
(1986) 01 P&H CK 0029
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1955 of 1978

Chamba Ram

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 28-01-1986

Acts Referred:

Citation : (1986) PLJ 387 : (1986) RRR 151

Hon'ble Judges : G.C.Mital, J

Advocate : Mr. N.K. Kapoor, Advocate., Advocates for appearing Parties

Judgement

G.C. Mital, J.

1. Prem Chand filed an application before the SubDivisional Canal Officer, Ghaggar SubDivision, Ottu under section 24 of the Haryana Canal and Drainage Act, 1974 (for short 'the Act'), seeking relief of restoration of dismantled watercourse ABC. By order dated 26th January, 1978, Annexure P.3, watercourse ADLC was ordered to be restored. Dana Ram, Bhagwana Ram and Chand filed an appeal against the aforesaid order before the Divisional Canal Officer, Sirsa Division, Sirsa. The Appellate Authority by order dated 20th April, 1978 Annexure P.4 ordered the restoration of water course ANBC, which was actually dismantled. Chamba Ram, through whose land watercourse ANBC was sought to be restored, came to this Court under Article 226 of the Constitution of India seeking the quashment of order Annexure P.4 on the ground that no opportunity of hearing was granted to him before passing the same.

2. After hearing the learned counsel for the parties, I am of the view that this writ petition deserves to be allowed on the short ground that the petitioner was not heard before order Annexure P.4 was passed. In para 9 (ii) of the petition, a specific averment was made that no notice was served on the petitioner as required by section 24 of the Act. In reply, the stand taken was that since the petitioner was not found to have demolished the watercourse, no notice was required to be served on him. If ever the part of the Khal, which is sought to be restored vide Annexure P.4, passed through the land of the petitioner, he will

have to be afforded an opportunity of hearing and to show that no Khal passed through his land, which may deserve to be restored and this is precisely his case. If after inquiries, which is conducted in the presence of the petitioner, it is found that the Khal did pass through the land of the petitioner, the question whether he demolished or somebody else on his behalf would be wholly immaterial because in that case restoration will have to be ordered through the land of the petitioner. In this view of the matter, it was the duty of the authority concerned to have sent notices to the petitioner and to give opportunity to him to defend his case. Hence, order Annexure P.4 deserves to be quashed.

3. Even the original authority, SubDivisional Canal Officer, who decided the matter vide Annexure P.3, had not issued notice to the petitioner. Therefore, it would be desirable to quash that order as well so that the entire matter is considered in the presence of the affected parties and then the decision is taken and if anybody feels aggrieved, he may go up in appeal.

4. For the reasons recorded above, this writ petition is allowed, orders Annexures P. 3 and P.4 are quashed and the case is remitted to the Sub Divisional Canal Officer, Ghaggar SubDivision, Ottu, (Sirsa) to decide the matter afresh after affording opportunity to the petitioner and other affected persons in accordance with law. There will be no order as to costs.