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

CWP-28489-2023

Date of decision : 18.12.2023

Pritam Singh**.....Petitioner****versus**

**The Superintendent Canal Officer, Ferozepur Canal Circle and others
..... Respondents**

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

Present :- Mr. Ramesh Chand Sharma, Advocate
for the petitioner.

*********RAJESH BHARDWAJ, J.**

Present petition is for quashing the order dated 16.05.2022 (Annexure P-2) as well as order dated 16.09.2022/15.05.2023 (Annexure P-3) and order dated 28.09.2023/06.10.2023 (Annexure P-4) passed by the respondents No.1 to 3 vide which watercourse (khal) has been restored in view of respondent No.4 from the land of petitioner, the same being wrong, illegal, unjust and against the law and facts on the file.

Learned counsel for the petitioner has submitted that respondent No.4 filed an application on 25.11.2021 for restoration of the khal (watercourse) which was allegedly demolished by the petitioner. It is submitted that the Sub Divisional Officer, Abohar sought report from the Zildar who submitted his report on 22.03.2022. Thereafter, the Sub Divisional Officer, Abohar i.e. respondent No.3 vide his order dated 16.05.2022 recommended to respondent No.2 for restoration of the demolished watercourse. He submits that respondent No.2 i.e. Divisional

Canal Officer vide his order dated 16.09.2022 ordered for restoration of the watercourse. He submits that aggrieved by the same, the petitioner filed an appeal before respondent No.1 who illegally dismissed the same vide his impugned order dated 28.09.2023. It is submitted by counsel for the petitioner that the respondents have passed the impugned orders in contravention to the evidence on record. He submits that the land of the petitioner has been bifurcated which fact was totally ignored by both the authorities below. It is submitted that the petitioner as well as respondent No.4 have land of their respective share and there is another khal from which land of respondent can be irrigated. Thus respondent No.4 has an alternate watercourse which has been ignored by both the authorities below and thus, have fallen in error in passing the impugned orders by directing to restore the watercourse as alleged. He submits that the impugned orders being totally perverse deserve to be *set aside*.

Heard. After hearing counsel for the petitioner and perusing the record, it is apparent that respondent No.4-Harpal Singh filed application for restoration of the demolished watercourse (khal) point AB with the request to install the same in Mogha No.163027/R, Rajbaha Lambi. On receiving the application, report was obtained from Zileadar Ajimgarh and statement of the applicant and concerned co-sharers were recorded. The Zileadar of the area visited the spot on 31.12.2021 after taking Halqa Patwari along with him. The record was perused and it was found that the turns of approved water for the respondents were at Serial No.35/2, 36, 36/1 from demolished khal the existence of which was proved which was found to have been demolished by the petitioner. Respondent No.4 was found to be suffering due to stoppage of his water

and thus, the demolished watercourse from Point A to B was recommended to be restored by the DCO as per mandate of Section 30 FF of the Canal Act. Learned DCO heard both the sides and perused the record. It is apparent that the case was investigated and the reports of Zildar and DCO were appreciated. Thus, the recommendation made by the DCO was found to be based on the reports prepared as per the record and visit of the site. The existence of khal was duly proved and the same was thus, directed to be restored vide impugned order dated 16.05.2022. Aggrieved by the same, petitioner filed an appeal before learned Superintendent Canal Officer. Learned SCO issued notice to the respondents and re-appreciated the record of the case. Both the parties were heard. It was found that the appellant and respondents are brothers and they had joint area and it was found that their joint warabandi was approved and as per the same, at the joint vatt of 182 M having Killa 5-6 and 1-0 at the demolished khal, the naqa was installed in the approved warabandi. Thus, the watercourse was found to be falling in the category of a sanctioned watercourse. On account of the demolition of the same by the petitioner, the only source of irrigation for the respondent was stopped. Thus, finding no merit in the appeal, the same was dismissed. As is apparent from the record, there are concurrent findings by the authorities below that the petitioner had demolished the existing khal totally in contravention to the statutory provisions and thus, the same ordered to be restored.

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.

In the considered opinion of this Court, there is no merit in the petition and the same is hereby dismissed.

18.12.2023
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No