



CWP-191-2024 (O&M)

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

CWP-191-2024 (O&M)

Date of Decision: May 07, 2024

Baldev Singh and others

.....Petitioner

Versus

Superintending Canal Officer and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.K.S.Brar, Advocate
for the petitioners.

Mr.SPS Tinna, Advocate
for the Caveator/respondent.

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RAJESH BHARDWAJ, J.(ORAL)

1. Petitioner has approached this Court praying for setting aside the impugned order, dated 19.10.2023, Annexure P-2, passed by respondent No.1, whereby the appeal filed by the petitioners has been dismissed and the impugned order dated 09.05.2023, Annexure P-1, passed by respondent No.2, vide which the application filed by respondent No.3 regarding transfer of 7.43 acre area from water outlet RD-70080-R Panjawa Rajbaha in water outlet RD 75730-TR Panjawa Rajbaha has been allowed.

2. It has been submitted by learned counsel for the petitioners that respondent No.3 filed an application before respondent No.2 for transfer of 7.43 acres from the water outlet RD-70080-R to water outlet RD 75730-TR on the ground that the land is better cultivable with this outlet as the irrigation of his land from the existing water outlet was not possible any

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the area was far away from the water outlet and its level was also high and the land was near to this outlet. It is submitted that the application filed by respondent No.3 was forwarded to Zildar for enquiry in which statements of respondent No.3 and some other co-sharers were recorded and the notice was issued to the petitioners. He has submitted that on receiving the same, the petitioners raised their objections to the application filed by respondent No.3. It was specifically objected by the petitioners that the land of respondent No.3 was already being irrigated efficiently from the exiting outlet. He has submitted that respondent No.3 intentionally demolished the water course at the time of enquiry whereas the actual water course is existing and his land was being irrigated from the outlet No.RD 70800 R. Panjawa Rajbaha. However, respondent No.2 failed to appreciate the same and thus illegally accepted the application filed by respondent No.3 vide impugned order dated 09.05.2023. It is submitted that aggrieved by the same, the petitioners filed an appeal before respondent No.1, however the appellate authority had also fallen in error in mis-interpreting the evidence on record and the statutory provisions and thus illegally dismissed the same vide his order dated 19.10.2023. He has submitted that both the authorities have miserably failed to appreciate that land of respondent No.3 was being irrigated from the existing outlet RD-70080-R as is clear from the Khasra Girdawari. He has submitted that the authorities below have failed to appreciate that there is a massive area measuring 808 acres of land being irrigated from the proposed outlet RD 75730 R and hence if the area as prayed for by respondent No.3 is added to the same there would be deduction of 90-95 minutes in turn of the co-sharers already existing on this outlet and hence the petitioners would be seriously prejudiced. However the

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authorities have failed to appreciate the same and thus illegally approved the addition of the area of 7.43 acres as prayed for by respondent No.3. It is submitted that the authorities did not consider the fact that irrigation of the land of the co-sharers in the outlet RD-75730 TR is already getting less water as the same is situated at the tail end hence less water reaches upto the tail. However, the existing outlet RD 70080-R is not at the tail end thus the same is getting sufficient water. Thus the petition filed by respondent No.3 was totally a frivolous one but the authorities have miserably failed to appreciate the same and thus have drawn a wrong conclusion. He submits that the impugned orders having been passed against the evidence on record and in violation of the statutory provisions are not sustainable in the eyes of law and thus deserve to be set aside.

3. Heard.

4. On hearing the learned counsel for the petitioner and perusing the record, it is apparent that respondent No.3 filed an application for transfer of 7.43 acres of land from the water outlet RD-70080-R to water outlet RD 75730-TR. On filing the application, the necessary procedure was adopted and the Zildar conducted the enquiry on the application. The statement of the respective parties were recorded and the record was perused. The SDO Abohar produced the command statement. The Scheme framed was published and the DCO visited the site for further necessary action. The report submitted by the Zildar and SDO were appreciated. Both the sides were heard. It was found that there was no permanent water course from the current water outlet to the land of respondent No.3. On appreciation of the record and the command statement, the application filed



approved by the DCO vide its order dated 09.05.2023. This was further assailed by the petitioners before the Superintending canal officer where both the sides were heard. The evidence on record were re-examined. It was found that demand of respondent No.3 was to shift the area of 7.43 acre from the existing outlet to the proposed one. On evaluation of the evidence on record it was found that no prejudice would be caused to the petitioners by the transfer of this small area to the proposed water course. Hence the appeal filed was dismissed.

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.

6. 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.

May 07, 2024
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(RAJESH BHARDWAJ)
JUDGE

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| 1. Whether speaking/reasoned ? | Yes/No |
| 2. Whether reportable ? | Yes/No |