

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

CWP-5794-2024

Date of Decision: 13.03.2024

Bhushan Kumar

..... Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Anuj Balyan, Advocate, for the petitioner.

Mr. Navneet Singh, Sr. DAG, Punjab.

Mr. Kulwinder Singh, Advocate for
respondents No.4 to 7.

Rajesh Bhardwaj, J.

1. Prayer in the present petition is for quashing the impugned order dated 27.12.2023 (Annexure P-2) passed by respondent No.3 and order dated 12.02.2024 (Annexure P-3) passed by respondent No.4 dismissing the appeal of the petitioner and all the subsequent proceedings arising thereafter, being null and void.

2. It has been submitted that the private respondents with malafide intention filed an application under Section 30(FF) of the Northern India Canal and Drainage Act, 1873 (for short, 'the Act') for restoration of the water outlet claiming to be the co-sharer of water outlet No.12166 Boha Rajwaha Canal alleging therein that the petitioner had demolished the said watercourse. He submits that the petitioner filed reply to the same and refuted the allegations. Thereafter, to ascertain the factual position of the spot, an enquiry report was called by the official respondent. He submits that Zildar recorded the statements of the parties and visited the spot on 19.09.2023. He submits that it was evident from the report that the private

respondents were not in cultivating/irrigating from Point H to I, because their area was one feet higher from the Point H and the source of the water supply was BCDE as shown in the site plan. It is submitted that same was not tallied with the *warabandi* as well. It is submitted that learned Divisional Canal Officer after perusing the report and hearing the parties, illegally accepted the application filed by the private respondent vide impugned order dated 13.12.2023, wherein the evidence on record and the law settled was totally ignored. He submits that learned Divisional Canal Officer solely relied upon the order passed by the Deputy Collector dated 18.10.1996 and restored the water outlet which was never existed. He submits that aggrieved by the same, the petitioner filed an appeal before the Superintending Canal Officer, who without appreciating the evidence on record, dismissed the same by passing a non-speaking order dated 12.02.2024. It has been submitted that the impugned orders passed are totally in violation of Section 30 (FF) of the Act. He submits that *warabandi* record relied upon by the respondent-authorities, was not in force and thus, Section 30 (FF) of the Act could not have been invoked. It has been further submitted that the petitioner would be adversely effected by the impugned orders, which are totally against the evidence on record and the settled proposition of law and thus, the same deserve to be set aside.

3. Learned counsel for respondents No.4 to 7 has opposed the contentions raised by counsel for the petitioner. He has submitted that there being no infirmity in the impugned orders passed, the present petition deserves to be dismissed.

4. Heard.

5. The Court heard learned counsel for the petitioner and Mr.

Jaskaran Singh, Zileadar, who is present in Court. It is apparent from the record that on filing of the application by the private respondents, the case was investigated and the relevant reports were received from the Zileadar, Dialpura. The record of the *warabandi* was perused and it was established from the record that there existed an approved *warabandi* of the watercourse. Thus, existence of the watercourse was duly established and in the interest of the better irrigation, watercourse which was found to have been demolished, was restored by learned Divisional Canal Officer. In the appeal filed before the Superintending Canal Officer, the parties were heard again and the record was re-appreciated. However, on re-appreciation of the record, the petitioner failed to point out any infirmity in the *warabandi* record produced and thus, existence of the watercourse was found to be duly established, which was rightly restored.

6. The Court has interacted with Mr. Jaskaran Singh, Zileadar. He has submitted before this Court that watercourse from H to I was sanctioned in the year 1994 and thus, the same being in operation since then, is a sanctioned watercourse, which was illegally demolished. Thus, there is no *iota* of doubt regarding existence of the *khaal*, which was a sanctioned one and was the source of the irrigation for the land of the private respondents.

7. There are concurrent findings by both the authorities below in favour of respondent No.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).

8. 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.

13.03.2024
sharmila

(RAJESH BHARDWAJ)
JUDGE

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