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

CWP-3726-2024

Date of decision : 20.03.2024

Gurlal Singh and another**.....Petitioners****versus**

**Superintending Canal Officer Patiala Canal Circle Water Supply
Department Punjab and others** **..... Respondents**

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

Present :- Ms. Harmanpreet Kaur, Advocate
for the petitioners.

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

Prayer in the present petition is for quashing the impugned order dated 28.06.2023 (Annexure P-1) passed by respondent No.2 vide which the application filed by the private respondents has been allowed and restore the water resource and impugned order dated 03.10.2023 (Annexure P-3) passed by Superintending Canal Officer-respondent No.1 vide which the appeal of the petitioners has been dismissed, being illegal and against the law.

It has been contended by counsel for the petitioners that respondents No.4 and 5 filed application praying for restoration of watercourse allegedly demolished by the petitioners. It is submitted therein that respondents No.4 and 5 are the co-sharers of the said Mogha Burji. It is further submitted that the alleged watercourse was the ancestral khal of the respondents but the same was demolished by the petitioners which blocked the irrigation water to the land of the respondents. This

application was sent to the Sub Divisional Officer Budhlada for further necessary action. Zileadar prepared a sketch of the spot and recorded the statements of the co-sharers. She has submitted that necessary documents were not supplied to the petitioners and thus, in the absence of the same, they were unable to give any statement. It is submitted that respondent No.2 illegally allowed the application filed by respondents No.4 and 5 and thus, illegally restored the khal/watercourse vide impugned order dated 28.06.2023. Being aggrieved, petitioners assailed the same by way of filing the appeal. It was specifically contended by counsel for the petitioners that the required documents were not provided to the petitioners and thus, in the absence of the same, they could not complete their defence. However, ignoring the same, respondent No.1 has illegally dismissed the appeal filed by the petitioners vide impugned order dated 03.10.2023. It is submitted by counsel for the petitioners that the respondents-authorities have failed to appreciate that there was no evidence on record to establish the existence of the watercourse/khal which was alleged to have been dismantled by the petitioners. Thus, the respondents had set up a false case merely on the basis of conjectures and surmises. It is submitted that the disputed watercourse bifurcates the land holding of the petitioners and hence, restoration of the same had caused a serious prejudice to the petitioners but both the authorities below have failed to appreciate the same. She has submitted that fixing of warabandi on a particular watercourse does not prove its existence but the same has been illegally accepted by the irrigation authorities. It is submitted that the impugned orders are totally cryptic and non-speaking. She submits that in the overall facts and circumstances of the present case, the impugned orders being unsustainable in the eyes of law deserve to be *set aside*.

Heard. On hearing counsel for the petitioners and perusing the record, it is apparent that the application for restoration of the demolished watercourse was filed by respondents No.4 and 5. The application was duly investigated and in the warabandi record the watercourse was found to be in existence. On perusal of the warabandi map, it was found that the area of the petitioners in the north wall of Settlement No.45//14-15 was canalized. Thus, the existence of the watercourse was duly established which was found to have been dismantled. Thus, on finding the application filed to be genuine, the same was allowed and khal was agreed to be restored by the learned Divisional Canal Officer by passing the impugned order dated 28.06.2023. This order was further assailed by way of filing the appeal before learned Superintending Canal Officer, who reappreciated the evidence on record and heard both the sides. However, finding no infirmity in the impugned order passed by the learned Divisional Canal Officer, the appeal filed by the petitioners was dismissed by respondent No.1-Superintending Canal Officer vide impugned order dated 03.10.2023. Thus, in the overall facts and circumstances of the case, it is apparent that the warabandi record of the watercourse in dispute proved the existence of the khal in the inquiry carried out in pursuance to the petition filed by the respondents. This khal was found to have been dismantled. Thus, the application filed was found to be genuine. Hence, the khal has been restored by learned Divisional Canal Officer which has been further upheld by the Superintending Canal Officer vide order dated 03.10.2023. Thus, there are concurrent views in favour of respondents by both the irrigation authorities. 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 considered opinion of this Court, there is no illegality and perversity in the impugned orders passed by the authorities below and hence, this petition, being devoid of any merits, is hereby dismissed.

20.03.2024
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned

:

Yes/No

Whether reportable

:

Yes/No