

(2000) 12 P&H CK 0165

High Court Of Punjab And Haryana At Chandigarh**Case No:** Civil Writ Petition No. 18511 of 1998

Gurnam Singh

APPELLANT

Vs

Divisional Canal Officer, Faridkot

RESPONDENT

Date of Decision: Dec. 7, 2000**Acts Referred:**

- Constitution of India, 1950 - Article 226
- Northern India Canal and Drainage Act, 1873 - Section 30

Citation: (2001) 3 RCR(Civil) 781**Hon'ble Judges:** K.S. Garewal, J; Jawahar Lal Gupta, J**Bench:** Division Bench**Advocate:** Mr. B.R. Mahajan, for the Appellant; Mr. M.C. Berry, D.A.G. and Mr. K.S. Bhullar, for the Respondent**Final Decision:** Dismissed

Judgement

Jawahar Lal Gupta, J.

Respondents No. 3 and 4 filed a petition for restoration of their water channel. The petitioner contested the claim. Ultimately vide order dated March 11, 1998, the Division Canal Officer accepted the claim of the respondent-applicants and ordered the restoration of the water channel. He found as a fact that there was an existing water course. The Khasra Girdawari and "abiana slips" (receipts regarding payment of water cess) attached with the reply proved the contention raised by the applicants. He further found that the petitioner had raised a new construction to raise the plea that there was a Gurudwara at the site. After considering of the material on record he ordered the restoration of the water channel.

2. The petitioner filed an appeal. The Superintending Canal Officer on a consideration of the matter found that the "water course ordered to be restored has been made pucca by the PSTC (Punjab State Tubewell Corporation). The appellant could not give any solid reason to set aside the order of the Division Canal Officer,

Faridkot". Resultantly, the appeal was dismissed.

3. Aggrieved by the orders, copies of which have been produced as Annexures P-3 and P-5 respectively with the writ petition, the petitioner has approached this Court through the present writ petition.

4. A detailed written statement has been filed on behalf of the respondents No. 3 and 4. A separate reply has also been filed by the official respondents. The petitioner has filed replications.

5. Mr. B.R. Mahajan, learned Counsel for the petitioner contends that there was no existing water course. The order of the respondent-applicants, if implemented, would make it difficult for the petitioner to enjoy his property, inasmuch as the house as well the Gurudwara shall be damaged. The claim made on behalf of the petitioner has been controverted by Mr. K.S. Bhullar, learned Counsel appearing for respondents No. 3 and 4. It has been pointed out that the petitioner had filed a civil suit. The Civil Court has come to a positive finding against the petitioner regarding the existence of the water course. Thus, the plea as sought to be raised in the present proceedings is wholly untenable. It has also been stated that the petitioner along with his son had constructed a small hut so as to raise a plausible plea of damage to the Gurdwara and to oppose the prayer for the restoration of the water channel. In fact, there is no Gurdwara at the site.

6. It is not disputed that the petitioner had filed a civil suit along with his two minor sons in the Court of the Civil Judge, Faridkot. One of the issues which arose in the suit was - "Whether a Khal existed in the suit land, which has been dismantled? OPD". The Court on a consideration of the matter has recorded the following findings:

"From all the evidence, it is clear that a khal existed in the suit land of Gurnam Singh, plaintiff who has been dismantled by them. The issue is accordingly decided in favour of the defendants and against the plaintiffs."

7. The above findings recorded by the Civil Court clearly belies the claim made by the petitioner that the water channel did not exist. Still further, it is quite clear that the Division Canal Officer as well as the Superintending Canal Officer have recorded a firm finding of fact with regard to the existence of the water channel. It has also been found that it had been made pucca by the Punjab State Tubewell Corporation. The findings recorded by the two authorities are in conformity with the finding recorded by the Civil Court. We find no ground to differ with the view taken by the different authorities and the Civil Court.

8. Mr. Mahajan submits that an appeal has been filed against the finding recorded by the Civil Court. Mr. Bhullar contests this claim. He points out that the Civil Court had decided the matter vide its order dated September 5, 1998. The appeal had been filed after a long delay of almost a year. The application for condonation of

delay has been filed. This application has not yet been allowed. So in law there is no existing appeal against the finding recorded by the Civil Court.

9. Whatever be the position, we find that there is no material before us to conclude that the findings recorded by the Division Canal Officer and the Superintending Canal Officer are not correct. We find no error of law or fact so as to call for any interference in proceedings under Article 226 of the Constitution of India.

10. No other point has been raised.

11. In view of the above, we find no merit in this writ petition. It is consequently dismissed. No costs.

12. Petition dismissed.