

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

CWP-6385-2024

Date of Decision: 18.03.2024

Hardeep Singh

..... Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Ashish Gupta, Advocate, for the petitioner.

Mr. Navneet Singh, Sr. DAG, Punjab.

Mr. S.P.S. Tinna, Advocate for
respondents No.4 to 6.

Rajesh Bhardwaj, J.

1. Prayer in the present petition is for quashing of the impugned orders dated 14.10.2022 (Annexure P-4) passed by respondent No.2 as well as order dated 21.12.2021 (Annexure P-3) passed by respondent No.3, whereby, both the authorities below have ordered that restoration of the questioned *khaal* from the land of the petitioner without hearing him and both the impugned orders deserve to be set aside, having been passed at the back of the petitioner without serving any notice upon him as per the statutory provisions of the Northern India Canal and Drainage Act, 1873 and hence, the impugned orders cannot be sustained in the eyes of law.

2. It has been submitted by learned counsel for the petitioner that on 28.11.2019, respondents No.4 to 6 filed an application before respondent No.3 i.e. Divisional Canal Officer thereby submitting that the Competent Authority had passed an order dated 15.09.2015 for construction of a *pucca khaal*. It is submitted that the petitioner alongwith his brother and father filed a suit for permanent injunction before the Civil Court, Gidderbaha in which stay was granted, hence, the *pucca khaal* could not be constructed.

However, thereafter the stay order had been vacated and respondents No.4 to 6 tried to take water through this canal by constructing temporary *watt*.

He submits that the petitioner alongwith his brother and father restrained them to do so and prayed for restoration of the *khaal*, so that the irrigation may be done in a proper manner. He submits that respondent No.3 i.e. Divisional Canal Officer, Abohar, Fazilka sought report from the field staff and issued notice to the concerned parties as per Rules, however, the petitioner was never served any notice of hearing and summons were issued jointly to the petitioner alongwith his brother and his father. He submits that the Divisional Canal Officer i.e. respondent No.3 decided the application vide order dated 21.12.2021 in the absence of the petitioner as no one appeared on behalf of the petitioner to contest the application filed. Thus, the impugned order passed by respondent No.3 accepting the application filed by respondents No.4 to 6, is unsustainable in the eyes of law being in violation of principle of natural justice. He submits that aggrieved by the same, the petitioner filed an appeal before respondent No.2 i.e. Superintending Canal Officer, Ferozepur but respondent No.2 has also fallen in error in not appreciating the facts and circumstances of the case and the evidence on record and thus, has illegally dismissed the same vide impugned order dated 14.10.2022. It is submitted that as is evident from Annexure P-2, summons were issued jointly to the petitioner as well as his brother and father, which is against the statutory provisions of the Act. It is submitted that once the service has not been effected on the petitioner in accordance with the provisions of the Act, the impugned orders passed are unsustainable in the eyes of law. He has submitted that by passing the impugned orders, the land of the petitioner has been bifurcated in two parts, which has resulted in causing serious prejudice to the petitioner. He further submits that the authorities below have failed to appreciate the same and

thus, the impugned orders being unsustainable, deserve to be set aside.

3. Learned counsel for respondents No.4 to 6 has vehemently opposed the submissions made by learned counsel for the petitioner and has contended that both the authorities below have rightly passed the impugned orders and thus, the present petition is liable to be dismissed.

4. Heard.

5. After hearing learned counsel for the parties and perusing the record, it is apparent that an application was filed by respondents No.4 to 6 praying for restoration of temporary *khaal*, which was demolished from Point A-1 BC of outlet No.3000-L Abul Khurana, Moga, but the petitioner obtained stay from the Civil Court at Gidderbaha and thus, the *khaal* could not be constructed. Thereafter, stay granted by the Civil Court was vacated. Reports were received and the record was perused. On perusal of the same, it was found that *warabandi* of the said *khaal* was approved. Reports of the Illaqa Zildar and Sub Divisional Officer, SF, Gidderbaha, were also perused, wherein it was duly recommended for the restoration of the *khaal* as it was found to have been illegally demolished. Learned Divisional Canal Officer has observed in his order that the petitioner intentionally did not appear despite service having been effected upon him. Thus, the application filed by respondents No.4 to 6 for the restoration of *khaal* was accepted by learned Divisional Canal Officer vide his impugned order dated 21.12.2021. Aggrieved by the same, the petitioner filed an appeal before learned Superintending Canal Officer. The parties were heard and case was re-appreciated and it was found that the *khaal* left at the time of consolidation was in existence as the sanctioned *khaal*. *Warabandi* of this *khaal* was also sanctioned and turn of the private respondents was found at Sr. No.14 for taking water from Killa No.12-20 of Murabba 165. On perusal of the record

and the site plan produced, *khaal* in dispute was found to have been demolished, which was functioning at the spot as per *warabandi*. It was further found that this *khaal* was the only source of water for the irrigation of land of the private respondents. Thus, finding no infirmity in the order passed by the Divisional Canal Officer, learned Superintending Canal Officer also affirmed the same by dismissing the appeal filed by the petitioner vide order dated 14.10.2022. Thus, it is evident that the application filed by respondents No.4 to 6 for the restoration of the *khaal* was duly investigated and the record was summoned and site plan was perused. From the *warabandi* record, existence of the *khaal* was duly established, which was illegally found to have been demolished by the petitioner. Thus, the same was restored by the authorities below.

6. 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).”*

7. 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.

18.03.2024
sharmila

(RAJESH BHARDWAJ)
JUDGE

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