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

**CWP No.14782 of 2023
Date of Decision: 14.07.2023**

Ajaib Singh**..... Petitioner**

Versus

**Deputy Collector Bathinda Canal Division,
Bathinda and others****..... Respondents****CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ****Present:** Mr. Deepak Aggarwal, Advocate
for the petitioner.**RAJESH BHARDWAJ J. (ORAL)**

The present writ petition has been filed under Article 226 of the Constitution of India for issuance of a writ in the nature of certiorari for quashing of the order dated 28.02.2023 (Annexure P-6) passed by respondent No.2 and further for setting aside the order dated 05.06.2023 (Annexure P-7) passed by respondent No.3.

Learned counsel for the petitioner has vehemently contended that the respondents-authorities had fallen in error in appreciating the facts and circumstances on the record and the law settled and thus reached at wrong conclusion in setting aside the well reasoned order dated 16.01.2023 passed by respondent No.1 and thus passed the impugned order dated 28.02.2023 which being unsustainable in the eyes of law, deserves to be set aside. He submits that as per facts of the case, in the application filed by one Gurjant Singh prayed for separate outlet and the same was dismissed on 13.06.2013. Thereafter, fresh application was filed by Nirdosh Singh son of Gurjant Singh

praying for the separate outlet, which was allowed by the Deputy Collector, Bathinda Canal Division vide his order dated 04.06.2018. The petitioner assailed the same by way of filing the appeal under Section 68 (5) of the Northern India Canal and Drainage Act, 1873. However, after hearing both the sides, the Divisional Canal Officer, Bathinda Canal Division, Bathinda declined the same vide his order dated 16.09.2019. This was further challenged by the petitioner before the Executive Engineer and after hearing both the sides, the Executive Engineer, Sirhind Canal Circle, Ludhiana remanded the case with a direction to decide the case afresh by passing a speaking order vide his order dated 23.09.2021. After the re-hearing, learned Deputy Collector, Bathinda Canal Division, Bathinda dismissed the same vide his order dated 16.01.2023. Respondent No.4 challenged the same by way of filing the appeal before the Divisional Canal Officer, Bathinda and the appeal filed by respondent No.4 was accepted by the Divisional Canal Officer vide impugned order dated 28.02.2023. The petitioner further challenged the same by way of filing the appeal under Section 68(6) of the Northern India Canal and Drainage Act, 1873 but the same was rejected by the learned Executive Engineer, Ludhiana Canal Division, Ludhiana vide impugned order dated 05.06.2023 and thus, upholding the impugned order dated 28.02.2023.

It has been contended by learned counsel for the petitioner that the impugned orders passed are cryptic and non speaking and thus, there is no reasoning given by the respondents-authorities while passing the impugned orders. He submits that the impugned orders have been passed by placing reliance on the order dated 04.06.2018 but the authorities have failed to appreciate that these orders were set aside by

the Appellate Authority vide order dated 23.09.2021 when the case was remanded for fresh hearing and thus, the same could not have been relied upon. He further submits that respondent No.1 passed order dated 16.01.2023 after inspecting the spot whereas respondents No.2 & 3 have not inspected the spot and passed the impugned orders without inspecting the spot. He has reiterated that the observation made by respondents No.2 & 3 by relying upon the order dated 04.06.2018 is totally erroneous as the same was already set aside by the Appellate Authority when case was remanded for fresh hearing vide order dated 23.09.2021. He has submitted that by passing the impugned order, the Appellate Authority has failed to appreciate that the petitioner would suffer irreparable loss as his land would not be properly irrigated. He submits that the impugned order being totally against the evidence on record and against the law settled deserve to be set aside.

I have heard learned counsel for the petitioner and perused the material on record.

Evidently, it is apparent that the impugned orders have been passed by the respondents-authorities in the second round of litigation between the parties. The *Inter se* dispute between the parties as evident from the record is since long. In 2013, it was Sadhu Singh, who filed the application regarding his warabandi and the same was decided vide order dated 13.06.2013. Thereafter, the issue was appreciated by the Deputy Collector, Bathinda. The prayer made by Nirdosh Singh regarding his warabandi was sanctioned and objections of the petitioner-respondent were dismissed vide order dated 04.06.2018. This was challenged by the petitioner by way of filing the appeal and both the sides were summoned and heard in detail. On the basis of record, the appeal filed by the

petitioner was dismissed by the Divisional Canal Officer vide his order dated 16.09.2019. However, in the further appeal, the case was remanded by the Executive Engineer, Sirhind Canal Circle vide his order dated 16.01.2023. Thereafter, in the second round of litigation, the appeal filed by respondent No.4 was accepted vide impugned order dated 28.02.2023. Thus, it was observed that the applicant had managed a temporary watercourse on the spot, which would increase the irrigation of the applicant and would not cause any harm to the respondent i.e., the present petitioner. It was further observed that it would not affect the turn of the petitioner and he would get water from the *pucca* outlet. Thus, finding no prejudice caused to either of the parties, the appeal filed by respondent No.4 was accepted by the Divisional Canal Officer vide his impugned order dated 28.02.2023. As observed earlier, the petitioner further challenged this order by way of filing an appeal before the Executive Engineer, Sirhind Canal Circle and both the parties were again heard at length. The relevant record was summoned and appreciated. It was observed that the respondent had purchased the land from the owners regarding which the Deputy Collector, Bathinda Canal Division, Bathinda passed the order dated 04.06.2018 and sanctioned the outlet at khatta No.155/1. It was found that the land purchased by respondent No.4 could not be irrigated properly and thus, another outlet was required for the better irrigation. On the appreciation of the arguments raised and the record produced, no merit was found in the appeal and thus, the impugned order dated 28.02.2023 was upheld.

This Court is of the opinion that the arguments raised by learned counsel for the petitioner have already been appreciated by the Quasi Judicial Authorities at various stages and the welfare of both the

sides has been taken care of. In the larger interest of the parties, no material irregularity or prejudice has been found by Quasi Judicial Authorities and thus, the impugned orders were passed. This Court do not find any perversity in the views taken by the respondents-authorities and hence, this petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

14.07.2023
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Whether speaking/reasoned : Yes/No
Whether reportable or not : Yes/No