

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

**CWP-27125-2023**

Decided on 14.12.2023

Dalip Singh and another

...Petitioners

Versus

State of Haryana and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ**

Present: Mr. Ashwarya Bajaj, Advocate, for the petitioners.

\*\*\*

**RAJESH BHARDWAJ, J.**

The present petition has emanated from the impugned order dated 23.07.2019 (Annexure P-2) passed by Sub Divisional Canal Officer, Dhanger, Sub Division Fatehabad, order dated 20.12.2019 (Annexure P-3) passed by the Divisional Canal Officer Fatehabad, Division Fatehabad and order dated 26.10.2021 passed by Superintending Canal Officer, Bhakhra Water Service Circle, Fatehabad, wherein, the respondent-authorities have found the application filed by respondent No.5 for restoring the dismantled *khaal* to be genuine and thus, ordered for restoration of the same as the same was found to be dismantled by the petitioners in violation of the statutory provisions of the Haryana Canal and Drainage Act, 1974 (for short, 'the Act'). Aggrieved by the same, the petitioners have approached this Court by way of filing the present petition.

Learned counsel for the petitioners has submitted that the petitioners are in cultivating possession as co-owners of the Khasra No.223//17, 24-25 of Village Nadhori. It is submitted that on the application filed by respondent No.5, the Divisional Canal Officer proceeded *ex parte* qua the petitioners and thus, passed the impugned order dated 23.07.2019, whereby the watercourse which was not in the revenue record was ordered to be restored.

He has submitted that the order dated 23.07.2019 was passed without impleading the necessary parties. He submits that son of petitioner No.1 i.e. petitioner No.2 was not granted any opportunity of being heard and thus, the same is in violation of the principles of natural justice. He has submitted that aggrieved by the same, petitioner No.2 filed an appeal before Divisional Canal Officer for providing him an opportunity to contest the application, however, the same was declined vide order dated 20.12.2019. He has submitted that as the respondent-authorities have failed to appreciate the grievance raised by the petitioners, petitioner No.1 challenged the same by way of filing a revision before the learned Superintending Canal Officer, but the learned Superintending Canal Officer also failed to appreciate the facts and circumstances of the case and the law settled and thus, illegally and arbitrarily dismissed the same vide order dated 14.12.2021. It is further submitted that the impugned orders being against evidence on record and the law settled, deserve to be set aside.

After hearing learned counsel for the petitioner and perusing the record, it is apparent that respondent No.5 filed an application under Section 24 (1) (2) of the Haryana Canal & Drainage Act, 1974 for restoration of dismantled watercourse in the Chak of outlet RD 126986G-L Fatehabad Distt. After filing of the application, the same was got investigated through Zileadar, who conducted the spot inspection and submitted the report. As per report, the watercourse was found to be dismantled in the middle dole of field Nos.223//16-17 & 24-25. Though the watercourse RD was not mentioned in the consolidation but warabandi of the outlet was already sanctioned on this watercourse. It was found that the watercourse ABCD exists on the site and the same was found to be excavated by Vinod (petitioner No.2). Due to the same,

irrigation to the area of respondent No.5 was stopped. The Divisional Canal Officer having been satisfied directed the restoration of the dismantled watercourse. On further appeal filed by petitioner No.2, the learned Divisional Canal Officer again re-appreciated the case and it was found that the watercourse was running from the last more than 20 years and the same was dismantled. In the revision filed by petitioners, the learned Superintending Canal Officer again appreciated the material and found no infirmity in the findings arrived at by both the authorities. Thus, there are concurrent finding of facts by all the authorities below that the watercourse was in existence from the last more than 20 years which was dismantled by petitioner No.2 and thus, as per statutory provisions of the Haryana Canal & Drainage Act, of 1974, the same deserves to be restored as there was no other source of irrigation left for respondent No.5.

A Co-ordinate Bench of this Court in **Satinder Pal Singh Vs. State of Punjab and others, 2009 SCC OnLine P&H 11188** has held that *the findings of the authorities below cannot be interfered unless perverse, it is settled law that this Court while exercising the jurisdiction under Article 226 cannot sit as a Court of appeal over the findings recorded by the authorities below. Both the Courts below have recorded their detailed findings.*

Thus, in the considered opinion of this Court, there is no infirmity in the orders passed by the authorities below. Hence, the present petition being devoid of any merit is hereby dismissed.

( RAJESH BHARDWAJ )  
JUDGE

14.12.2023  
sharmila

Whether speaking/reasoned  
Whether reportable

Yes/No  
Yes/No