124

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-10842-2024
Date of decision : 09.05.2024

Gurmeet Singh and another **.....Petitioners**

versus

Superintendent Canal Officer and others **..... Respondents**

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

****

Present :- Mr. S.S. Salar, Advocate
for the petitioners.

****

RAJESH BHARDWAJ, J.

1. Prayer in the present petition is for quashing of order dated 21.12.2023 (Annexure P-3) ordering restoration of a water channel which never existed and also the order dated 05.02.2024 (Annexure P-4) passed by respondent No.1.

2. It has been submitted by counsel for the petitioners that respondents No.3 to 5 filed the application for restoration of the demolished water channel (khal), water outlet, Burji Left 34980/Rajwaha. He submits that it was alleged by the respondents that the petitioners had demolished water channel from Point A to B and C to D about 25 years earlier. It is submitted by the petitioners that no such water channel ever existed or demolished 25 years earlier as alleged. He has submitted that the partition of the land was done in the year 1999 and thus, there was no question of any demolition of the khal as alleged. He submits that land of most of the khasra numbers are chahi and the same is irrigated by tubewell. He further submits that respondent No.2 without appreciating the revenue record and ignoring the submissions made by counsel for the

MAMTA
2024.05.14 16:10
I attest to the accuracy and
integrity of this document

petitioners had illegally restored the water channel from point A to B and C to D vide his order dated 21.12.2023. It is submitted that aggrieved by the same, the petitioners filed an appeal before respondent No.1-Superintendent Canal Officer, Canal Division, Patiala. He submits that respondent No.1 has illegally dismissed the appeal by providing a new water channel even though the claim of respondents was to restore the alleged demolished watercourse. He has submitted that the land is joint and therefore, the respondent-department was to provide nakka at one point of the entire joint land and no different nakkas for every khasra numbers. He has submitted that the respondents miserably failed to produce any reliable evidence on record that they made any complaint to the police in case the petitioners had demolished the khal as alleged by them. He submits that the impugned orders are in violation of Section 30 FF of Northern India Canal and Drainage Act (for short 'the Act') as no new water channel could be provided as per the provisions of Section 30 FF of the Act. He has submitted that as alleged that the khal was demolished about 25 years ago but no plausible explanation has been given regarding delay for making prayer for restoration of the same. Hence, the petition filed was not maintainable on account of delay and latches. He submits that in view of the submissions made, it is apparent that both the authorities have passed the impugned orders totally in violation of the statutory provisions and the evidence on record and thus, being unsustainable in the eyes of law, deserve to be *set aside*.

3. Heard. On hearing counsel for the petitioners and perusing the record, it is apparent that respondents No.3 to 5 had filed the application for restoration of the demolished water channel. On receiving the application, notices were issued to the concerned parties and the case

MAMTA
2024.05.14 16:10
I attest to the accuracy and
integrity of this document

was investigated. The statements of the parties were recorded and the spot inspection was carried out. On perusal of the record, it was proved that the alleged *khal* which was demolished was running upto Eastern Watt of Killa No.170 and on the Easter Watt of Killa No.181, 184, 185, 240, 242 from Point A to C. Thus, on finding the existence of khal, the same was restored by the Divisional Canal Officer from point C to D. The appeal was filed against the same before the Superintendent Canal Officer who heard both the sides. It was found from the map of the year 1964 that the water channel existed which ran from the land in possession of the petitioners to the land in possession of the respondents. The contention of counsel for the petitioners that the respondents are irrigating their land by tubewell and thus, there is no need of the canal water, is totally misconceived. Perusal of the map attached to the petition would show that the water channel runs from point A towards BC. However, due to demolition of this water channel, the same was not found running from point A onwards.

4. There is no gainsaying that both the authorities on the finding of facts had found the khal/water channel to have been dismantled which existed as per the record. Hence, the same has been restored. All the authorities have given the factual findings which are concurrent in nature.

5. 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*.

MAMTA
2024.05.14 16:10
I attest to the accuracy and
integrity of this document

6. Thus, in the considered opinion of this Court, there is no infirmity, illegality and perversity in the impugned orders passed by the Authorities below and hence, this petition, being devoid of any merits is hereby dismissed.

(RAJESH BHARDWAJ)
JUDGE

09.05.2024
m. sharma

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

MAMTA
2024.05.14 16:10
I attest to the accuracy and
integrity of this document