

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

CWP-22226-2021

Date of Decision: 30.01.2024

Harbhagwan Singh and another Petitioners

Versus

Superintending Canal Officer and others Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Sushil Kumar Verma, Advocate, for the petitioners.
Ms. Akshita Chauhan, Deputy Advocate General, Punjab.
Mr. Sandeep Khunder, Advocate, for respondents No.3 to 5.

Rajesh Bhardwaj, J.

Prayer in the present petition is for quashing the impugned order dated 20.09.2021 (Annexure P-4) passed by respondent No.1 as well as order dated 03.05.2021 (Annexure P-2), passed by respondent No.2 being illegal and contrary to law. Further prayer has been made for directing the respondents not to implement the orders (Annexures P-4 and P-2) during the pendency of the present petition.

It has been submitted by learned counsel for the petitioners that the petitioners are the co-sharers of Mogha Burji No.27835/ Right Bhadaur Rajbaha. He has drawn the attention of this Court to the site plan, wherein, the land of the petitioner is shown in the light Pink colour and that of respondent No.3 to 5 is shown in purple colour, whereas the alleged demolished watercourse A-B is shown in blue colour. He has submitted that the dispute is with regard to the alleged watercourse A-B, which was never in existence, but the same was ordered to be restored by both the authorities below. It is submitted that respondent No.3 to 5 filed an application under Section 30 (FF) of the Northern India Canal and Drainage Act, 1873 (for

short, the Act') before respondent No.2 i.e. Divisional Canal Officer for restoration of the alleged demolished *khal* A-B. He submits that upon notice, the petitioners specifically argued that respondents No.3 to 5 illegally kept the *Nakka* in their fields. He submits that the alleged *khal* was never running for the last 20-25 years as contended by respondents No.3 to 5. He submits that in the *warabandi*, the turn was kept at *khata* No.113, whereas, there was no *khal* at the site. It is submitted that respondent No.2 i.e. Divisional Canal Officer has illegally accepted the application filed by the private respondents vide order dated 03.05.2021 on the ground that respondents No.3 to 5 are not able to irrigate their land properly as *khal* from point A-B was demolished. He has submitted that aggrieved by the same, the petitioners filed an appeal before the respondent No.1 i.e. Superintending Canal Officer, who without appreciating the evidence on record has illegally dismissed the same vide impugned order dated 20.09.2021. He has submitted that though respondent No.1 observed in the order that there were no marks present at the site regarding the demolition of *khal*, but even then the appeal filed by the petitioners was dismissed. He submits that once, there was no evidence regarding existence of the *khal*, the watercourse alleged to have been demolished could not have been restored. It is submitted that as per law settled, if the irrigation is being done from an alternative watercourse, then the demolished watercourse cannot be ordered to be restored under Section 24 of the Act. He has relied upon the judgments of this Court in Balbir Singh vs. Divisional Canal Officer, 1983 PLJ 244; Brij Lal vs. State of Punjab. He submits that both the authorities below have miserably failed to appreciate the evidence on record and thus, the impugned orders passed for restoring the alleged watercourse/*khal* A-B,

deserve to be set aside.

Per contra, learned counsel for respondents No.3 to 5 has vehemently opposed the submissions made by learned counsel for the petitioner. He submits that on filing of application by the respondents, Divisional Canal Officer marked the same to the Sub Divisional Officer, who marked to same to Zildar for enquiry. He submits that the Zildar inspected the spot on 06.07.2020 and submitted his report to the Sub Divisional Officer. He submits that thereafter, the Zildar filed his fresh report dated 05.08.2020 after inspecting the spot on 01.08.2020. He submits that on submission of the report, the Sub Divisional Officer himself inspected the spot on 24.12.2020 in the presence of the Zildar, Halqa Patwari and both the parties and vide his report dated 10.02.2021, he reported that upto point A in place of *pucca* watercourse, underground pipes were laid and watercourse from point B to C was in existence at the spot. It is submitted that *warabandi* for *khata* No.112, the *nakka* for taking water was mentioned at 115//16-114//11/1 and *nakka* for giving water at 125//5-114//21 and copies of *warabandi* for the years 2004, 2005 and 2010 was also added with the file according to which the *nakka* of taking water for *khata* No.112 was mentioned at 81//15-82//10 and *nakka* of giving water was mentioned at 125//5-114//21 and at the time of preparation of the *warabandi*, the *nakkas* were installed on the running watercourse. He submits that from the report submitted by the Sub Divisional Officer, it was established that watercourse A to B was in existence at the spot. He submits that from the report submitted existence of the *khal* was established from the spot inspection as well as from the *warabandi* record and thus, demolition of the same being proved, the authorities below had rightly

restored the demolished *khal* in accordance with the statutory provisions of the Section 30(FF) of the Act. He submits that there being no infirmity in the impugned orders, the present petition deserves to be dismissed.

Heard.

After hearing learned counsel for the parties and perusing the record, it is apparent that respondents No.3 to 5 filed an application under Section 30(FF) of the Act for the restoration of the watercourse A-B. On the submissions of application by the applicants, enquiry was marked to the Zileदार who submitted his report. Zileदार conducted the site inspection and verified the record of *warabandi*. The Sub Divisional Officer also inspected the spot. On the evaluation of the report submitted by the Zileदार and the *warabandi* record, it was duly established that watercourse A-B was in existence, which was found to be demolished. From perusal of the site plan placed on record, it is found that the main watercourse passes from point A-B-C.

Mr.Ranjeet Singh, Canal Patwari, Irrigation Department is present in Court. The Court has interacted with the official. He has submitted before this Court that the watercourse is in existence from point B-C, whereas, the same is missing from point A-B. He has apprised the Court that as the watercourse from point A-B was found to be in existence and the same was found to have been demolished. Thus, the demolished watercourse has rightly been restored in accordance with law. Learned counsel for the petitioner has failed to substantiate his arguments that watercourse A-B was not in existence.

There is no dispute regarding the judgment relied upon by learned counsel for the petitioners, however, the same are distinguishable on the facts and circumstances of the case in hand.

In view of the above, this Court does not find any infirmity in the impugned orders passed. Thus, the present petition being devoid of any merit is hereby dismissed.

30.01.2024

sharmila

(RAJESH BHARDWAJ)

JUDGE

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