



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

CWP-10120-2024

Date of Decision: 03.05.2024

Vijay Kumar and another

..... Petitioners

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Vikram Sharma, Advocate, for the petitioners.

Rajesh Bhardwaj, J.

1. Prayer in the present petition is for setting aside the order dated 05.04.2024 (Annexure P-6) and order dated 31.01.2024 (Annexure P-4) passed by respondents No.2 and 3, respectively, whereby restoration of watercourse adjoining to the road leading on southern side of Killa No.113//5 of the petitioner, has been ordered illegally, erroneously, mala-fidely, against the provisions of Northern India Canal and Drainage Act, 1873 and Rules framed thereunder. Further prayer has been made to stay the operation of order dated 05.04.2024.

2. Learned counsel for the petitioner has submitted that the petitioners are owners and in possession land measuring 47 Kanals 3 Marlas comprised in Khewat No.539/520, 583 Khatauni No. 1159, Khasra No. 89//16/2 (2-13), 25(8-0), 90// 19/2 (2 -13) 20/2 (2- 13), 21(8-0), 22(8 + 0) 112//1/1 (5-2), 113// 5(6-0) total land 43 Kanals 1 Marla and Khewat No. 294/279/1 Khatauni No.666, Khasra No.112//2/1 (4-2) total land 4 Kanal 2 Marla as per Jamabandi for the year 2020-21 situated in the village Ghorenab, Tehsil Lehra, District Sangrur. He submits that the petitioners being co-sharers, are getting canal irrigation from outlet Burzi No.



3590/Right miner No. 6 Rajwaha, Kotra. He submits that the petitioners filed a Civil Suit No.200 of 2023 and learned Civil Judge, Moonak vide order dated 12.09.2023 directed both the parties i.e. the petitioners and private respondents to maintain status quo qua possession over the suit property. He submits that civil suit is pending adjudication for consideration of the stay application. It is submitted that the private respondents filed an application for restoration of the demolished watercourse in Chakk Water Outlet Burzi No.3590/Right Minor No.6 Rajwaha Kotra under Section 30-FF of the Northern India Canal and Drainage Act, 1873 (for short, 'the Act') before respondent No.3 i.e. Divisional Canal Officer. It is submitted that the same was illegally accepted by learned Division Canal Officer vide his impugned order dated 31.01.2024. Hence, aggrieved by the same, the petitioners filed an appeal before learned Superintending Canal Officer, which was further illegally dismissed by him vide his impugned order dated 05.04.2024. He submits that learned Superintending Canal Officer has failed to appreciate that the civil suit filed by the petitioners is pending adjudication. It is submitted that the entire land of private respondents is shown as '*chahi*' in the Jamabandi for the year 2020-21. He has submitted that the land being *chahi* neither the watercourse of any type was running though this nor it has been mentioned in the site plan of the Revenue Department. He submits that as per the settled principles of law, there are three types of watercourse i.e. (i) sanctioned by law; (ii) sanctioned on agreement between the parties; and (iii) prescribed by way of easement. He submits that watercourse in question does not fall under any of said three categories. He submits that the respondent Canal authorities never inspected



the site on spot and only on the basis of the report prepared at the behest of the respondents accepted the petition filed by the private respondents. He submits that in the Jamabandi for the year 2020-21, land of the private respondents has been entered as *chahi*, which was getting irrigation water through tubewell, hence, *warabandi* sanctioned for the land of the private respondents is illegal as the same has been prepared without any watercourse being in existence. He further submits that the respondent-authorities have passed the impugned orders in violation of the evidence on record and the law settled and thus, the same being illegal and arbitrary, deserve to be set aside by allowing the present petition.

3. Heard learned counsel for the petitioner and perused the record.
4. It is apparent that the private respondents filed an application for restoration of demolished watercourse under Section 30-FF of the Act before the Divisional Canal Officer. After filing of the same, the case was examined and necessary reports were sought for adjudication of the case. Both the sides were heard by the Canal authority. Reports submitted by the Zildar Lehlan and Sub Divisional Officer, Diyalpura were examined. On the perusal of the *warabandi* report dated 12.09.1992, it was found that turn of the private respondents was at *khata* No.77. As per *warabandi* map, Canal watercourse was approved adjoining to the road (point A to B in map). It was observed that the petitioners had filed the civil suit in which stay was granted and both the sides were restrained from interfering in the land in dispute. However, it was found that petitioner Kulwant Rai and others had sown crop in the land of the above-said canal watercourse despite the stay. Thus, on finding the existence of the watercourse from the



record, which was found to have been demolished, the same was restored by learned Divisional Canal Officer vide order dated 08.02.2024. Aggrieved by the same, the petitioners filed an appeal before learned Superintending Canal Officer. Both the sides were heard by learned Appellate Authority and the record was appreciated. From the record of the *warabandi* and the inspection report etc., the watercourse was found demolished at point A-B and *warabandi* record proved that private respondents were irrigating their land through the watercourse at point A-B and thus, having found no infirmity in the order passed by the learned Divisional Canal Officer, the appeal was also dismissed. Thus, it is evident that the precise submission made by learned counsel for the petitioners is that the land of private respondents has been shown to be *chahi* in the *Jamabandi* for the year 2020-21. However, the turn of water of the private respondents is also proved from the *warabandi* wherein, they were found to have been irrigating their land through the watercourse at point A-B, which was found to have been demolished. Hence, this Court is not inclined to accept the argument raised by counsel for the petitioners that on the basis of the entry in the revenue record, the land of the private respondents as *chahi*, the private respondents can be held to be not entitled restoration of the watercourse, which has been found to have been dismantled.

5. There is no gainsaying that there are concurrent findings by both the authorities below in favour of the private respondents. 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.

6. 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.

03.05.2024			(RAJESH BHARDWAJ)
sharmila			JUDGE
	Whether Speaking/Reasoned	:	Yes/No
	Whether Reportable	:	Yes/No