

(1969) 09 P&H CK 0034
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2172 of 1965

Inder Singh and others

APPELLANT

Vs

The State of Punjab and other

RESPONDENT

Date of Decision : 30-09-1969

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1969) 09 P&H CK 0034

Hon'ble Judges : Prem Chand Jain, J

Bench : Single Bench

Advocate : K.C. Puri, for the Appellant; B.S. Dhillon, Advocate General, Punjab for Respondents Nos. 1 to 4 and Mr. Rattan Singh, for the Respondents Nos. 5 to 7, for the Respondent

Final Decision : Allowed

Judgement

P.C. Jain, J.—Inder Singh and others have filed this petition under Articles 226 and 227 of the Constitution of India challenging the legality of the order of the Chief Engineer, Respondent No. 2, dated 21st July, 1965 (copy Annexure "F" to the petition).

2. The facts as alleged in the petition are that the lands of the Petitioners and Respondents 5 to 11 are being irrigated by a Khal which takes off from outlet No. 32350 of New Dhandal Minor. Warabandi of this Khal was started by the Deputy Collector, Canals, Sirsa Division, Sirsa, and was settled by his order dated 29th June, 1964 (copy Annexure "C" to the petition). During the proceedings before the Deputy Collector, Jagraj Singh, Respondent No. 5, wanted a change in the alignment of the Khal but Respondent No. 4 directed him to apply separately to the Divisional Canal Officer for this purpose. Respondent No. 5 filed an appeal before Respondent No. 3 complaining against the order of Respondent No 4 date 29th June, 1964, but the same was dismissed on 11th January, 1965 (copy Annexure "D" to the petition). Still dissatisfied, a revision was filed by Respondents 5 and 6 u/s 68(6) of the Northern India Canal and Drainage Act

(hereinafter referred to as the Act) which was allowed by the Chief Engineer, Respondent No. 2, vide his order dated 21st July, 1965 (copy Annexure "F" to the petition). It is this order, the legality of which has been challenged by the Petitioners on the grounds stated in the petition.

3. After hearing the learned Counsel for the parties I am of the view that this petition deserves to be allowed. The main ground urged before me by the learned Counsel for the Petitioners, is that Respondent No. 2 had no power to pass the impugned order u/s 68 of the Act as it has resulted into a change in the course of the Khal. According to the learned Counsel any realignment of the Khal could be done under the provisions of Section 30 A and not Section 68 of the Act. In order to appreciate the contention of the learned Counsel, it would be proper to reproduce the relevant provisions of the statute:

30-A. (1) Notwithstanding anything contained to the contrary in this Act and subject to the rules prescribed by the State Government in this behalf, the Divisional Canal Officer may, on his own motion or on the application of a shareholder, prepare a draft scheme to provide for all or any of the matters, namely:

(a) the construction, alteration, extension and alignment of any watercourse or realignment of any existing watercourse.

(b) reallocation of areas served by one water-course to another ;

(c) the lining of any watercourse ;

(cc) the occupation of land for the deposit of soil from water course clearances ;

(d) any other matter which is necessary for the proper maintenance and distribution of supply of water from a watercourse.

(2) Every scheme prepared under Sub-section (1) shall, amongst other matters set out the estimated cost thereof, the alignment of the proposed watercourse or realignment of the existing watercourse, as the case may be, the site of the outlet, the particulars of the shareholders to be benefitted and other persons who may be affected thereby, and a sketch plan of the area proposed to be covered by the scheme.

68. Power of Deputy Collector to order use or distribution of water and settlement of differences as to mutual rights and liabilities of persons interested in watercourse.

(1) The Deputy Collector may, if in his opinion it is necessary so to do, pass an order as to the use or distribution of water from a watercourse amongst persons in any estate or a group of estates or in any holding or group of holding in such estate or estates:

Provided that no such order shall be passed by the Deputy Collector without making an inquiry into the matter and without giving a notice to all the persons

interested that, on a day to be named in such notice, he shall proceed to inquire into the said matter.

