

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

**CWP-25228-2021 (O&M)
Date of decision : 20.12.2023**

Kirpal Singh and another

.....Petitioners

versus

**Superintendent Canal Officer, Sirhand Canal Circle, Ludhiana and
others**

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Ankit Grewal, Advocate
for the petitioners.

Ms. Akshita Chauhan, DAG, Punjab.

Mr. K.S. Brar, Advocate
for respondents No.3 and 4.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the impugned order dated 25.02.2021 (Annexure P-6) being illegal, arbitrary and unreasonable therefore in violation of Article 14, 19 and 21. Further prayer has been made for directing the respondents to restore the watercourse from Point A to B as shown in the site plan (Annexure P-4).

It has been contended by counsel for the petitioners that petitioners and Sukhchain Singh i.e. respondent No.4 are co-sharers in Khasra No.1463. The existing khal measuring 10 karam along with the rasta has been demolished by respondents No.3 and 4 claiming it to be their land. He submits that aggrieved by the illegal action of the private respondents, the petitioners approached the Divisional Canal Officer, Faridkot in May, 2020 by way of filing petition under Section 30-FF of Northern India Canal and Drainage Act, 1873 (hereinafter referred to as

“the Act”) for the restoration of the same. He submits that on receiving the same, application was sent to Sub Divisional Officer, Gholia with the direction to send the report after conducting enquiry into the same. Resultantly, the Sub Divisional Officer forwarded the same to Zileadar Mudaki with the direction to submit his enquiry report. In pursuance to the same, Zileadar after getting the spot sketch prepared from the Halqa Patwari, the required record was attached with it. The statements of the parties were recorded. The Zileadar Mudaki inspected the site on 27.05.2020 and finding the request of the petitioners to be genuine forwarded their case to the Sub Divisional Officer for restoration of the demolished watercourse in Khasra No.1463. The Sub Divisional Officer, Gholia after going through the case recommended for restoration of demolished watercourse in Khasra No.1463 at Point A.B. It is submitted that on accepting the enquiry report by the Zileadar, Sub Divisional Officer, Faridkot i.e. respondent No.2 vide his order dated 15.09.2020 accepted the demand of the petitioners and directed the restoration of the watercourse. Aggrieved by this order of respondent No.2, the respondents filed an appeal before the Superintending Canal Officer i.e. respondent No.1 under Section 30-FF of the Act. However, respondent No.1 vide his order dated 25.02.2021 had allowed the appeal of the respondent by setting aside the order passed by respondent No.2. He submits that respondent No.1 had failed to appreciate the enquiry report of Zileadar and thus, by passing cryptic order had accepted the appeal filed by the respondent. Learned counsel for the petitioners has submitted that the dispute is among the brothers and the land of both the parties is a joint land which has not been partitioned till date. He has submitted that the petitioners are ready to compensate the respondent for restoring the demolished khal for providing

the irrigation of his land. He has submitted that learned Appellate Court has not appreciated the same and thus, passed the impugned order without appreciating the evidence on record. He has submitted that the co-sharer namely, Satpal Singh son of Mukhtiar Singh has given his consent for restoration of the khal but the respondents have not accepted the same due to personal grudge. He submits that the impugned order being illegal deserves to be *set aside*.

Per contra, learned counsel for respondents No.3 and 4 has opposed the submissions made by counsel for the petitioners. He has submitted that the land though is a joint land and the same is not partitioned however, the petitioners and the answering respondents are having the possession of their respective shares. He submits that the main water channel is RD25885/L i.e. Jandwala minor from which the petitioners and the respondents both are getting the water for their respective land from the public rasta. He submits that the petitioners are already getting their water. He has invited the attention of this Court to the map produced and submits that the petitioners are getting their watercourse from the Point D whereas, they are trying to get another watercourse at Point B which is in the land of the answering respondent. He submits that the petitioners have constructed a Kotha in Khasra No.1464 over the watercourse from which he is getting the water and thus, has tried to get two watercourse i.e. one from Point D and another at Point AB which falls in the share of the petitioners. He has submitted that the Appellate Authority has committed no illegality in passing the impugned order. However, he submits that the proposal given by the petitioners regarding compensation has not been raised earlier before the Lower Authorities.

Heard. On hearing counsel for the parties and perusing the record, it is apparent that the petitioners have filed petition under Section 30-FF of the Northern India Canal and Drainage Act 8 of 1873 for restoration of khal. It is an admitted position that the land owned by the petitioners and the respondent is a joint land and the same has not been partitioned. However, both the sides are irrigating the land which is in their possession. The petitioners besides other ground has taken the ground that they are ready to pay the compensation to the respondents for restoration of the demolished khal. The same ground has not been availed by the petitioners at the time of decision of the appeal. In the facts and circumstances of the case, this Court finds it appropriate that the proposal made by the petitioners be considered by the Appellate Authority and both the parties be heard again.

Resultantly, this Court is of the opinion that the appeal be heard afresh by respondent No.1 in view of the stand taken by the petitioners before this Court. Thus, the impugned order dated 25.02.2021 passed by respondent No.1 is *set aside*. The case is remanded to the respondent No.1 for deciding it afresh after hearing both the sides. Parties would be at liberty to raise all their grounds available including the offer made by the petitioners regarding grant of compensation to the respondents. Let the parties appear before respondent No.1 again however, in the facts and circumstances, respondent No.1 is directed to decide the matter filed within two months from the date of receipt of certified copy of this order. Petition stands disposed of.

20.12.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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