

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

CWP-19804-2023

Date of decision: 06.09.2023

Jatinder Singh

... Petitioner

Versus

The Superintending Canal Officer and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Sandeep Khunger, Advocate, for the petitioner.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the order dated 20.03.2023 (Annexure P-4) passed by the Divisional Canal Officer and order dated 26.06.2023 (Annexure P-6) passed by the Superintending Canal Officer, whereby, both the authorities have illegally and wrongly ordered for restoration of watercourse J-K in spite of the fact that it was brought to the notice of the authorities that *pucca* watercourse E-L-M-N is already in existence and at point N there is a *Pulli* meant for the irrigation of the land of respondents No.3 and 4 and a *Katcha* watercourse is in existence in 149//22 to 25 which has been shown in the site plan as N-N1 and further respondents No.3 and 4 have not placed on record any evidence to show that the said watercourse was in existence and still further the alleged watercourse J-K does not fall in any of the three categories i.e. I) sanctioned by law; ii) sanctioned by agreement; or iii) by way of easement.

It has been contended by learned counsel for the petitioner that the petitioner and respondents No.3 and 4 are having their holdings adjoining to each other and the source of irrigation is the canal water. He submits that

watercourse A-B-C-D is running at the spot and from point D, there are two watercourse i.e. one is D-I-J and other is D-E-L-M-N meant for irrigation of respondents No.3 and 4. He submits that respondents No.3 and 4 only to harass and cause harm to the irrigation of the petitioner submitted an application to the Canal authorities that watercourse J-K has been demolished by the petitioner. He has submitted that the Divisional Canal Officer illegally vide order dated 11.07.2022 (Annexure P-2) allowed the application under Section 30-FF of the Northern India Canal and Drainage Act, 1873 (for short, 'the Act') and illegally ordered for the restoration of watercourse J-K by observing that there is a *girdawari* for the year 1996-97. He has further submitted that aggrieved by the same, the petitioner approached the Superintending Canal Officer by filing an appeal, which was allowed and the order dated 11.07.2022 was set aside remanding the case to the Divisional Canal Officer vide order dated 25.11.2022 (Annexure P-3) wherein, it was specifically observed by the Superintending Canal Officer that the Divisional Canal Officer ordered restoration of the watercourse while placing reliance on *girdawari* for the year 1996-97, but ignored the statements of other parties, wherein it was mentioned that watercourse from Rectangle No.159, *Killa* Nos.2 to 5 and Rectangle No.149, *Killa* Nos.22 to 25 is in existence of the passage there is a *pulli* and the land of respondents No.3 and 4 is being irrigated from the said watercourse. He has submitted that the Divisional Canal Officer allowed the application on remand by passing the impugned order dated 20.03.2023 (Annexure P-4). He submits that thereafter, being aggrieved the petitioner filed an appeal before the learned Superintending Canal Officer, but the same was dismissed vide order dated 26.06.2023 by overlooking the facts and circumstances of the case. He has submitted that the Divisional Canal Officer vide order dated 11.07.2022

ordered for restoration while placing reliance on *girdawari* for the year 1996-97, which was more than 25 years old, whereas, according to the provisions of Section 29 of the Act, any watercourse which is disused for three years continuously the right of the said person to occupy such watercourse ceased absolutely. He has placed reliance on the judgments of this Court in Chamkaur Singh vs. Superintending Canal Officer, Sirhind Circle, Ludhiana and another, passed in CWP-16380-2009 on 16.09.2011; Jagar Singh vs. Superintending Canal Officer and others, 1972 PLR 315; and Ram Kumar vs. Bhim Singh, 1985 RRR 330, wherein, it was held that the applicant will have to plead and prove that watercourse was in existence for a continuous period of not less than six months prior to the date of its demolition. He has submitted that the impugned orders are totally in violation of Section 30-FF of the Act and thus, the same are being totally beyond the facts and circumstances of the case and the law settled, deserve to be set aside.

Heard.

After hearing learned counsel for the petitioner and perusing the record, it is deciphered that application was filed by respondents No.3 and 4 before the Divisional Canal Officer for restoration of demolished watercourse on outlet No.13156/13290/R. Notice was issued to the other side and statements of the concerned shareholders were recorded. The Divisional Canal Officer heard the case in the presence of Zildar, Moga. On 20.03.2023, the case was against investigated and on a perusal of the record, it was found that Jatinder Singh i.e. the petitioner deposed that he has not demolished the said watercourse. It was further deposed by him that it was a *katcha* watercourse and was damaged at the time of cultivation of the field. He also deposed that if respondent No.4 dig out canal watercourse from his area, then he would have

no objection. Keeping in view the statement made by the petitioner and inspecting the spot, the demolished watercourse from Point J to K was restored under Section 30-FF of the Act. Aggrieved by the same, the petitioner filed an appeal before the Superintending Canal Officer. Notice was issued to the opposite party and both the parties were heard. Record of the case was re-appreciated and it was found that at one point of time, compromise was effected between both the parties. It was further found that the respondent side was in joint *khata* and the appellant had admitted in his statement that he had not intentionally demolished the watercourse, but it was damaged while cultivating the field as it was a *katcha* watercourse. Thus, the existence of the watercourse was proved from the record, which was dismantled by the petitioner. The submissions made by learned counsel for the petitioner regarding Section 29 of the Act are not applicable in the facts and circumstances of the case. The petitioner himself has admitted that the watercourse restored got damaged while cultivating the land, thus, restoration of the watercourse as held by both the authorities below is as per the statutory provisions of the Act. In all its humility, the judgments relied upon the counsel for the petitioners are not disputed, however, in the facts and circumstances of the present case, the same are distinguishable. Thus, in the considered opinion of this Court, there is no infirmity in the impugned orders passed, hence, the present petition being devoid of any merit, is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

06.09.2023
sharmila

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No