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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-11930-2018
Date of decision: 06.05.2024

Jasveer Singh and anotherPetitioners

versus

Superintending Canal Officer and others Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Ms. Sunita Chauhan, Advocate
for the petitioners.

Mr. Navneet Singh, Senior DAG, Punjab.

Mr. K.B. Raheja, Advocate
for respondent No.5.

RAJESH BHARDWAJ, J.

1. Prayer in the present petition is for setting aside the order dated 08.09.2017 (Annexure P-5) passed by respondent No.1 in appeal and order dated 01.06.2016/02.06.2016 (Annexure P-4) passed by respondent No.2 being devoid of reason, without support from official record prior to year 2015 and against the provisions of the Constitution of India and The Northern India Canal & Drainage Act, 1873. Further prayer has been made for staying the operation of order dated 08.09.2017 (Annexure P-5) passed by respondent No.1 in appeal and order dated 01.06.2016/02.06.2016 (Annexure P-4) passed by respondent No.2.

2. As submitted by counsel for the petitioner, respondent No.5- Mahal Singh filed an application for restoration of the watercourse Outlet Burji No.16330-R, Jhawla Minor. Respondent No.2 without analyzing the facts and circumstances of the case that there was no evidence regarding the



existence of this watercourse illegally accepted the application and restored the watercourse as prayed for by respondent No.5 vide his impugned order dated 02.06.2016. He submits that aggrieved by the same, petitioner filed the appeal before the learned Superintending Canal Officer who again had fallen in error in illegally dismissing the appeal filed by the petitioner vide impugned order dated 08.09.2017.

3. It is submitted by learned counsel for the petitioner that the respondents-authorities have failed to consider that respondent No.5 was already getting the water through permanent watercourse at point D1 shown in the map dated 18.10.2015 which shows permanent watercourse marked as ABCD touching the field of respondent No.5 of Rectangle No.6 and 61. It is submitted that the watercourse already running through Rectangle No.60 and Killa No.11/1-9/2 belongs to respondent No.5 Mahal Singh. It is submitted that the respondents-authorities have failed to consider the statement of the petitioners dated 15.12.2015 that the watercourse is already running through Rectangle No.60, Killa No.11/1-9/2. It is submitted that there was no evidence brought on record of dismantling the watercourse and thus, existence of the watercourse is not proved. She submits that though there is a contention that the watercourse existed since last 30 years however, the same is not proved from the warabandi. It is thus, submitted that once the watercourse itself is not proved, there was no question of dismantling the same as alleged by respondent No.5 who illegally requested the respondents-authorities for restoration of the same. She submits that the impugned orders being against the statutory provisions of Section 30FF of Punjab Amendment Act, deserve to be *set aside*.

4. *Per contra*, learned counsel for respondent No.5 has opposed the submissions made by counsel for the petitioners. He has submitted that the petitioners had dismantled the watercourse meant for irrigation of the



land of respondent No.5 and thus, respondent No.5 had no other alternative than to file the application for restoration of the same. He has submitted that on filing the application by respondent No.5, the same was investigated and the existence of the watercourse was established which was found to have been dismantled by the petitioners and hence, the same was restored. It is also submitted that the impugned orders having been implemented, earlier petition CWP-11930-2018 was disposed of as infructuous.

5. Learned State counsel has opposed the submissions made by counsel for the petitioner. He submits that on filing the application by respondent No.5, the proper procedure was followed and the enquiry was conducted through Sub Divisional Officer, Sub Division Ferozepur. The reports were sought from the Zileadar, respondent No.3. He visited the spot and got prepared the map of the spot from the Patwari. On visiting the spot by respondent No.2 on 01.06.2016 in the presence of respondents No.3 and 4, it was found that there was no watercourse exchanged in Killa No.11/1,9/2 of Rectangle No.60 along with the road as alleged by the petitioners. However, one watercourse found existing was tubewell watercourse. It was found that there was no watercourse to the land of respondent No.5 from Point D1 and the direction of siphon at point E showed that the watercourse running through Killa No.11/2,9/1 of Rectangle No.60 for irrigation of the land of respondent No.5 was found to have been demolished. Therefore, the application filed by the respondent was found to be valid and thus, in the interest of better irrigation to the land of respondent No.5, the same was accepted by learned Divisional Canal Officer. In the appeal filed, learned Superintendent Canal Officer heard both the sides however, finding no infirmity in the order passed by the Divisional Canal Officer, the same was dismissed. It is submitted that there being no infirmity in the impugned order, the petition deserves to be dismissed.

6. On hearing counsel for the parties and perusing the record, it is evident from the record of the case that respondent No.5 filed application for restoration of the watercourse which was illegally demolished by the petitioners. The necessary procedure was followed and the enquiry was got conducted through the Sub Divisional Officer and the reports were received from the Zileadar. The spot was visited by learned Divisional Canal Officer in the presence of the parties on 01.06.2016 and the khal was found to have been dismantled. The watercourse at point CDE in the map was proved to be dismantled by the petitioners. Thus, the same was restored. The appeal filed by the petitioners before the Superintendent Canal Officer was found to be without merit and was also dismissed. There is no gainsaying that there are concurrent findings on the factual aspects by both the Courts below.

7. 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.*

8. 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.

06.05.2024
m. sharma

(RAJESH BHARDWAJ)
JUDGE

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