

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

CWP-13162-2023

Date of Decision: 10.08.2023

Kanta Devi

..... Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. R.K. Arya, Advocate, for the petitioner.

Rajesh Bhardwaj, J.

Petitioner has approached this Court praying for quashing of order dated 16.06.2021 (Annexure P-1) passed by respondent No.3 and order dated 01.03.2023 (Annexure P-2) passed by respondent No.2 being illegal null and void.

It has been contended by learned counsel for the petitioner that respondent No.5 Om Pyari submitted application before respondent No.3 that her cultivable land falls under the irrigation system of canal and irrigated through canal outlet point/burji No.15530/left since last about 70 years but the watercourse was demolished by Laxman Singh son of Satpal and thus, she is unable to irrigate her land and hence, the watercourse should be restored. He submits that the petitioner appeared before the authority and filed her reply, however, the Divisional Canal Officer committed patent illegality in passing the impugned order dated 16.06.2021 as the same has been passed without appreciating the evidence on record. He submits that the findings arrived at by the Divisional Canal Officer are totally against the facts on record. It is submitted that aggrieved by the same the petitioner filed an appeal under Section 30 FF(4) of Northern India Canal and Drainage Act, 1873 (for short, 'the Act'), however, the same was

dismissed by the learned Superintending Canal Officer. He has submitted that for the restoration of the alleged dismantled watercourse, positive findings were to be recorded by the authorities, but there were no such findings to the effect that it was a sanctioned Khaal. He submits that in the absence of the same, the findings arrived at by the authorities are totally violative of Section 30FF (2 & 3) of the Act and thus, the impugned orders suffer from patent illegality and hence, deserve to be set aside. He further submits that the Divisional Canal Officer conducted no enquiry regarding the fact that the alleged Khaal was demolished or altered and in the absence of the same, the authorities drawn a wrong conclusion, which is totally based on presumptions and assumptions. He has submitted that the petitioner had not been afforded proper opportunity to lead her evidence and hence, the impugned orders are totally cryptic and deserve to be set aside.

Heard.

After hearing learned counsel for the petitioner and perusing the record, it is found that the rest of the share holders had agreed to restore the channel in their area from which the existence of demolished drainage was substantiated. The record and the site plan was perused. The statements and the recommendation report were appreciated. On the basis of the same, outlet point/burji No.15530/left Rajbah/canal sathiali demolished outlet point found to be existed at ABCDE and thus, the demolished outlet point CDE was restored under Section 30 FF of the Act. Aggrieved by the same, the petitioner filed an appeal before the Superintending Canal Officer. Both the sides were heard again and the record was perused. Mobile videos were presented by the respondents and decision of both the parties by mutual consent regarding constructing the drainage was also perused. On the basis

of perusal of the record and the overall interest of the parties for better irrigation, restoration of the demolished Khaal was found to be in consonance with the statutory provisions of Section 30 FF (3) of the Act. Resultantly, the appeal was dismissed. Thus, there was concurrent finding by both the Courts below in restoring the Khaal.

A Coordinate Bench of this Court in Satinder Pal Singh vs. State of Punjab and others, 2009 SCC OnLine P&H 11198 has held that the findings of the authorities below cannot be interfered with unless perverse, it is settled law that this Court while exercising jurisdiction under Article 226 of the Constitution of India cannot sit as a Court of appeal over the findings recorded by the authorities below.

In view of the above, this Court does not find any perversity in the findings arrived at by the Courts below, thus, the present petition is hereby dismissed being devoid of any merit.

10.08.2023			(RAJESH BHARDWAJ)
sharmila			JUDGE
	Whether Speaking/Reasoned	:	Yes/No
	Whether Reportable	:	Yes/No