

**(1979) 03 P&H CK 0010**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 821 of 1967**

Ajmer Singh and another

APPELLANT

Vs

The Superintending Canal Officer, Hissar and others

RESPONDENT

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**Date of Decision :** 01-03-1979

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1979) 03 P&H CK 0010

**Hon'ble Judges :** Surinder Singh, J

**Bench :** Single Bench

**Advocate :** Hari Singh Mann, for the Appellant; S.C. Mohanta for the Respondents 1 to 3, Mr. D.S. Chahal for the Respondents 4 to 64, for the Respondent

**Final Decision :** Allowed

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## Judgement

Surinder Singh, J.—The facts giving rise to the present Writ Petition under Articles 226 and 227 of the Constitution of India, filed by Ajmer Singh and another, petitioners, are that the petitioners) are the right-holders of Village Desu Malkana, District Hissar, where they own land. The land of the petitioners and some other right-holders was being irrigated from Outlet R.D. 504-L Mithri Distributary, and the said irrigation was carried on through a watercourse which did not properly irrigate the land of the petitioners, which land was situated at a lower level. The water course also bifurcated the land of the petitioners, thus, depreciating its value. The petitioner Ajmer Singh, therefore, filed a petition u/s 30 (A) of the Northern India Canal and Drainage Act (hereinafter referred to as the Act) before the Divisional Canal Officer (respondent No. 2), for change of the alignment of the water course. This application was considered by, the said Officer after due notice to the parties affected and complying with the formalities envisaged u/s 30 of the Act. Consequently a Scheme was prepared and published. After inviting objections, as required under the law, final orders were passed by respondent No. 1 on January 1, 1966, and a water-course was duly sanctioned. A

copy of this order, dated January 1, 1966, is Annexure "A" to the Writ Petition. None of the persons affected by this order filed any appeal or revision, as contemplated under the Act.

2. It transpires that long after the passing of the order Annexure "A" by the Divisional Canal Officer, some residents of Village Kalanwalis waited upon the Deputy Minister (Irrigation and Power) and submitted before him their application, dated November 6, 1966, copy whereof has been produced as Annexure "B". In this application, they made a grievance that the new water-course and the Outlet which had been provided by the Scheme, were not suitable and that the old water-course should continue. The Deputy Minister made the following endorsement on the said application :

This application is sent to the S.E. (Superintending Engineer) for consideration and for proper action.

Sd./--KESRA RAM JI, Deputy Minister, 6 11.66.

3. Thereafter, the Superintending Canal Officer, Hissar, took up the consideration of the aforesaid application endorsed by the Deputy Minister, and passed the order dated April 26, 1967. A copy of this order is Annexure "C" to the Writ Petition. As per this order, the Superintending Canal Officer reconsidered the matter and reversed the order, passed by the Divisional Canal Officer on January 1, 1966 (Annexure "A"). The original" water-course was once again approved. The petitioners were, thus, prompted to approach this Court for the exercise of powers under Articles 226/227 of the Constitution of India, for quashing the order of the Superintending Canal Officer aforesaid.

3. In so far as the facts noticed above are concerned, there is no controversy between the parties. The only point which has been mooted is, as to whether it was within the competence of the Superintending Canal Officer to revise the order of the Divisional Canal Officer, after about one year and four months. In order to appreciate the objection in this behalf, it would be necessary to notice the provisions of section 30-B (3) of the Act, as in force at the relevant time, which is reproduced below :

30-B (3) The Superintending Canal Officer may, suo motu at any time or on an application by any person aggrieved by the approved scheme made within a period of thirty days from the date of publication of the particulars of the scheme u/s 30A, revise the scheme approved by the Divisional Canal Officer :

Provided that such revision shall not be made without affording to the person affected an opportunity of being heard.

4. A bare perusal of the above mentioned statutory provision leaves no room for doubt that the Legislature envisaged two situations in which the Superintending Canal Officer could exercise revisory powers He could do so suo motu at any time and if he has to exercise such power on an application being made by any person aggrieved by the approved scheme, he can exercise the powers only within a

period of thirty days from the date of the publication of the particulars of the Scheme u/s 30-A. There is no dispute that the Scheme for the new water course had been published long ago in consequence of the order passed by the Divisional Canal Officer

5. Mr. Mohunta, learned Advocate-General, Haryana, has tried to contend that suo motu powers could be exercised by the Superintending Canal Officer even in consequence of an application moved by the aggrieved persons which was actually presented to the Deputy Minister and not to the Superintending Canal Officer himself. I am afraid, the argument is not tenable. In face of the clear provision of the statute, no other interpretation is possible. Mr Mohunta has indeed referred to *The Board of Revenue, Madras v. Rai Brothers Agencies* (1973) 81 S.T.C. 434 and, *The Paper Products Limited v. Assistant Commissioner, Commercial Taxes* (1973) 32 S.T.C. 208, with a view to seek support to his contention aforesaid but both these authorities are distinguishable in as much as the statutory provision which required interpretation in these cases, did not contain a bar in respect of entertainment of Revision Petitions from aggrieved parties beyond certain limited period, as in the present case under the Northern India Canal and Drainage Act. The order passed by the Superintending Canal Officer on the application forwarded to him by the Deputy Minister is, therefore, in clear violation of law. It is noteworthy that in this order, the learned Superintending Canal Officer has himself made a reference to the application made by the residents of Village Kalanwali. It is, thus, not a case where the Superintending Canal Officer had really acted suo motu in the matter.

6. In the result, the Writ Petition succeeds and the order passed by the Superintending Canal Officer, HISSAR ON April 26, 1967 (Annexure "C" to the Writ Petition), is quashed. There shall, however, be no order as to costs.