
(1963) 01 P&H CK 0034
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 262 of 1961

Chanan Singh and others

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 29-01-1963

Acts Referred:

Northern India Canal and Drainage Act, 1873 — Section 30A

Citation : (1963) 01 P&H CK 0034

Hon'ble Judges : Mehar Singh, J;Dua, J

Bench : Division Bench

Advocate : Shri Baldev Singh, for the Appellant; N.L. Salooja, for Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

Dua, J.—These two cases (Civil Writs Nos. 262 and 276 of 1961) were heard together and would be disposed of by the same order.

2. Both these writ petitions initially came up before me sitting singly and during the arguments the point canvassed at the bar related to the controversy whether the acquisition of the land in question was governed by the Land Acquisition Act or whether the State could only proceed under the Northern India Canal and Drainage Act.

3. The point, however, has not been seriously pressed at the bar before us now because Section 30-A of the Canal and Drainage Act construed in the light of the definition of drainage work, as contained in Section 3(3) of the said Act has been conceded by the counsel not to apply to the case in hand, with the result that it has been expressly conceded at the bar that so far as the present controversy goes the Land Acquisition Act and the Northern India Canal and Drainage Act can coexist and there is no question of the applicability of one to the exclusion of the other.

4. The Petitioners' counsel has, however, submitted that in the present case

Section 57 of the Canal and Drainage Act should be complied with and that the alignment to chalk out the water drain to carry away the "sem" water has been varied at the instance of the Minister concerned, without complying with the said section.

5. The Petitioners' own land in village Badshah Pur, Tehsil Maler-kotla. District Sangrur and according to their averments the impugned alignment has been started from the side of Ghanauri Kalan towards the west of the Petitioners' village. This alignment goes just near the village at a distance of about 20 karams from the phirni and goes through the chahi niani land belonging to the Petitioners. The previous alignment was made towards the east of the village where water logging is actually in progress and "sem" water is stored. The present alignment, as just stated, is, on the contrary, towards the west of the village and goes through the land which is on a higher level and is not affected by water logging.

6. According to the written statement filed by the Executive Engineer, Drainage Division No. II, Ludhiana, it has been asserted that "a number of alternatives were considered and the technically sound alternative was approved by the Government. The approved alignment of the drain runs to the western side of village Badshah Pur." Except for this bald assertion in the written statement, no material was attached with the written statement showing the approval of the technically sound alternative by any competent authority, as pleaded. The record produced in support of the impugned action of the Government has been inspected by us but we have been unable to find any such technical approval on the record. The learned Counsel for the Respondents has also not been able to find on the record any such technical opinion

7. Here, Section 57 of the Canal and Drainage Act may with advantage be reproduced:

Whenever it appears to the State Government that any drainage-works are necessary for the improvement of any lands, or for the proper cultivation or irrigation thereof, or that protection from floods or other accumulation of water, or from erosion by a river, is required for any lands. The State Government may cause a scheme for such drainage-works to be drawn up and published, together with an estimate of its cost and a statement of the proportion of such cost which the State Government proposes to defray, and a schedule of the lands which it is proposed to make chargeable in respect of the scheme.

We have on the record an inspection note by the Superintending Engineer, Patiala Circle, which shows that originally the alignment was proposed on the east of village Badshah Pur near the Kotla Branch. Later, an alternative alignment towards the west was investigated and approved by Shri Gian Singh Rarewala when he was Irrigation and Power Minister. Subsequently, Zamindars of village Badshah Pur represented that the alignment along the west of Badshah Pur village was passing through comparatively less water-logged areas and that it

