

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

CWP-23659-2023

Date of Decision: 18.10.2023

Jagdish Rai 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.

Petitioners have approached this Court praying for quashing of order dated 30.08.2023 (Annexure P-6) passed by respondent No.1 and order dated 24.02.2023 (Annexure P-4) passed by respondent No.2, whereby, respondent Nos.1 and 2 have illegally and arbitrarily ordered for the restoration of the watercourse in outlet No.76291-R Ramsara minor, without following the procedure laid down under Section 30 (FF) of the Northern India Canal and Drainage Act, 1873.

It has been submitted by learned counsel for the petitioners that respondent No.3-Gopal Ram filed an application on 07.03.2022 before respondent No.2 praying restoration of demolished watercourse, which has been illegally accepted vide impugned order dated 24.02.2023 (Annexure P-4). He has submitted that the appeal filed by the petitioners before respondent No.1 i.e. Superintending Canal Officer, was also illegally declined vide impugned order dated 30.08.2023 (Annexure P-6). He has submitted that the impugned orders have been passed in connivance with the respondents and the fields staff as Zildar in report dated 26.04.2022 (Annexure P-2) had submitted that demolition of the watercourse is not proved on the spot. He submits that despite that Sub Divisional Officer

submitted his report that the watercourse has been demolished without there being any evidence regarding the same. He has submitted that respondents No.1 and 2 did not even appreciate the facts and circumstances of the case and evidence on record and thus, have passed impugned orders simply on the basis of conjecture and surmises. He also submits that respondent No.3 entered into compromise with the petitioners, whereby, respondent No.3 agreed to give land in lieu of the watercourse. He has submitted that the private respondent backed out from giving land so the watercourse never came into existence and thus, the compromise proves that the disputed watercourse was not a sanctioned watercourse. He has submitted that in view of the facts and circumstances of the case, the impugned orders deserve to be quashed.

Heard.

After hearing learned counsel for the petitioner and perusing the record, it is evident that respondent No.3 filed application for restoration of the demolished watercourse. It was submitted by respondent No.3 that he had no other source of irrigation. On receiving the application, the SDO, Abohar forwarded the application to Zildar for investigation. On investigation, it was found that watercourse A-B was running for the last 50 to 60 years, which was demolished by Jagdish son of Pirthi Ram. As per the revenue record, demolished watercourse was a sanctioned watercourse and there was a record of *warahbandi* as well regarding the same. It was established from the record that except this watercourse, there was no other watercourse leading to the land of respondent No.3 and thus, the area was found to be commandable and *warahbandi* under Section 68 was also sanctioned. In view of the overwhelming evidence on record, the Divisional Canal Officer accepted the application filed by respondent No.3 vide order

dated 24.02.2023. Aggrieved by it, the petitioners assailed the same by way of filing an appeal before Superintending Canal Officer i.e. respondent No.1. Both the parties were heard by respondent No.1 and record of the case was re-appreciated. However, the petitioners failed to prove any infirmity in the order passed by the learned Divisional Canal Officer and thus, the existence of demolished watercourse was duly established, which was illegally demolished. Thus, the appeal filed by the petitioners was also dismissed vide order dated 30.08.2023. In the considered opinion of this Court, there is no perversity in the impugned orders passed by respondents No.1 and 2. Resultantly, the present petition being devoid of any merit, is hereby dismissed.

18.10.2023
sharmila

(RAJESH BHARDWAJ)
JUDGE
Whether Speaking/Reasoned : Yes/No
Whether Reportable : Yes/No