

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

CWP-9278-2024

Date of decision: 25.04.2024

Sukhdev Singh

.....Petitioner

versus

State of Punjab and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. Maan Akashdeep Singh, Advocate
for the petitioner.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for setting aside an impugned orders dated 12.06.2023 (Annexure P-2), 08.09.2023 (Annexure P-3) and 20.03.2024 (Annexure P-4) passed by respondents respectively being an arbitrary, illegal and against the procedure prescribed under Northern Indian Canal and Drainage Act, 1873. Further prayer has been made for staying the operation of impugned orders dated 08.09.2023 and 20.03.2024 (Annexures P-3 and P-4).

2. The precise submissions made by counsel for the petitioner is that the respondents prepared the case regarding conversion of an area measuring 38.52 acres from command area to uncommand area on *suo moto* basis without there being any application/complaint. The Field Staff submitted the report without taking into account the actual position existing on the spot and without associating the petitioner or other affected shareholders. Thereafter, the proceedings commenced in the Court of respondent No.3 and after hearing the case, notice was issued to the parties. He submits that without appreciating the controversy involved in the present case and in violation of the provisions of the Act, the proceedings were carried out and the impugned order dated 08.09.2023

was passed by the learned Divisional Canal Officer. He submits that aggrieved by the same, petitioner filed the appeal in the Court of respondent No.2 who illegally dismissed the same vide impugned order dated 20.03.2024. It is submitted that neither the petitioner was allowed to join the proceedings before passing of order dated 08.09.2023. It is submitted that the impugned orders have been passed in violation of the principles of natural justice and the statutory provisions and as such, the same deserve to be *set aside*.

3. Notice of motion.

4. On asking of the Court, Mr. Navneet Singh, Senior DAG, Punjab accepts notice on behalf of the State. He has opposed the submissions made by counsel for the petitioner and has submitted that the impugned orders have been passed after following the due process. It is submitted that in view of the policy launched by the State, the case was investigated and the site plan was prepared. On appreciation of the same, it was found that according to chakbandi, the area which had come under the Solar Plant was liable to be made uncommand. Thus, the area measuring 38.52 acres has been made uncommand on temporary basis under Section 20 of the Act. Once the Solar Plant is removed, the objector on submitting the application can get the area restored. He submits that both the Courts have passed the orders after appreciating the requisite record and site inspection report. Thus, it is submitted that the petition being devoid of any merits deserves to be dismissed.

5. This Court has heard counsel for the parties and perused the record. It is apparent that the respondents-State vide Memo No.749-52/CE/Canals dated 12.06.2023 issued letter to all Patwaris and Zileedars for preparing case for declaring area from command canal area to

uncommand area. The petitioner had used their land for this scheme. Thus, the petitioner had given his land measuring 38.52 acres to the solar company on lease for 30 years. As a result, the solar plant has been installed at the spot. Hence, the land was found to be no more cultivable and thus, the necessary decision was taken to convert this command area to uncommand area. However, as evident from the order passed, the command area has been made uncommandable area on temporary basis and the same would be restored once the solar plant installed is removed.

6. Thus, in the overall facts and circumstances of the case, this Court does not find any reason for interference in the impugned order. However, as submitted before this Court by the respondent-State, the petitioner would be at liberty to file an appropriate application for restoring his turn of water as and when the solar plant installed in this land is removed.

7. Petition is disposed in above-mentioned terms.

(RAJESH BHARDWAJ)
JUDGE

25.04.2024
m. sharma

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