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

CWP No.28615 of 2023

Date of Decision: 19.12.2023

Lachhman Singh

..... Petitioner

Versus

**Superintending Canal Officer, Patiala Circle,
Irrigation Branch, Patiala and others**

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Judgepreet Singh Warring, Advocate
for the petitioner.

Mr. Ankit Midha, Advocate
for respondents No.5 and 6.

RAJESH BHARDWAJ, J.

The present petition has arisen on the dismissal of the petition filed by the petitioner with the prayer to connect the channel with the underground pipeline, which had been rejected by the authorities below by way of passing the impugned orders dated 24.07.2023 (Annexure P-12), 05.06.2023 (Annexure P-11) and 22.03.2023 (Annexure P-8).

It has been contended by learned counsel for the petitioner that the petitioner is a marginal farmer and owner in possession of the land measuring 40 Kanals 9 Marla. He submits that due to the unnecessary interference and influence of the private respondents, the

entire surrounding land to the land of the petitioner got transferred from the earlier outlet RD to the present outlet RD except the land of the petitioner, by the Canal Authorities. He submits that the petitioner requested and demanded the canal irrigation for his land, however the same was rejected by respondent No.2. He submits that the petitioner filed an appeal before respondent No.1-Superintending Canal Officer, who remanded the case to the Divisional Canal Officer with specific directions on 19.01.2018. He submits that on remand, respondent No.2 accepted the demand of the petitioner and converted the land area of the petitioner from un-command land to command land. He has submitted that the petitioner filed an application to connect the outlet with the branch of present outlet vide application dated 04.08.2020 but respondent No.2 by passing a non speaking and illegal order dated 18.01.2021 rejected the same. He submits that the petitioner assailed the same by way of filing an appeal and respondent No.1 had remanded the case to respondent No.2 with direction that in case the parties are not agreeing then the case be considered for sanctioning of water course under compensation vide his order dated 03.08.2021. He submits that on remand, respondent No.2 passed the well reasoned order dated 29.12.2021. However, respondent No.5 assailed the same by way of filing an appeal and respondent No.1 without considering the facts and circumstances of the case, remanded the case to respondent No.2 vide order dated 11.05.2022. Being aggrieved the petitioner filed **CWP No.19488 of 2022** impugning order dated 11.05.2022. This Court disposed of the same by directing respondent No.2 to decide the case

afresh within a period of six months. He submits that in compliance of the order passed by this Court, the petitioner approached respondent No.2 again and requested to connect his command land along with the branch of the present outlet by sanctioning the water course/pipeline in lieu of the compensation. He submits that petitioner had undertaken before the authorities to pay his share to all the share holders, who had spent money upon the said branch of pipeline, if any, along with the further compensation in favour of the private respondents. He submits that respondent No.2 has failed to appreciate the submissions made by the petitioner and under the influence of the private respondents, started preparing the fresh scheme for underground pipeline AB through the passage without any mandatory approval from the Gram Panchayat and thus, passed the impugned order dated 22.03.2023, which is totally against the evidence on record and the law settled. He submits that being aggrieved the petitioner filed an appeal before respondent No.1. He submits before respondent No.1 that the area of petitioner is at the distance of only 5 karams from the underground pipeline installed by respondents No.3 and 4 and the petitioner is ready to compensate for the land which is acquired for 5 karams for giving him water course. He further submits that the petitioner is ready to pay the expenses for the underground pipe line but the same was totally ignored. Thus, respondent No.1 rejected the appeal by passing the impugned order dated 05.06.2023. He submits that the order passed by respondent No.1 is totally cryptic and non speaking. He has submitted that aggrieved the petitioner filed the review petition against the impugned order dated

05.06.2023 but respondent No.1 rejected the same without taking into consideration the error apparent on the face of it and thus, the review petition filed was also dismissed vide impugned order dated 24.07.2023. He submits that the genuine prayer made by the petitioner was rejected by all the authorities and thus, have drawn the wrong conclusion in rejecting the same by way of passing the impugned orders. He submits that the impugned orders being unsustainable in the eyes of law deserve to be set aside.

Learned counsel for respondent No.5 & 6 has vehemently opposed the submissions made by learned counsel for the petitioner. He has submitted that the petitioner has not approached this Court with clean hands and he has distorted the facts of the case. He has drawn the attention of this Court to the site plan attached. He submits that as per the site plan, the pipeline was to be brought by the petitioner to his land from point A to point B by way of underground pipeline from the common rasta. He submits that this plan was acceptable to everyone as this pipeline from A to B was to be from the place where common rasta is situated. But the petitioner intentionally changed the same by trying to connect this pipeline to the underground pipe installed by respondents No.5 & 6 in their own fields. Besides this, he submits that the tubewell kotha of the respondents is also installed from where the petitioner proposed to bring his pipeline to his fields. He submits that the petitioner has no right to connect the pipeline in the private pipeline of the respondents and disturb the kotha constructed by the respondents. He submits that the respondents have no objection, if the petitioner takes the

underground pipeline from point A to B, that would meet the ends of justice for all the co-sharers and would not prejudice any of the co-sharers. He submits that the petitioner intentionally changed the proposal which has been rightly rejected by all the authorities below. He has submitted that the grievances of the petitioner was appreciated by all the authorities below and they have given concurrent view against the petitioner. Thus, the petition being devoid of any merit deserves to be dismissed.

Heard.

After hearing learned counsel for the parties and perusing the record, it is apparent that on filing the petition by the petitioner for connecting the channel with the underground pipeline for converting his land from un-command area to command area, the case was investigated and the spot inspection was done on 14.03.2023. The Superintending Canal Officer i.e. respondent No.1 remanded the case to Divisional Canal Officer for reconsidering the same and decide the case afresh. Accordingly, a new site plan and scheme was prepared from the Zildar, Jhuneer and all the parties were heard. On hearing the arguments of both the sides, due to non consent of the applicant with the respondents side, the case was consigned to the record room. However, thereafter the parties were heard again and the entire record was examined. It was concluded on perusal that the proposed pipeline at point A-B goes with the BMB which had been prepared in the interest of better irrigation. Thus, this proposed land at point A-B and in the passage/Pahi goes with the BMB shown in the new site plan was sanctioned and the petitioner

was directed to initiate the proceedings under the Rules by the Divisional Canal Officer vide his order dated 22.03.2023. However, the same was assailed by way of filing an appeal before the Superintending Canal Officer i.e. respondent No.1. Respondent No.1 issued notice to the other side and both the sides were heard. The record of the case was re-appreciated. However, no infirmity was found in the scheme formulated by the Department and which was duly appreciated by the Divisional Canal Officer i.e. respondent No.2. Hence, the Superintending Canal Officer dismissed the appeal filed. It was further assailed by the petitioner by way of filing the review. However, no merit was found in the same and the same was also dismissed. It is apparent from hearing the parties and perusing the record that the scheme formulated for converting the un-command area of the petitioner to command area by laying down the underground pipeline from A to B was for better irrigation and was in the interest of justice of all the parties.

Thus, there are concurrent findings of all the authorities below and this Court does not find any infirmity in the impugned order passed. Resultantly, the present petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

19.12.2023
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No