

115

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

CWP-26353-2023

Date of decision : 18.12.2023

Tarsem Singh

.....Petitioner

versus

Superintendent Canal Officer, Ferozepur and others Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Ajaypal Singh Sandhu, Advocate
for the petitioner.

Ms. Akshita Chauhan, DAG, Punjab with
Mr. Rajan Dhingra, Executive Engineer-cum-
Divisional Canal Officer.

RAJESH BHARDWAJ, J.

Present petition has arisen from the impugned order dated 31.08.2023 (Annexure P-2) passed by learned Division Canal Officer, Harike Canal Division, Water Resource Department, Ferozepur wherein the petition filed by respondent No.3 for restoration of the khal/water course was accepted and appeal filed against the same by the petitioner was dismissed by respondent No.1-Superintendent Canal Officer, Ferozepur Canal Circle, Ferozepur vide impugned order dated 04.10.2023.

It has been contended by counsel for the petitioner that respondent No.3 filed an application dated 07.06.2022 for restoration of the watercourse on the allegation that the petitioner had demolished the same. He submits that it was alleged that the said watercourse came from Mogha-Burji (outlet) No.7285/L and was dismantled by the petitioner from his own land. He submits that respondent No.2 has illegally accepted the same vide order dated 31.08.2023. He submits that respondent No.2 had

admitted in the impugned order that there was no watercourse in this place where respondent No.3 was demanding a watercourse as per map of *Warabandi* and site map. It is submitted that there was no mutual understanding in between the petitioner and respondent No.3 to provide tubewell water to their land through the private land of the petitioner. He submits that aggrieved by the impugned order dated 31.08.2023, petitioner filed an appeal before respondent No.1 who illegally dismissed the same vide impugned order dated 04.10.2023.

Learned counsel for the petitioner further submits that as per *jamabandi* for the year 2020-2021, the tubewells were the source of irrigation and the same has been incorporated in the revenue record but the respondents authorities ignored the same and passed the impugned orders by directing the watercourse to be made from the private land of the petitioner. He submits that respondent No.3 is a stranger and had no right, title or concern with Killa No.11 in Rectangle 9 which exclusively belongs to the petitioner. It is submitted by him that no watercourse/khal has ever been sanctioned from point C to D of 36 karams at any point of time. He submits that there was no agreement between the petitioner and respondent No.3 to provide him watercourse through his own land by brotherhood etc. He submits that the impugned order passed are totally in violation of the statutory principles of Section 30 FF of the Northern India Canal and Drainage Act and hence, being null and void, deserves to be *set aside*.

This Court had summoned the Divisional Canal Officer vide order dated 13.12.2023. In pursuance to the same, Mr. Rajan Dhingra, Executive Engineer-cum-Divisional Canal Officer, Ferozepur is present

in person in the Court along with record. This Court has interacted with the Officer who has explained the case to the Court. He has submitted that on receiving the application from respondent No.3, the case was investigated and the record was perused. He has submitted that there is a warabandi record about the khal in dispute since 1985. He has submitted that statement of the petitioner was also recorded wherein the existence of the khal is not even denied by him. On perusal of the record, it is apparent that DCO on 30.08.2023 in presence of the field staff and both the parties visited the spot and found that from point B to C, the watercourse was running and beyond that from point C to D, there was no watercourse and hence, the respondent was not getting the canal irrigation. It was found that area of respondent No.3 was situated at the last of outlet. Thus, it is evident that the khal was demolished from point C to D. Resultantly, the same was directed to be restored. Aggrieved by the same, petitioner filed appeal before the Superintendent Canal Officer, Ferozepur. The parties were again heard and the record was re-appreciated. Finding no infirmity in the record, the appeal filed was dismissed. On perusing the record and interacting with the Officer present in the Court, it is found that the petition filed by respondent No.3 was duly investigated. The warabandi record of the demolished khal was found from 01.04.1985 and thus, it was established that the khal was demolished by the petitioner from point C to D. The officer present in the Court has informed this Court that the respondent has no other source of canal irrigation after the demolition of this water khal. The arguments raised by counsel for the petitioner that the respondent has the alternate source of water from the tubewell is totally misconceived. Every farmer has a right of canal irrigation if the

same is available and made by the State. Merely because the respondent No.3 has the option of irrigation from the tubewell as well, cannot disentitle him from seeking the canal irrigation. Thus, the right of the respondent No.3 from the canal irrigation cannot be defeated as there exist a tubewell as well. Hence, in the considered opinion of this Court, there is no infirmity in the impugned orders passed by the authorities and accordingly, the petition is hereby dismissed.

18.12.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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