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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-23181-2018(O&M)

Date of Decision: December 20, 2023

Jagsir Singh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.N.S.Dandiwal, Advocate
for the petitioner.

Ms.Akshita Chauhan, DAG, Punjab.

Mr.Amaninder Preet, Advocate
for respondents No.5 to 7.

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RAJESH BHARDWAJ, J.(ORAL)

Petitioner has approached this Court praying for quashing of order dated 31.05.2017, Annexure P-5, passed by respondent No.2, order dated 22.11.2017, Annexure P-6, passed by respondent No.3 and order dated 12.07.2018, Annexure P-7, passed by respondent No.4 being illegal, void ab-initio, arbitrary, malafide and against the provisions of Northern India Canal & Drainage Act, 1873. It is further prayed to direct respondents No.2 to 4 to sanction the new water channel at Point N on water course 'EF' keeping in view of the better irrigation of the area of the present petition and allow him to irrigate the land from Point N.

It has been submitted by learned counsel for the petitioner that petitioner and respondents No.5 to 7 are the co-sharers in the water outlet No.45150-L Baghapurana. It is submitted that all the co-sharers, i.e.

petitioner as well as respondents No.5 to 7 filed an application before the Executive Engineer, Faridkot Canal Division, Faridkot, that the present siphon was 250 ft away from the water outlet (Mogha) and water flows through siphon from other side towards the upper side. It is submitted that as most of the times the siphon remained blocked and the same created problem in the irrigation. The Executive Engineer referred the application to the Sub Division Officer Gholia to prepare a report with regard to the siphon. The report was submitted before the Executive Engineer, Faridkot, on 21.10.2015 wherein the Officer observed that after perusing the application JE Gholia had visited the spot and prepared a proposed siphon plan. Finding the demand of the applicants as genuine, the shifting of the siphon was recommended at Mogha Burji No.45150-L by imposing the conditions that the parties would bear the expenses on their own and would cover the pipes with 6 inch concrete cover. He submits that the new siphon was sanctioned and the petitioner started irrigating his land from the water course 'EF' by taking Nakka at Point 'N'. He submits that respondent No.5 filed an application raising objection that petitioner was illegally irrigating his land from the point 'N'. He submits that earlier application was filed by all the co-sharers including respondents No.5 to 7 and on the same, the fresh Nakka was sanctioned but thereafter surprisingly the same respondent took a contrary stand raising the objection for taking the water channel at Point 'N'. He submits that the authorities, without taking into consideration the facts and circumstances of the case, have illegally rejected claim of the petitioner to irrigate his land from point 'N'. He submits that the impugned orders are totally beyond the evidence on record and against the law settled and thus,

deserve to be set aside by sanctioning a new water course channel at point 'N' on the water course 'EF'. He submits that private respondents only in order to harass the petitioner have taken a contrary stand that land of the petitioner is being irrigated properly from the old siphon.

Per contra, learned counsel for respondents No.5 to 7 has vehemently opposed the submissions made by learned counsel for the petitioner. He has submitted that the petitioner has not approached this Court with clean hands. It is submitted that as per warabandi sanctioned under Section 68 of the Punjab Land Revenue Act, petitioner was getting his irrigation done from the Head Moga Khata No.41 and has also got tubewell connection installed in khasra No.217//16/1 alongwith Rajbaha whereas the petitioner has illegally opened a Nakka at point 'N' in his land bearing khasra No.217//15-1, 216//11. He submits that 12 feet wide road was being constructed on the right side and the water outlet Mogha Burji No.45150-L was situated on the left side of the Rajbaha. The said bypass being at higher level, the water course used to get filled with soil and create hindrance in the normal flow of the water course. On account of this difficulty, the petitioner alongwith respondents filed an application to the concerned authorities for construction of a new siphon by laying down new pipe lines. The authorities visited the spot and accordingly with the consent of the petitioner as well as the respondents came to the conclusion that a new siphon be constructed by making water course 'EF' and also they reconstructed the old siphon by laying down the pipelines so as to allow a smooth flow of water for proper irrigation. He has submitted that the petitioner already had his turn of water as per warabandi at Khata No.41 and

through the said old siphon the other co-sharers were already getting water for the irrigation without any interruption after laying down the underground pipes. He submits that there was no hindrance in the flow of the water and the petitioner had illegally opened the new Nakka which had been closed by the authorities so as to allow the smooth irrigation for both the sides. He submits that the petition being devoid of any merit be dismissed. Learned counsel for respondents No.5 to 7 further submits that on 05.05.2022 the application/representation was moved by the respondents to the Deputy Collector for closing the permanent water outlet forcibly made by the petitioner in the Government water course. In pursuant to the same, the summons were also issued by the Zileadar to the petitioner. He submits that on the representation, the illegal Nakka opened by the petitioner was closed and thereafter the petitioner initiated the second round of litigation, which is pending adjudication.

Learned State counsel has also opposed the submissions made by learned counsel for the petitioner. She has drawn attention of this Court to the reply filed by way of affidavit of Jagtar Singh, Divisional Canal Officer, Canal Division, Faridkot, on behalf of respondents No.1 to 4. She submits that the petitioner had opened an illegal Nakka at point 'N' from the new water course coming towards his fields and he was irrigating his land illegally from this Nakka even though he had a Nakka in front of his fields from the other side of Rajwaha at Point 'A'. She submits that by taking the illegal water course, he was causing harm to the water course. He also throw the earth in the water course and had planted 59 eucalyptus trees alongwith the water course. On account of the same, the water course was

being damaged which has deprived the respondents from their due share of water. It is submitted that earlier siphon was working properly and the Nakka of the petitioner is existing at that water course. It is submitted that old siphon S-1 and new siphon S-2 both are running at the spot. She has further submitted that spot was inspected on 13.06.2017 by the authorities in the presence of both the parties before pronouncing the order dated 14.06.2017. She has submitted that the water channel has already been sanctioned to Navdeep Singh s/o Jagsir Singh and from the water channel, his land is being irrigated properly from point 'A'. As land of the petitioner was being properly irrigated from the old siphon, there was no question for sanctioning of a new water channel at Point 'N'. She has submitted that there arose no cause of action to the petitioner and thus the petition being devoid of any merit be dismissed.

On hearing the counsel for the parties and perusing the record, it is apparent that the petitioner and the respondents/co-sharers both were provided water channel from siphon S-1 and S-2. However, the petitioner had illegally opened a new Nakka which created a problem in irrigation of the respondents. The authorities had duly inspected the spot and found an additional Nakka opened by the petitioner in contravention to the statutory provisions. The same was closed and thereafter both the sides are duly getting their share of water. The site had been inspected and it was found that land of the petitioner is being irrigated from the old siphon without any hindrance. The petitioner, as submitted before this Court, has initiated the second round of litigation, which is pending adjudication.

Thus in the considered opinion of this Court, there is no

infirmity in the impugned orders passed and thus the petition, being devoid of any merit, is hereby dismissed.

December 20, 2023
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1. Whether speaking/reasoned ?

2. Whether reportable ?

(RAJESH BHARDWAJ)
JUDGE

Yes/No
Yes/No