2021 and 23.05.2024 respectively, allowing the shifting of the afore-said Outlet, has been dismissed.



2. Bereft of unnecessary details, the facts, as emanating from the perusal of the file and resulting in the filing of the present appeal, are that respondent No.5 and some other share-holders of Outlet RD 38550L moved an application (Annexure P-2) to respondent No.4-Divisional Canal Officer with the prayer to shift the head/source of the watercourse, used for irrigating their land, from Outlet RD 38550L to RD 38150L, while averring that the site for the watercourse for the irrigation of their land, with the source/head from the proposed Outlet RD 38150L, had been reserved at the time of consolidation of the land holdings in the Village and their land was not being properly irrigated through the existing Outlet RD 38550L. In view of the above-mentioned application, the Draft Scheme dated 03.02.2020 (Annexure P-3) was prepared and floated and thereafter, respondent No.4 passed the order on 20.07.2020 (Annexure P-4) for shifting of the head of the watercourse from Outlet RD 38550L to RD 38150L.

3. Feeling aggrieved by the afore-referred order (Annexure P-4), the appellant filed an appeal and the same was rejected by respondent No.3-Superintending Canal Officer, Bhakhra Water Services Circle No.1, Hisar vide the order dated 02.02.2021 (Annexure P-6). Then, the appellant availed the statutory remedy, as provided under Section 20(2) of the Haryana Canal and Drainage Act, 1974 (for short 'the Act of 1974'), by preferring an appeal before respondent No.2-Chief Canal Officer, Irrigation and Water Resources, Haryana, who, vide the order dated 08.12.2021 (Annexure P-9), remanded the matter to the Competent Authority below with the observations that the land of the reserved watercourse had been



encroached upon by the appellant and the fresh Scheme be drafted after the receipt of the eviction order passed by the Competent Authority. However, respondent No.5 approached this Court by filing **CWP No.4766 of 2022** to assail the order Annexure P-9 and the same was allowed and the said order was set-aside and respondent No.2 was directed to decide the appeal afresh. In compliance of this order, respondent No.2 passed the order Annexure P-11 on 23.05.2024, rejecting the appeal as moved by the appellant and upholding the order Annexure P-6. The appellant, then, filed the **Civil Writ Petition No.14641 of 2024** which came to be dismissed vide the judgment, impugned in the instant appeal.

4. We have heard learned counsel for the appellant as well as learned State counsel, who has appeared on behalf of respondents No.1 to 4, in this appeal and have also perused the file carefully.

5. Learned counsel for the appellant has contended that the watercourse from Outlet RD 38150L had never remained operational and rather, initially, the watercourse having the source from Outlet RD 38300L was in use for irrigation of the land of all the concerned share-holders but in the year 2007, its source was shifted to Outlet RD 38550L and the same is perfectly suitable for the irrigation of the fields of the share-holders and moreover, the appellant has constructed his house on the land earmarked for the watercourse with source/head from Outlet RD 38150L and has been residing therein since long and even otherwise, the respective orders passed by respondents No.4, 3 and 2, i.e Annexures P-4, P-6 and P-11, are not based on any cogent reasoning and are, thus, perverse but learned Single



Judge did not consider these crucial aspects of the matter in the correct perspective and has wrongly dismissed the writ petition and therefore, the impugned judgment is not legally sustainable and hence, it is liable to be set-aside.

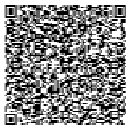
6. However, we do not find the above-raised contentions to be tenable at all because as regards the contention qua the suitability of the watercourse running from existing head/source at Outlet RD 38550L, for the irrigation of the land of the share-holders, it is worth-while to mention here that undisputedly, the watercourse from Outlet RD 38150L of Petwar Distributory had been planned/allocated for the irrigation of the land of respondent No.5 and the other share-holders and its site had been reserved during the proceedings of consolidation of the land holdings in the Village. As categorically mentioned in the order Annexure P-4, respondent No.4 had recorded the statements of respondent No.5 and the appellant and had inspected the site and perused the Draft Scheme along-with other relevant record and had heard the parties, before observing that the demand of respondent No.5 and the other 26 share-holders for shifting the Outlet for the existing source of the watercourse to the one, for which the land had been reserved at the time of the consolidation of the land holdings, was justified and the land reserved for the watercourse was owned by the Gram Panchayat and the house had illegally been constructed in the same. Moreover, Annexure A-1 is the copy of the Sketch-Plan denoting the watercourses with the heads/sources from both the afore-mentioned Outlets and a perusal of the same shows that the watercourse running from the



existing source/head at Outlet RD 38550L bifurcates at two places, from the beginning till it reaches Rectangle No.347 whereas it is not so in case of the watercourse having source/head at Outlet RD 38150L. The appellant has not been able to show as to how Outlet RD 38550L is more suitable than the demanded one, i.e Outlet RD 38150L, as planned at the time of consolidation of land holdings in the Village.

7. So far as the contention qua the construction of the house by the appellant on the land/site reserved for the watercourse from Outlet RD 38150L is concerned, it is again pertinent to mention here that respondent No.2 has observed in the concluding para of the order Annexure P-11 that the illegal encroachment over the land of the watercourse from the Outlet RD 38150L by the appellant, has been removed from the site. The above-referred fact also finds specific mention in para No.10 in the impugned judgment. In these circumstances, the contention under reference pales into insignificance.

8. Lastly, the contention regarding the orders Annexures P-4, P-6 and P-11 being perverse, is also bereft of any merit because as discussed earlier, it has categorically been mentioned in the order Annexure P-4 that respondent No.4 had considered the Draft Scheme and the other relevant record available on the file and had inspected the site and had also recorded the statements of the parties and had heard them before passing the said order. Similarly, as per order Annexure P-6, respondent No.3 had also gone through the afore-referred record and the Sketch-Plan and had heard the arguments as addressed on behalf of both the parties, before dismissing the



appeal filed by the appellant against the order Annexure P-4. Further, as is explicit from the bare reading of the order Annexure P-11, respondent No.2 had heard the counsel for both the parties and had perused the record and had, then, rejected the appeal preferred by the appellant, while specifically observing that the reserved watercourse originating from the site of Outlet RD 38150L, could properly irrigate the entire area. It being so, the above-said orders cannot be construed to be perverse at all.

9. As a sequel to the foregoing discussion and in view of the findings as recorded by the learned Single Judge, we are of the considered opinion that there is no cogent reason/ground to interfere in the impugned judgment. Resultantly, the appeal in hand, being *sans* any merit, stands dismissed accordingly.

(G.S. SANDHAWALIA)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

September 02, 2024
pooja

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>