had been got approved through influential people. The Sub-Divisional Officer was thereupon asked to submit L sections along the alternative alignments indicating the class of land coming under each alignment. A little lower down, this note proceeds to state, that as seen by the Superintending Engineer, most of the land, particularly downstream the railway line along the alignment east of Badshah Pur, was waste land wrecked by flood, and improvement of this land would be possible if the alignment lying to the east of this village was adopted. The lands lying eastward were badly thur-affected and the reclamation of these lands would be easier if the alignment towards east of the village was adopted. This expert opinion does not support the assertion in the written statement. We have not been shown any other expert report giving a contrary opinion. This is, however, a letter dated 26th February, 1960 from the Executive Engineer, Floods, to the Executive Engineer, Drainage Division, but in this letter also reference is only made to the approval of the Minister Irrigation and Power for keeping the alignment on the western side of village Badshah Pur, sometime in June, 1959. In this letter, stress is laid on the suggestion that the work should be immediately taken in hand and completed with promptitude. There is also on the record a note dated 25th June, 1959 from which too it is obvious that the impugned alignment is really the result of instructions from the Irrigation and Power Minister and not of any sound technical advice as is represented in the written statement.

8. Reliance has been placed on behalf of the State on a communication from the Executive Engineer, Drainage Division, to the Superintending Engineer, Patiala, I.B. Circle, but this too by no means improves the position.

9. The Petitioner's counsel has referred in support of his contention to an unreported decision of a learned Single Judge of this Court in *Bit Singh v. State of Punjab* C.W. No. 176 of 1961 in which relying on an earlier decision of another Single Judge in *S Mehtab Singh v. Chief Engineer* C.W. No. 37 of 1960, it was observed that it was the Chief Engineer alone who must apply his mind to the facts of a particular case and make the necessary order with regard to the alignment and that the Minister was not competent under the Northern India Canal and Drainage Act to pass any order. In *S. Mehtab Singh's* case, the Chief Engineer had directed the alignment for the purpose of carrying out the direction of the Minister and this order was quashed. On identical grounds the impugned order in *Bir Singh's* case was also quashed. In both these cases, I am informed that Letters Patent Appeals were dismissed.

10. In the case in hand, it has been urged by the Respondents that there is no specific challenge in the writ petition against the impugned order based on the ground that it was the Minister who had given the direction in regard to the alignment which was being enforced by the Canal Officer. This perhaps is so. The learned Counsel for the Petitioners" has explained that he did not know about the Minister's direction and that his case, therefore, naturally was that action had not been taken under the Northern India Canal and Drainage Act and that it

was only from the record that it has transpired that the action is being taken at the instance of the Minister. At any rate, the counsel has emphasised that action could only be taken under the Canal and Drainage Act for changing the alignment and that it was essentially for the Respondents to establish and substantiate that change in the alignment was being done in accordance with the statutory provisions.

11. According to the Petitioners' counsel, the production of the record has fully disclosed and demonstrated that the action has been taken at the instance of the Minister who is not empowered by law to direct the change of alignment at his own will or pleasure. The change, it has been forcefully contended, can only be directed in accordance with Section 57 of the Canal and Drainage Act and the provisions of this section must be fully complied with.

12. In my opinion, the Petitioners are justified in his complaint and his contention must prevail. The impugned action has not been taken in accordance with law as laid down in the Northern India Canal and Drainage Act and the Petitioners are, in my opinion, entitled to relief. It has to be remembered that people in this country are governed by law and not by men, though law is administered through human agency. This agency is itself the creation of law which controls and guides the administrator in the discharge of his duties and functions. It is, therefore, necessary that those incharge of wielding power of the State must cultivate the spirit of the rule of law. I am, therefore, constrained to hold that suitable writ and direction should be issued directing the Respondents not to make any change in the alignment except in accordance with the provisions of the Northern India Canal and Drainage Act and order accordingly. It is unnecessary to say anything more in the present case.

13. In Civil Writ No. 276 of 1961 it is conceded that if the writ petition in Chanan Singh's case succeeds then obviously this writ should also succeed. We, therefore, issue similar directions in this case as well.

The Petitioners in both the cases are entitled to their costs which are fixed at Rs. 100/- each.

Mehar Singh, J.

14. I agree.