

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

CWP-8422-2024

Date of decision: 16.05.2024

Om Parkash

.....Petitioner

versus

Superintending Canal Officer and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Harpreet Singh Jakhal, Advocate
for the petitioner.

Mr. Navneet Singh, Senior DAG, Punjab.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the order dated 06.11.2023 (Annexure P-4) passed by respondent No.3, order dated 18.12.2023 (Annexure P-5) passed by respondent No.2 and order dated 22.02.2024 (Annexure P-6) passed by respondent No.1 whereby respondents No.1 to 3 have illegally and arbitrarily accepted the prayer for the re-alignment of the watercourse without following the procedure laid down under Section 30(A) to Section 30(D) and Section 30(FF) of the Northern India Canal and Drainage Act, 1873 (for short 'the Act').

It has been contended by counsel for the petitioner that respondent No.4 filed an application dated 08.06.2023 before respondent No.3 for change of his turn i.e. for the re-alignment of watercourse from Mogha No.7280-R Bandiwala Miner of Village Sabhana District Fazilka. He submits that it was contended by respondent No.4 that he had purchased the land measuring 9.11 acres and his name be recorded in the warabandi. It has been further prayed by respondent No.4 that his turn of water be changed beyond 5 karams at Serial No.16/1 from Rectangle No.176, Killa No.19-21 (nakka of inlet) and Rectangle No.175, Killa No.18-24 (nakka of inlet). On

filing of the complaint, the case was investigated and thus, the Zildar

Fazilka filed his report dated 05.07.2023 stating therein that the warabandi as prayed by respondent No.4 could not be collectively re-aligned as his land was situated at two different places i.e. in two different taks. It is submitted that respondent No.3 without appreciating the report filed by the Zileadar in arbitrary and unlawful manner allowed the application of the respondent No.4 vide order dated 14.07.2023. Being aggrieved, petitioner filed the appeal before respondent No.2 which was accepted by him and thus, remanded the case for a fresh decision vide his order dated 07.09.2023. He submits that after remand, respondent No.3 again without visiting the spot and without appreciating the evidence on record illegally allowed the claim of respondent vide order dated 06.11.2023. Being aggrieved, petitioner filed an appeal before respondent No.2. Respondent No.2 equally had fallen in error in ignoring the contentions raised by counsel for the petitioner and thus, illegally dismissed the appeal by passing a cryptic order dated 18.12.2023. Still aggrieved, petitioner assailed the said order by way of filing appeal before respondent No.1. Petitioner duly brought to the notice of respondent No.1 regarding the illegality committed by both the authorities i.e. respondents No.2 and 3 but respondent No.1 misread the evidence on record and thus, rejected the same vide impugned order dated 22.02.2024.

Learned counsel for the petitioner has invited the attention of this Court to the site plan attached. It has been submitted that the land in Green colour belongs to the petitioner whereas in Orange colour belongs to the respondent. He has submitted that the disputed watercourse is shown at point A to B and the proposed is at Point C to D. It is submitted that the respondents-authorities have not given any finding as to whether the watercourse was a sanctioned or a personal watercourse. He has

submitted that the impugned orders passed are violative of Section 30-A of the Act. He has submitted that by re-aligning the watercourse of the private respondents, the distance of the water khal of the petitioner is increased from 5-1/2 acres to 7-1/2 acres for irrigating land of the petitioner i.e. from kachha khal and the same has prejudiced the petitioner. Thus, he has submitted that the impugned orders have been passed ignoring the report filed by the Zileदार and in violation of Section 30(A) to 30(D) of the Act. He submits that hence, the impugned orders being unsustainable in the eyes of law, deserve to be *set aside*.

Notice of motion.

On asking of the Court, Mr. Navneet Singh, Senior DAG, Punjab accepts notice on behalf of the State. He however, has opposed the submissions made by counsel for the petitioner. He has submitted that on filing of the complaint by the private respondents, the same was duly investigated and the report was sought. He further submits that statement of the concerned shareholders were recorded. Thus, finding the complaint filed by the respondent to be genuine, the same was accepted. He has submitted that primarily the grievance raised by counsel for the petitioner is regarding loss of time which has been duly compensated by the respondents-authorities by adding extra time to his turn of irrigation and thus, the contentions raised by counsel for the petitioner are without any force. He submits that the impugned orders having been passed in accordance with law, suffers from no infirmity and thus, the petition being devoid of any merits deserves to be dismissed.

Heard. On hearing counsel for the petitioner and perusing the record, it is apparent that respondent No.4 has filed the application for re-align the warabandi of Mogha No.7280-R. The co-sharers were issued

notice and their statements were recorded. The necessary investigation was carried out and the spot inspection was conducted. On appreciation of the record and objections raised by petitioner, the application filed by the respondent was found to be genuine and thus, the same was accepted by the Deputy Collector vide his order dated 06.11.2023. Being aggrieved, the petitioner filed an appeal before the learned Divisional Canal Officer. Both the sides were heard by the learned Divisional Canal Officer and relevant record was appreciated. It has been found that re-alignment of the watercourse did not affect any other co-sharer and the change in the flow of the water pressure was verified by the Field Staff. It was found that from the turn of the inlet of watercourse of respondent four minutes were found to be reduced and hence, the same was added in the *warabandi* turn of the watercourse of the petitioner. Thus, it was ensured that no prejudice is caused to any other co-sharers including the petitioner. Thus, learned Divisional Canal Officer also found no infirmity in the order passed by the Collector and upheld the same vide his order dated 18.12.2023. In the further appeal filed before the Superintendent Canal Officer, all the co-sharers were heard again and it has been found that the Deputy Collector has himself visited the spot so as to ensure that no prejudice is caused by re-alignment as prayed by the respondent. Petitioner was compensated by adding four minutes time in his *warabandi*. Thus, it is evident that all the three authorities have duly appreciated the record including the report submitted by the Zildar dated 05.07.2023. However, it was found that re-alignment as prayed by the respondent is in the better irrigation of both the sides and thus, there are concurrent views of all the three authorities in favour of the respondent.

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.*

In the considered opinion of this Court, there is no merit in the petition and the same is hereby dismissed.

16.05.2024
m. sharma

(RAJESH BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No