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

**CWP-26647-2018 (O&M)
Date of decision : 09.04.2024**

Ranjit**.....Petitioner**

versus

**Superintending Canal Officer Bhakra Water Services Circle Sirsa
and others**

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present :- Mr. J.S. Thind, Advocate
for the petitioner.

Ms. Upasana Dhawan, AAG, Haryana with
Mr. Sandeep Kumar, Executive Engineer, Sirsa (DCO, Sirsa)
Mr. Ramesh Kumar Patwari, W/S Division, Sirsa.

Mr. P.K. Ganga, Advocate
for respondents No.4 and 5.

RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing the impugned orders dated 03.10.2017 (Annexure P-1), 12.02.2018 (Annexure P-3) and 08.05.2018 (Annexure P-2) passed by respondents No.3, 2 and 1 respectively. Further prayer has been made for directing the official respondents to accept the application of the petitioner for deleting the turn of water of the private respondent which is without water course and ownership.

It has been contended by counsel for the petitioner that the petitioner is having the agricultural land at Outlet No.RD8000/L Lehna Khera Minor Village Kharia at Khata No.53 of the *Warabandi* dated 16.06.2010. He has submitted that the petitioner filed the application

before respondent No.3 for cancellation of turn of water of the private respondent which was without watercourse and existed at Khata No.52 in Warabandi dated 16.06.2010 and at Khata No.50 of Warabandi dated 04.04.2003. He has submitted that those persons never used the turn of their water and they sold the water to others. He submits that the application filed by the petitioner was illegally rejected by respondent No.3 by passing a cryptic order as the grounds taken therein were not dealt with by respondent No.3. Aggrieved, petitioner filed the appeal before respondent No.2 contending therein that neither the private respondents had owned land nor they had watercourse upon the land in question and hence, the *warabandi* sanctioned in their favour was liable to be *set aside*. It is further submitted that one *diggi* already existed was allotted at the time of consolidation however, respondent No.2 did not appreciate the evidence brought on record and hence, illegally dismissed the same vide impugned order dated 12.02.2018. Still aggrieved, petitioner filed the appeal before respondent No.1 on the basis of the grounds taken therein which were not dealt with by the respondents-authorities while passing the impugned orders under challenge. It is submitted that respondent No.1 equally had fallen in error in not appreciating the evidence on record and thus, illegally upheld the impugned orders by dismissing the revision filed by the petitioner vide impugned order dated 08.05.2018. He has submitted that the observations made by respondent No.1 that the watercourse ABC was left during consolidation is factually incorrect as the same was *kacha* watercourse. It is also submitted that the petitioner had also filed the civil suit for seeking permanent injunction against the official respondents. He has submitted that the impugned orders are totally unsustainable in the eyes of law as the

respondents did not have any land and hence, according to the Haryana Canal and Drainage Act, there was no provision to provide the turn of water to those persons who were not owner of the land. It is submitted that the respondents cannot be allowed to utilize turn of water without there being watercourse. It is submitted that the impugned orders passed are in violation of Section 27 of the Haryana Canal and Drainage Act. He has submitted that the objections taken by the petitioners were not dealt by all the three authorities below. Thus, the same being violative of Section 55(5) of the Haryana Canal and Drainage Act, the petition deserves to be allowed by setting aside the impugned orders.

This Court had summoned the concerned official along with the record to assist the Court on the contentions raised by counsel for the petitioner and thus, Mr. Sandeep Kumar, Executive Engineer, Sirsa (DCO, Sirsa) and Mr. Ramesh Kumar Patwari, W/S Division, Sirsa are present in the Court along with record.

Learned counsel for respondents No.4 and 5 has opposed the submissions made by counsel for the petitioner. He has submitted that the impugned orders have been passed by taking into consideration the complete record of the case and making the spot inspection. He has submitted that in view of the provisions of the Haryana Canal and Drainage Act, if the watercourse is in existence from the last more than 20 years in view of Section 2(15) of the Act, the same remains in existence on the basis of presumption. It is submitted that the existence of the khal has been approved from the last more than 20 years however, the petitioner had made a pond in this watercourse and thus, restrained further flow of water in the watercourse due to which the supply of the water to the respondents is totally stopped. He has submitted that the land of

respondents No.4 and 5 is in the command area and the turn of water has been provided to the land of the answering respondent by the canal authorities as per their respective share. It is submitted that the canal authorities have passed all the impugned orders after examining the record and doing spot inspection by personally visiting the spot along with technical staff. He has submitted that there being no illegality in the impugned orders passed, the petition being without any merits deserves to be dismissed with costs.

The Officers come present in the Court have apprised the Court that as per the record of this case, the *warabandi* has been sanctioned in accordance with law. It is submitted that the watercourse was sanctioned during the consolidation. The petitioner has made the water tank(diggi) by making unauthorized possession over the land left for the watercourse and thus, the respondents are left with no watercourse hence, the watercourse are approved on examination of the record and by making the spot inspection. They submitted that the impugned orders suffers from no illegality.

Heard. On hearing counsel for the parties and the Officers present in the Court, it is apparent that the petitioner had filed the application before respondent No.3 for cancellation of turn of water of the private respondents which was without watercourse and existed at Khata No.53 in Warabandi dated 16.06.2010 and at Khata No.50 of Warabandi dated 04.04.2003. On filing the application, the same was investigated and the spot inspection was also made. On receiving the relevant reports, it was found that yellow coloured line ABC shown in the khata plan was the land for the watercourse left during the consolidation. It was found by canal authorities that the petitioner intentionally made a water tank (diggi)

by making unauthorized possession over the watercourse and thus, the link of the watercourse was disrupted which required to be removed being unauthorized. All the three authorities have appreciated the facts and evidence on record and finding no merit in the petition, the same is dismissed.

In the overall facts and circumstances of the case, this Court does not find any infirmity in the impugned orders passed and thus, the petition being devoid of any merits, is hereby dismissed.

09.04.2024

m. sharma

(RAJESH BHARDWAJ)
JUDGE

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