

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

CWP-19640-2023

Date of decision : 05.09.2023

Jagtar Singh and another

.....Petitioners

versus

Superintending Canal Officer and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. S.P.S. Tinna, Advocate
for the petitioners.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the order dated 25.05.2023 (Annexure P-7) passed by respondent No.1, order dated 04.01.2023 (Annexure P-5) passed by respondent No.2 and order dated 17.12.2021 (Annexure P-2) passed by respondent No.3 whereby respondents No.1 to 3 have illegally and arbitrarily allowed the amendment in the warahbandi and thereby sanctioned the new watercourse without following the procedure laid down under Section 30 (A) to Section 30(D) and Section 30(FF) of the Northern India Canal and Drainage Act, 1873.

It has been submitted by counsel for the petitioners that respondent No.4 moved an application before respondent No.3 for amendment in the warahbandi stating therein that he was a shareholder of the Outlet Burji No.67010-L, Rajbah Doda, Village Doda, Tehsil Doda, District Sri Muktsar Sahib as he has purchased whole area of Khata No.1 and 6 kanals 0 marla from Khata No.2 and hence, his turn of water be sanctioned in his name as per civil record. It is submitted that respondent

No.3 sought the report of Zileadar without seeking any objection from the petitioners. He has submitted that the Deputy Collector allowed the same vide order dated 17.12.2021 without serving the petitioner. Aggrieved by the same, the petitioner filed an appeal before respondent No.2-Divisional Canal Officer alleging therein that the proceedings before the Collector were carried out *ex parte*. However, learned Divisional Canal Officer without appreciating the facts and circumstances of the case illegally dismissed the appeal vide order dated 31.08.2022. Being aggrieved, petitioner filed an appeal before respondent No.1-Superintending Canal Officer and after hearing both the sides, respondent No.1 remanded the appeal vide order dated 10.11.2022 with a specific direction that before passing the order, the exact location of the nakkas be verified. He has submitted that in compliance of the remand order dated 10.11.2022, the proceedings commenced afresh before respondent No.2-Divisional Canal Officer. He has submitted that respondent No.2 without complying the direction by respondent No.1 as directed in the order dated 10.11.2022 reiterated his earlier order vide impugned order dated 04.01.2023. Aggrieved by the same, petitioner filed a revision petition before respondent No.1, however, respondent No.1 ignored the contentions raised by counsel for the petitioner and evidence on record and thus, illegally dismissed the same vide impugned order dated 25.05.2023. He has submitted that the impugned orders passed are totally beyond the evidence on record as the site plan clearly depicts that the water course was running from the passage and not from the land of the petitioners but the Courts below ignored the same and passed the impugned order. He has submitted that from the site plan, it is clear that water course was

running from the passage and the private respondents have got the said water course shifted/realigned to the land of the petitioners under Section 68(6) of the Northern India Canal & Drainage Act, which is not even applicable as the separate proceedings are maintainable under Section 30 of the Canal Act. He has submitted that the impugned orders being violative of the statutory provisions, deserve to be *set aside*.

Heard. After hearing counsel for the petitioners and perusing the record, it is apparent that the application for amendment in the warahbandi has filed by respondent No.4. The Deputy Commissioner called the report of Zileदार and on perusing the same, prayer made by the respondent was found to be genuine and the same was accepted vide order dated 17.12.2021. Aggrieved by the said order, petitioners filed the appeal which was dismissed and in the revision filed, the case was remanded for decision afresh. Thus, the facts and circumstances were re-appreciated and on hearing both the sides, respondent No.2 re-affirmed his earlier decision finding no illegality in the same. In the appeal filed by the petitioners, again the record was perused, the parties were heard and finding no merit in the appeal, the same was dismissed by the Divisional Canal Officer vide order dated 04.01.2023. Thereafter, the petitioners filed appeal before Superintending Canal Officer. The complete record of the case was re-appreciated. The site plan/warahbandi/jamabandi and the relevant reports were appreciated and it was found that the Divisional Canal Officer, Faridkot himself inspected the spot wherein it was found that the water is running in between the passage. Thus, the same was found suffering from no illegality. The respondents-authorities have appreciated the facts and circumstances of the case at every level and

thus, found no force in the submissions made by counsel for the petitioners. All the authorities have given the factual findings which are concurrent in nature. A Co-ordinate Bench of this Court in **Satinder Pal Singh Vs. State of Punjab and others, 2009 SCC OnLine P&H 11188** has held that *the findings of the authorities below cannot be interfered unless perverse, it is settled law that this Court while exercising the jurisdiction under Article 226 cannot sit as a Court of appeal over the findings recorded by the authorities below. Both the Courts below have recorded their detailed findings.* Thus, in the considered opinion of this Court, there is no illegality and perversity in the impugned orders passed by the Deputy Collector, Appellate and Revisional Authorities and hence, this petition, being devoid of any merits is hereby dismissed.

05.09.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No