

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

CWP-1318-2024

Date of Decision: 05.02.2024

Tejinder Paul Jindal and others Petitioners

Versus

State of Punjab and others Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ankit Midha, Advocate, for the petitioners.

Rajesh Bhardwaj, J.

Prayer in the present petition is for quashing of order dated 10.10.2022 (Annexure P-18), passed by respondent No.2 and order dated 27.05.2022 (Annexure P-16), passed by respondent No.3.

It has been contended by learned counsel for the petitioners that the petitioners and the private respondents were the owner of adjoining properties of Mansa-Patiala Road in village Malakpur Khiala, Tehsil and District Mansa. On 02.03.2021, respondent No.4 filed an application seeking restoration of alleged watercourse in front of the plots owned by the petitioners. He submits that Zildar recorded the statements of few petitioners on 01.10.2021, who stated that they had purchased the land during the year 2004-05 and there was no watercourse at that time. It is submitted that the Zildar submitted his report on 21.01.2022 and thereafter, on the basis of the same, Sub Divisional Officer submitted his report on 07.02.2022. He has submitted that no notice was issued to the petitioners as required under Rule 79 of Northern India Canal and Drainage Rules, 1878. He has submitted that respondent No.3 i.e. Divisional Canal Officer decided the case while restoring the watercourse in front of the land/plots of the

petitioners vide his order dated 22.05.2022. He submits that aggrieved by the same, petitioners No.2 and 3 filed an appeal before respondent No.2 i.e. Superintending Canal Officer, who without affording any opportunity to the petitioners to present their case, dismissed the appeal vide order dated 10.10.2022. It is submitted by him that *warabandi* record as available in the record of the respondents, was not placed on the case file. He submits that no *warabandi* is approved for outlet No. RD 60810/TF Atla Branch under Section 68 of Northern India Canal and Drainage Act, 1873 (for short, 'the Act'). He submits that earlier the land purchased by the petitioners and the private respondents used to be irrigated from another outlet on Bhaini Distributory and the impugned watercourse was operative till the year 1982 and hence, the land of the petitioners and private respondents was transferred to outlet RD 60810/TF Atla Branch, but no *warabandi* was sanctioned under Section 68 of the Act. He submits that *warabandi* on the basis of which watercourse has been restored, is not approved *warabandi* of outlet RD 60810/TF. He has further submitted that procedure adopted by the Revenue authorities is in violation of the statutory provisions of Section 30(FF) of the Act and thus, the impugned orders being unsustainable in the eyes of law, deserves to be set aside.

Heard.

After hearing learned counsel for the petitioners and perusing the record, it is apparent that respondent No.4 filed an application for restoration of the watercourse. On the filing of the same, the site was inspected on 26.05.2022 and marks of the existence of the watercourse were found at the site. Report prepared by the Zildar was examined. The *warabandi* record was perused and from the evidence on record, the

existence of the watercourse was proved, thus, the learned Divisional Canal Officer restored the same vide his order dated 22.05.2022. Thereafter, the appeal was filed by the petitioners before the learned Superintending Canal Officer. The parties were heard again and the record was re-appreciated and existence of the *khaal* was found to have been substantiated from the site inspection report and the *warabandi* record. Thus, it was duly established that the watercourse existed at the place which was subsequently demolished. Both the parties have been heard by the authorities below and thus, the orders have been passed after hearing them. Hence, there is no violation of principal of natural justice. From the overall facts and circumstances, this Court does not find any infirmity in the impugned orders passed. There is concurrent opinion of both the Courts below and thus, finding no merit in the present petition, the same is hereby dismissed.

05.02.2024
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Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE

: Yes/No
: Yes/No