(2) Whenever a difference arises between two or more persons in regard to their mutual rights or liabilities; in respect of the use, construction or maintenance of a watercourse, any such person may apply in writing to the Deputy Collector stating the matter in dispute.

(3) On receipt of an application under Sub-section (2) the Deputy Collector shall give notice to the other persons interested that, on a day to be named in such notice, he shall proceed to inquire into the said matter, and after the enquiry he shall pass an order thereon.

(4) An order passed under Sub-section (1) or Sub-section (3) as to the use or distribution of water for any crop sown or growing at the time when such order is made or with regard to the construction or maintenance of a watercourse shall, subject to an order passed on appeal or revision under Sub-sections (5) and (6), be final.

(5) An appeal shall lie to the Divisional Canal Officer against an order referred to in Sub-section (4) within a period of thirty days from the date of such order.

(6) The Superintending Canal Officer, within whose jurisdiction the watercourse is situated, may suo motu or on application made in this behalf by an aggrieved person, revise an order passed in appeal by a Divisional Canal Officer under Sub-section (5).

Provided that no such application shall lie unless it is made within a period of thirty days from the date of such order,

(7) No order passed under this section shall be liable to be called in question in any Civil Court.

4. From the plain reading of the above mentioned two provisions, I am of the view that Section 68 applies only to the existing watercourse regarding the use or distribution of water and settlement of differences as to mutual rights and liabilities of persons interested in watercourse, while Section 30-A, in addition to other matters, provides for the preparation of a draft scheme for the construction, alternation, extension and alignment of any watercourse or re-alignment of any existing water course.

5. Now coming to the facts of this case, I feel that the proceedings were admittedly started by the Deputy Collector for prescribing Warab-andi under Sub-section (1) of Section 68 regarding watercourses already existing. It was during those proceedings that Respondent No. 5 wanted a re-alignment of an already existing watercourse that had bifurcated his fields into two portions. For that purpose an application was made by him to the Executive Engineer on 20th June 1964 (which is at page 51 of the original file), on which the Executive Engineer wrote as under:

Request for stay of warabandi out-let 31350/R New Dhandal. D. C. Sirsa.

Please investigate and report very expeditiously. The Warab-bandi should be prepared on sanctioned W/Cs. keeping Nakkas on it. The request of applicant is genuine.

Sd/- . .

Executive Engineer,

Sirsa Division, Sirsa.

There is another note on this application dated 25th June, 1964, by some officer to the effect that:-

Please investigate and report at the time of hearing as the date is already fixed. You should inspect the site before the date of hearing.

6. As observed earlier, the application referred to above, was made by Respondent No. 5 for the realignment of a watercourse. Such an application was governed by the provisions of Section 30-A and not by the provisions of Section 68. The impugned order has been passed on revision under Sub-section (6) of Section 68. Admittedly the procedure as prescribed u/s 30-A to F has not been followed nor has the impugned order been passed under any of these provisions. The learned Advocate General contended that the application of Respondent No. 5 should be treated as having been made under Sub-section (2) of Section 68 which gives power to an appropriate authority to decide mutual rights or liabilities in respect of the use, construction or maintenance of a watercourse. According to the learned Advocate General the " word "construction" would include alignment or re alignment of a watercourse. However, I am unable to accept this contention of the learned Advocate General as the word construction" in this Sub-section applies to any dispute in respect of an existing watercourse and not to the construction, alignment or realignment of a new watercourse, as for that purpose specific provision has been made by the Legislature in Section 30-A. It may be observed that the application was not even filed in accordance with the provisions of Sub-section (2) of Section 68 nor was the procedure prescribed in Sub-section (3) was followed in deciding the application. Thus viewed from any angle, the impugned order passed on revision under Sub-section (6) is illegal and without jurisdiction.

7. In the view I have taken on the first contention of the learned Counsel, I do not propose to deal with his other contentions.

8. For the reasons recorded above, I allow this petition and quash the impugned order (Annexure "F"). The Petitioner will have his costs from Respondents 1 to 4 which are assessed at Rs. 100/-.