

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

CWP-6079-2022 (O&M)

Date of Decision: 15.04.2024

Jagdev Singh and another

..... Petitioners

Versus

Superintending Canal Officer and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Jagraj Singh Khiva, Advocate, for the petitioners.

Rajesh Bhardwaj, J.

1. Prayer in the present petition is for quashing of impugned order dated 06.09.2021 (Annexure P-17) passed by respondent No.1, order dated 10.03.2021 (Annexure P-15) passed by respondent No.2, order dated 05.02.2020 (Annexure P-13) passed by respondent No.3, being illegal, arbitrary, unjust, against the law and facts of the case, against the principles of natural justice and contrary to the Northern India Canal and Drainage Act, 1873 (for short, 'the Act'), and thus, unsustainable and liable to be set aside/quashed and application dated 05.08.2019 (Annexure P-3) filed by respondents No.5 & 6 may be ordered to be dismissed with costs.

2. It has been contended by learned counsel for the petitioners that the petitioners and respondents No.5 & 6 are the shareholders of outlet No.32350-L Canal Distributory Upli village Kattu. He submits that as per site plan, yellow colour is a consolidated watercourse Mark B-E-F-G is a sanctioned *khaal* alongside the road on which respondents No.5 & 6 have their *Khata* No.33 and *Khata* No.14 opposite to the road. It is submitted that Mark A-B-C-D is consolidated *khaal* where the pipeline was laid down and the petitioners have their *Khata* No.49 on this consolidated *khaal*. He submits that Mark G-H-L-I-J is a sanctioned *khaal* which was closed by

respondents No.5 & 6 by filling earth. He submits that land of the petitioners and that of private respondents, is irrigated by canal water from outlet No.32350-L and as per warabandi, water turn of private respondents is mentioned at Sr. No.14 and Sr. No.33. On the other hand, water turn of the petitioners is mentioned at Sr. Nos.48 and 49. It is submitted that respondents No.5 & 6 filed an application dated 05.08.2019 before respondent No.3 for consolidating canal water turn. In pursuance to the application filed, respondent No.3 directed respondent No.4- i.e. Zileadar Dhanaula to prepare the case as per the demand in the application and statements of respondents No.5 & 6 and objections by the petitioners were raised. He submits that however, without considering the objections raised by the petitioners, respondent-authorities sanctioned a new *Nakka* on 26.08.2019 on the application filed by respondents No.5 & 6. He submits that as per the spot inspection carried out, condition of already existing *Nakka* was found to be dilapidated, however, the same was not taken into consideration. He submits that on 30.08.2019, Maukhtiar Kaur (mother of petitioner No.1) filed an application before respondent No.3 for stopping the illegal use of *Nakka* No.49. He submits that the petitioners filed a civil suit for permanent injunction before the Court of Civil Judge (Senior Division), Barnala against the private respondents. He submits that vide order dated 25.09.2019, respondent No.3 issued notice to all the concerned parties regarding amended *warabandi* and called the objections for 14.10.2019. It is submitted that respondent No.3 without considering the evidence on record and the statements of other shareholders as well as the order passed by the Civil Court, sanctioned a new *Nakka* No.49/1 vide order dated 05.02.2020 in favour of the private respondents without assigning any

reason. He submits that aggrieved by the order dated 05.02.2020, the petitioners assailed the same by way of filing an appeal before respondent No.2 on 03.03.2020, however, respondent No.2 without considering the statements made by the petitioners, dismissed the same vide order dated 10.03.2021. He has submitted that still aggrieved by the same, the petitioners filed a revision petition under Section 68(6) of Act before respondent No.1. He submits that respondent No.1 has equally fallen in error in dismissing the revision petition vide his order dated 06.09.2021 and thus, has illegally upheld the order passed by the authorities below. He submits that respondents No.1 to 3 did not consider the fact that the old sanctioned watercourse was found to be in dilapidated condition and the private respondents were responsible for the same as they sold their land adjoining the road by filling earth in the sanctioned watercourse. It is submitted that the impugned orders passed are non-speaking and cryptic. He further submits that respondent-authorities have failed to consider that respondents No.5 and 6 intentionally closed the watercourse belonging to Nakka at Khata No.33 by filling earth and thus, there was no reason for sanctioning a new *nakka*. He submits that supply of water to the petitioners would be reduced by sanctioning of new *Nakka* but the same has not been taken into consideration by all the three authorities below and thus, the impugned orders being unsustainable in the eyes of law, deserves to be set aside.

3. After hearing learned counsel for the petitioner and perusing the record, it is apparent that respondents No.5 & 6 filed an application for consolidating their canal water turn. On the application filed, necessary reports were received by the authorities after conducting the spot inspection.

On perusal of the same, it was found that due to construction alongside the old *khaal*, the said *khaal* was not in working condition at some places and thus, was not in a proper working condition. Hence, *warabandi* was amended by the Deputy Collector as per Section 68 of the Act. On the assessment of the site report and the record, no prejudice was found to have caused to the petitioners, by the authorities below. Sanctioning of the new *Nakka* was found to be for the better irrigation of all the shareholders. There is no gainsaying that there are concurrent findings by both the authorities below in favour of respondents No.5 & 6. 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.*

4. 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.

15.04.2024
sharmila

Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No

(RAJESH BHARDWAJ)
JUDGE