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

CWP-7782-2024

Date of Decision: May 08, 2024

Subhash Godara

.....Petitioner

Versus

Superintending Canal Officer and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Judgepreet Singh Warring, Advocate with
petitioner-Subhash Godara.

Mr.Navneet Singh, Sr.DAG, Punjab with
Mr.Joginder Kumar, Zileadar, Kabulshah, Fazilka.

Mr.Harpreet Singh Jakhal, Advocate
for respondents No.4 and 5 alongwith
Respondent No.5-Naresh Kumar.

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RAJESH BHARDWAJ, J.(ORAL)

1. Prayer in the present petition is for quashing the order dated 30.01.2024 (Annexure P-5), order dated 18.12.2023 (Annexure P-3) and order dated 27.10.2023 (Annexure P-2) passed by respondents No.1 to 3 respectively whereby earlier order passed by respondent No.3 has been modified, being arbitrary, unconstitutional, against the provisions of the Northern India & Canal Drainage Act, 1873 (for short, 'the Act'). Further prayer has been made for staying the operation of the impugned order dated 30.01.2024 (Annexure P-5), order dated 18.12.2023 (Annexure P-3) and order dated 27.10.2023 (Annexure P-2) passed by respondents No.1 to 3 respectively.



2. It has been contended by learned counsel for the petitioner that the petitioner and the respondents are the share holders of the outlet and being from the same family inherited their respective land from their forefathers. It is submitted that private respondents, in connivance with the canal authorities, just to take the unnecessary benefit of the new water course AB, as shown in the map, clandestinely filed an application before respondent No.3 seeking amendment in the turn of water without there being any cause of action. He has submitted that without there being an impartial enquiry, respondent No.3 accepted the application filed by the private respondents on the basis of tainted report submitted before him. It is submitted that the enquiry conducted was totally in violation of the procedure laid down in the Act. He has submitted that by accepting the frivolous application filed by the private respondents, respondent No.3 had made an attempt to create a new water course in collusion with respondents No.4 and 5. He submits that aggrieved by the same, the petitioner filed an appeal before respondent No.2 however, without appreciating the evidence on record, respondent No.2 illegally dismissed the same vide its order dated 18.12.2023, Annexure P-3. Still aggrieved, the petitioner assailed the same before respondent No.1, however, respondent No.1 also had fallen in error in overlooking the facts and circumstances of the case and the statutory provisions and thus dismissed the same by illegally upholding the orders passed by respondents No.2 and 3. He has submitted that the petitioner specifically pleaded before respondent No.3 that the proceedings have been carried out at his back and doctrine of first come first serve has not been followed. He submits that it was pleaded that the water course for the land



of respondents No.4 and 5 is already running in between the Rectangle No.53 Killa No.5 and Rectangle No.52, killa No.10 which abuts the land of the private respondents. He has further submitted that the proposed water course AB is not running on the spot as in between killas No.10 and 9 of Rectangle No.52 the petitioner has already installed a solar tubewell on the very said point under the Government scheme. He further submits that it was pleaded before the respondent/authorities that the proposed arrangement has bifurcated the land of the petitioner and thus he would be seriously prejudiced, however respondent No.3 has miserably failed to appreciate the same and thus illegally allowed the petition which was further illegally upheld by the appellate authorities by passing the impugned orders. He submits that the impugned orders are in violation of Section 30A/30B of the Act. The solar tubewell, which has been installed by the petitioner under the Government Scheme has also been disturbed and land of the petitioner is also bifurcated by virtue of the impugned orders. He has submitted that no Notice under Section 79 of the Act was ever served upon the petitioner and thus the impugned orders being unsustainable in the eyes of law, deserve to be set aside.

3. Pursuant to the order passed by this Court, dated 08.04.2024, the parties are present in Court. The Officer Shri Joginder Kumar, Zildar, Kabulshah, Fazilka, is also present in Court.

4. As emanated from the facts and circumstances of the case, respondents No.4 and 5 filed an application for amendment of their water turn before the Deputy Collector. On filing of the same, the necessary procedure was initiated. The site plan was prepared by the Halqa Patwari on



the spot. It was found that the place where the water course had come to an end, as per the site plan prepared by Halqa Patwari, the same was a Tibba and thus it being a permanent obstacle, land of the respondents could not be irrigated. On perusal of the record, it has been found that the water course is running on the joint land of killa No.9-10 of 52M. Learned counsel for the petitioner has drawn attention of this Court to the site plan.

5. The officer present in Court has also assisted this Court after perusing the site plan.

6. It has been submitted before this Court by the learned State counsel and the officer present that finding grievances of the respondents to be genuine, the application was accepted by the Deputy Collector. This order was further assailed before respondent No.2, who heard both the sides. It was found that on the spot at 53S of Killa No.6 and 52M at Killa No.10, there was no joint link active water course and at the raqba of petitioner, 52M Killa No.1, there was a Tibba. However, as per the record at 52M of Killa No.9-10, the joint link was active on the water course and earlier during the joint turn, the land of the respondents was being irrigated through other water course. Thus, finding no merit in the same, this appeal was dismissed. This order was further assailed before respondent No.1, i.e. Superintending Canal Officer, who again found no infirmity in the findings arrived at by the earlier authorities and thus dismissed the same.

7. From the findings recorded by all the authorities it is evident that between Killa No.6-10 there was a Tibba and thus there was no possibility of taking the watercourse further from this Course. However, the water Course was active between Killa No.9-10 and the water course, as



depicted in the map, AB was active and this was the only water course for the respondents to irrigate their land. From the record it is apparent that the petitioner has participated in the proceedings throughout. Both the sides were duly heard and orders impugned by the petitioners have been passed on hearing both the sides and perusing the investigation report.

8. 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.

9. 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 08, 2024

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(RAJESH BHARDWAJ)

JUDGE

1. Whether speaking/reasoned ?

Yes/No

2. Whether reportable ?

Yes/No