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**(1978) 04 P&H CK 0001**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Letters Patent Appeal No. 12 of 1977

Charan Singh and others

APPELLANT

Vs

State of Punjab and others

RESPONDENT

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**Date of Decision :** 15-04-1978

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (1978) 04 P&H CK 0001

**Hon'ble Judges :** S.S. Dewan, J;A.D. Koshal, J

**Bench :** Division Bench

**Advocate :** R.N. Narula, for the Appellant; G.S. Sidhu, for A.G. Punjab and Mr. M.S. Ratta, for Respondents 3 to 12, for the Respondent

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## Judgement

A.D. Koshal, C.J.—This is an appeal under clause 10 of the Letters Patent from a judgment dated the 15th November, 1976 of Sandhawalia, J. dismissing with costs a petition filed by the appellants under Articles 226 and 227 of the Constitution of India in which the prayer made was that the order of the Superintending Canal Officer dated the 14th of January, 1975, directing that an area of 156/159 acres and another of 22/18 acres be transferred from outlet RD 14300/TR Minor No. 5. Budhalada Branch to outlet RD 71449/ TL, Biroke Branch be quashed

2. The impugned order is attacked on the ground that the learned Single Judge started with the basic error and that was comprised of the assumption that the Divisional Canal Officer whose order was dealt with in appeal by the Superintending Canal Officer had merely modified and not totally rejected the scheme framed u/s 30A of the Northern India Canal and Drainage Act, 1973. It is common ground between the parties that if the Divisional Canal Officer had totally rejected the scheme, the order of the Superintending Canal Officer would be without jurisdiction as he could entertain an appeal only from an order wholly rejecting it. We think that the challenge to the impugned judgment is well-founded. The order of the Divisional Canal Officer which was modified in appeal

by the Superintending Canal Officer starts with a statement declaring the nature of the case before him to be this:--

Transfer of area 1591156 acres 22/18 Mogha Burji 14300. T.R. Minor No. 5 Budhlada Branch to 71449 T.L. Biroke Branch.

This clearly indicated that the scheme before the Divisional Canal Officer envisaged the transfer of an area measuring 15 6/159 acres and another comprising 22/18 acres commanded by outlet RD 14330/TR. Minor No. 5 Budhlada Branch to outlet No. 71449/TL, Biroke Branch. The order of the Divisional Canal Officer further shows that he refused to transfer either of the areas in question to outlet No RD 71449/TL, Biroke Branch and, on the other hand, directed that they be irrigated from outlet No. RD 14300/TR. Minor No. 5 Budhlada Branch. In this way he rejected the scheme in toto and his order, therefore, cannot be said to comprise a mere modification of the scheme. The learned Single Judge commenced the impugned judgment with the assumption that the area comprising 156/159 acres was sought by the scheme to be transferred from outlet No. RD 7450/TL, Biroke Branch. We have asked Mr. Ratta, learned counsel for the respondents over and over again to point out to us from any scheme or from a description thereof that it envisaged the transfer of an area of 156/159 acres from outlet No. 7450/TL, Biroke Branch and not from outlet No. RD 14300/TR, Minor No. 5, Budhlada Branch but he has failed to do so. In fact, the scheme is not available on the record of respondents Nos. 1 and 2 which has been made available to us. In the absence of the scheme itself the best that could be done to know its contents was its description as given by the Divisional Canal Officer himself and that description cuts at the root of the assumption made by the learned Single Judge.

3. Holding that the Divisional Canal Officer had rejected the scheme in toto, we declare that the Superintending Canal Officer had no jurisdiction to entertain the appeal on a decision of which he passed the order upheld by the learned Single Judge. Accordingly that order as well as that of the learned Single Judge are set aside and that of the Divisional Canal Officer which is dated the 1st of June, 1973 and is annexed as P. 2 to the petition under Articles 226 and 227 of the Constitution of India aforesaid is restored. There will be no order as to costs.

S.S. Dewan, J.

4. I agree.