

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

CWP-19489-2023

Date of decision : 04.09.2023

Lal Chand

.....Petitioner

versus

Superintending Canal Officer, Ferozepur and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Judgepreet Singh Warring, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the order dated 19.12.2022 (Annexure P-10), order dated 13.03.2013 (Annexure P-8) and order dated 19.10.2011 (Annexure P-7) passed by respondents No.1 to 3 respectively, whereby, earlier order dated 16.12.2010 (Annexure P-6) passed by respondent No.3 has been modified, being arbitrary, unconstitutional, against the provision of the Northern Indian & Canal Drainage Act, 1873 as well as Doctrine of "First come-First serve".

Adumbrated facts of the case as submitted before this Court are that the petitioner and respondent No.4 are the real brothers and are shareholders of outlet RD No.27800/TL New Bazidpur Minor and their land is adjoining to each other. As per the earlier arrangement of the canal irrigation, the turn of water for the land of the petitioner has been fixed and sanctioned at Serial No.123 and 123/1 i.e. prior to the turn of water of respondent No.4 which was fixed and sanctioned at Serial No.123/2.

Thereafter, the petitioner filed an application dated 18.09.2010 to

respondent No.3 praying for segregation of the turns of water on account of change of land owners. On the basis of the application, Zileadar Dharangwala submitted his report in favour of the petitioner to respondent No.3. On hearing both the sides, respondent No.3 accepted the application filed by the petitioner on the doctrine of "first come-first serve" vide order dated 16.12.2010. Respondent No.4 challenged the said order by way of filing an appeal before respondent No.2 who accepted the same by remanding the case to respondent No.3. However, respondent No.3 passed the impugned order dated 19.10.2011 by fixing alternative arrangements for the turn of waters of the petitioner and that of respondent No.4. Being aggrieved, petitioner filed the appeal before respondent No.2 against the order dated 19.10.2011 and respondent No.2 dismissed the same vide impugned order dated 13.03.2013 which was challenged before respondent No.1 was also dismissed the petition vide impugned order dated 19.12.2022. Hence, the petitioner is before this Court by way of filing the present writ petition.

Learned counsel for the petitioner has vehemently submitted that as per the provisions of Section 68 of The Northern India Canal and Drainage Act, 1873 (for short 'the Act'), the principle "first come-first serve" is essential but as the same has not been followed, hence the impugned orders are in violation of provisions of Section 68 of the Act and thus, are unsustainable in the eyes of law. He has submitted that the alternative arrangements as made by the respondents-authorities would adversely affect the legal right of the petitioner. He has submitted that respondent No.4 is unnecessarily harassing the petitioner. He has submitted that the observation regarding excavation of the water canal by

the petitioner is factually incorrect. It is submitted that respondent No.4 excavated the soil from his land way back and now the level of his land is deeper than the level of the land of petitioner. He has submitted that the observation made by the respondents-authorities that the petitioner used to give the canal water to the brick kiln is factually incorrect. He has submitted that the impugned orders are violative of Section 68 of the Act. He submits that the findings in the impugned orders are not based upon sketch plan as well as the factual position of the land. He submits that in view of the overwhelming facts and circumstances, the impugned orders being illegal and arbitrary, deserve to be *set aside*.

Heard. After hearing counsel for the petitioner and perusing the record, it is evident that the petitioner and respondent No.4 are the real brothers. On the application filed by the petitioner, the Collector accepted the same vide order dated 16.12.2010 on the doctrine of "first come-first serve". However, in the appeal filed by respondent No.4, the same was remanded. The petitioner filed the appeal against the same before the learned Divisional Canal Officer who heard both the sides and perused the record. The site situation on the spot was seen. It was observed that by digging the loose earth from his land, the petitioner has decreased the level at lower of his land, due to which, water was discharged directly to his land, causing loss to respondent. The order dated 19.10.2011 of the District Collector, Abohar was reversed vide order dated 13.03.2013 by the Divisional Canal Officer. Petitioner filed an appeal against the same before the Superintending Canal Officer. It was observed by the Superintending Canal Officer that the petitioner was selling his wari to the brick kiln. The same was affirmed from the

statement of the neighbouring field owners. Thus, the appeal filed by the petitioner was not only dismissed by the Superintending Canal Officer but he also directed the recoveries to be made from the brick kiln owner regarding the water purchased by him from the petitioner. From the map produced by the petitioner before this Court, it is apparent that the water course starts from point 'A' and meet at the point 'B' from where the land of the petitioner is being irrigated and thereafter the land of the respondent is situated. Thus, the arrangement made by the respondents-authorities which is 'turn by turn' appears to be more rational and thus, in the considered opinion of this Court, the impugned orders suffer from no infirmity. Resultantly, the petition, being devoid of any merits, is hereby dismissed.

04.09.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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