

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

CWP-21655-2017 (O&M)

Date of Decision: 14.02.2024

Gurnam Singh

..... Petitioner

Versus

State of Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. S.L. Chander Shekhar, Advocate, for the petitioner.

Mr. Navneet Singh, Sr. DAG, Punjab.

Mr. H.S. Batth, Advocate, for respondent No.4.

Rajesh Bhardwaj, J.

Prayer in the present petition is for quashing the impugned order dated 10.08.2017 (Annexure P-3) passed by respondent No.2 and order dated 09.09.2015 (Annexure P-2) passed by respondent No.3, as the non-scheme running canal water channel which is in demolished condition has been restored in illegal and arbitrary manner.

It has been contended by learned counsel for the petitioner that the petitioner owns land measuring 6 kanals 11 marlas in village Chaudhariwal, Tehsil and District Tarn Taran. He submits that respondent No.4 Salwinder Singh filed an application under Section 30 FF (2) of the Northern India Canal and Drainage Act, 1873 (for short, 'the Act') to restore the demolished non-scheme running water channel Mogha Burji 660-Left minor. He submits that respondent No.4 was in possession of *shamlat* land and the petitioner was in possession of land measuring 6 kanals 11 marlas in his ownership. He submits that for the last so many years, the petitioner is irrigating his fields through the *Khaal* in question and respondent No.4 never used this *khaal* in question because he was in

possession of the *shamlat* land and the *shamlat* land cannot be irrigated through the *khaal*. It is submitted that respondent No.3 i.e. Divisional Canal Officer without considering the facts and evidence on record, has illegally restored the running canal water channel falls under the non-scheme which was in demolished condition vide order dated 09.09.2015. He submits that aggrieved by the same, the petitioner filed an appeal before respondent No.2 i.e. Superintending Canal Officer under Section 30 FF (4) of the Act. He submits that respondent No.2 without considering the contentions raised by counsel for the petitioner and the evidence on record, illegally dismissed the same vide order dated 10.08.2017. He further submits that thus, the impugned orders, which are passed without considering the facts of the case, being unsustainable in the eyes of law, deserve to be set aside.

Per contra, learned counsel for respondent No.4 has opposed the submissions made by counsel for the petitioner. He has submitted that the petitioner has not approached this Court with clean hand. He has submitted that the impugned order was passed after providing due opportunities to both the sides and perusing the complete record of the case. He has submitted that the competent authority inspected the spot and perused the revenue record prepared by the Halqa Patwari and demolished non-scheme water channel, site plan and it was found from the site plan that *khaal* was demolished at point D-E. He submits that as this water channel was found to have been demolished illegally, the same was rightly restored by passing a speaking order. It is submitted that the impugned orders passed suffer from no infirmity and thus, the petition filed by the petitioner being devoid of merits, deserves to be dismissed.

Learned State counsel has also submitted that the impugned orders have been passed in due course after inspecting the site and perusing

the record. He has submitted that both the parties were heard in detail and on finding the water channel having been demolished, the same was ordered to be restored by the learned Divisional Canal Officer, which was further upheld by the learned Appellate authority as well. He submits that there being concurrent finding against the petitioner, the impugned orders suffer from no illegality and thus, the petition deserves to be dismissed.

After hearing learned counsel for the parties and perusing the record, it is apparent that on filing of application by respondent No.4, Zileadar, Khuwaspur Section inspected the site and perused the record. Halqa Patwari prepared the site plan. As per the site plan section A-B-C-D water channel was found to be existing at the site, whereas, section D-E was found to be demolished at the site. All the share-holders were heard. The existence of demolished *khaal* D-E was established from the site inspection report and the revenue record. Thus, the same having been demolished illegally, was restored by the Divisional Canal Officer on hearing both the sides vide his order dated 09.09.2015. In the appeal filed, evidence were re-appreciated and the parties were heard again. Finding no merit in the appeal, the same was dismissed by the Superintending Canal Officer vide his order dated 10.08.2017 and hence, the order passed by the Divisional Canal Officer was upheld. Thus, there is concurrent finding 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.

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.

14.02.2024
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Whether Speaking/Reasoned	:	Yes/No
Whether Reportable	:	Yes/No

(RAJESH BHARDWAJ)
JUDGE