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

CWP No.66 of 2024

Date of Decision: 09.01.2024

Gurtej Singh

..... Petitioner

Versus

**Superintending Canal Officer, Patiala Canal
Circle Water Resources Department,
Patiala Punjab and others**

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Amarpreet Singh, Advocate
for the petitioner.

Mr. Ankit Midha, Advocate
for the caveator/respondent No.3.

RAJESH BHARDWAJ, J.

Present writ petition has been filed for quashing the order dated 20.11.2023 (Annexure P-1) passed by Superintending Canal Officer, Patiala Canal Circle Water Resources Department, Punjab Patiala-respondent No.1 vide which appeal of the petitioner has been dismissed and order dated 18.09.2023 (Annexure P-2) passed by Divisional Officer Canal Mansa Canal Ground Water Division-respondent No.2 has been affirmed against law and facts on record, being illegal, null and void, without jurisdiction whereby the petitioner has been directed to restore Katcha Khal from point A-B in Khasra No.1401

(Moga 1960/L Rajwaha Raghu) situated in the area of village Kot Bakhtu, Tehsil Talwandi Sabo, District Bathinda. Further prayer has been made for staying the operation and execution of above mentioned orders (Annexures P-1 and P-2) till the decision of this petition.

It has been submitted by learned counsel for the petitioner that Katcha Khal was running from point A-B in Khasra No.1401 (Moga 1960/L Rajwaha Raghu) situated in the area of village Kot Bakhtu, Tehsil Talwandi Sabo, District Bathinda. He submits that the pacca Khal was made in 2016 up to point A. He has vehemently submitted that the petitioner got his land measured in the month of February, 2023 and found that the pacca Khal till point A falls in his land and the Katcha Khal from point A-B has also fallen in the area of his land. He has submitted that respondents No.3 and 4 had claimed their turn of water on account of warabandi record No.35 & 36. He has submitted that respondents No.3 and 4 had filed the petition under Section 30-FF of the Northern India Canal and Drainage Act, 1873 (hereinafter referred to as 'the Act') before the Divisional Canal Officer i.e. respondent No.2 for restoring the demolished khal from point A to B. He has submitted that respondent No.2 without appreciating the evidence on record and the law settled, passed the impugned order dated 18.09.2023 by illegally accepting the petition filed by respondents No.3 and 4. He submits that aggrieved by the same, the petitioner filed an appeal before the Superintending Canal Officer i.e. respondent No.1, who has again fallen in error in not appreciating the evidence on record and the law settled and

thus, has illegally upheld the order passed by the learned Divisional Canal Officer vide his order dated 20.11.2023. He submits that as per demarcation, it was found that the khal runs in the land of petitioner and thus, respondents No.3 and 4 had no right for restoration of the demolished khal, which was private khal of the petitioner. He submits that the impugned orders being against the law settled deserve to be set aside.

Per contra, learned counsel appearing on behalf of the caveator/respondent No.3 has opposed the submissions made by learned counsel for the petitioner. He has submitted that existence of the khal is duly proved from the warabandi record. He has filed the copy of site map today in the Court. He submits that on perusal of the same, it is apparent that the khal for irrigation of the land of respondents was in existence since beginning and the same has been demolished by the petitioner from point A onwards and thus, respondents No.3 and 4 are left with no source of water after demolition of this khal. He has also submitted that both the authorities below have relied upon the report submitted by the Canal Authorities and found the petitioner to have demolished the khal from point A to B and thus, have rightly restored the demolished khal. He also submits that demolition of the khal is not under dispute as the petitioner has admitted the same in para No.6 of the writ petition. He has submitted that respondents No.3 and 4 do not have any other source of water and thus, the present petition being devoid of any merit deserves to be dismissed with costs.

Heard.

On hearing learned counsel for the parties and perusing the record, it is apparent that respondents No.3 and 4 had filed the petition under Section 30-FF of the Act for restoration of the demolished khal. After filing of the same, the case was examined by the authorities and reports were summoned. It was found from the site map that Mogha Burji 1960/Khabba Rajwaha Raghu's Pakka Nahri Khal was intact up to point A whereas beyond this point A-B settlement number 1401 is demolished on the upper side (north side) of Pahi, it was found that existence of this khal was proved from the warabandi record. Thus, the petition filed by respondents No.3 and 4 was found to be genuine and hence, the same was accepted by the learned Divisional Canal Officer vide his order dated 18.09.2023. The same was assailed by the petitioner by way of filing an appeal before the learned Superintending Canal Officer. Both the parties were heard by the Appellate Authority and record was re-appreciated. The Appellate Authority also found that the khal was sanctioned in the warabandi record. The Field Team had filed the report by recommending restoration of the khal from point A to B. Thus, demolition of the khal was established in unequivocal terms and the appeal was dismissed.

It is apparent that on appreciation of the evidence on record and the law settled, both the authorities below have given concurrent finding in favour of respondents No.3 and 4. 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 overall facts and circumstances of this case, this Court does not find any infirmity in the impugned orders passed by the authorities below. Hence, the present petition being devoid of any merit is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

09.01.2024
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Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No