
(1970) 02 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 3748 of 1968

Ishar Singh and others

APPELLANT

Vs

The State of Punjab and others

RESPONDENT

Date of Decision : 02-02-1970

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1970) 02 P&H CK 0008

Hon'ble Judges : P.C. Jain, J

Bench : Single Bench

Advocate : Manmohan Singh Liberhan and K.K. Cuccria, for the Appellant; Sukhdev Khanna, for Respondents Nos. 1, 4 and 5 and Mr. Megh Raj, for the Respondent

Final Decision : Allowed

Judgement

P.C. Jain, J.—Ishar Singh and others have filed this petition under Articles 226 and 227 of the Constitution of India for the issuance of an appropriate writ, order or direction, quashing the orders of the Divisional Canal Officer, and the Superintending Canal Officer, dated nil, and 6/13th November 1968 (copies Annexures "C" and "E" to the petition respectively)

2. The only ground urged by Mr. M.S. Liberhan, learned Counsel for the Petitioners, is that the scheme which was finally approved by the Superintending Canal Officer on 28th February, 1963, by which water course "LNABCJM" was sanctioned could not be changed subsequently by the Divisional Canal Officer in the proceedings which were started u/s 30(D) of the Northern India Canal and Drainage Act hereinafter referred to as the Act), and on this short ground the legality and correctness of the impugned orders has been challenged. After hearing the learned Counsel for the parties, I am of the view that there is considerable force in this contention of the learned Counsel.

3. The admitted facts on which there is no dispute, are that a scheme for water

course "LNABCJM" was approved by the superintending Canal Officer on 28th February, 1963. that acquisition proceedings were started subsequently by the Divisional Canal Officer u/s 30-D of the Act, that notices of the acquisition proceedings were issued to the Petitioners who filed objections before the Divisional Canal Officer, that in those proceedings the alignment of the water course from "Lnibcjm" was changed to "ABCDM", that by the impugned order Of the Divisional Canal Officer the land under water course "ABCDM" was ordered to be acquired, that no fresh scheme was prepared u/s 30-A of the Act for changing the alignment of water course "LNABCJM" to water course "ABCDM", and that on revision, the Superintending Canal Officer by the impugned order dated 6/13th November, 1968, affirmed the impugned order of the Divisional Canal Officer. Section 30-D of the Act reads as under:

3 -D. (1) The Divisinal Canal Officer may either of his own motion or on the application of a shareholder, publish in the manner prescribed a notice of his intention to acquire any land required for implementation of the scheme.

(2) Any person interested in the land notified under Sub-section (1) may within fifteen days from the publication thereof, apply to the Divisional Canal Officer by petition stating his objections to the proposed acquisition of his rights.

(3) After considering the objections, the Divisional Canal Officer may proceed to take the occupation of the land so required on behalf of the shareholders.

(4) Compensation, to be fixed by the Divisional Canal Officer on the principles set out u/s 23 of the Land Acquisition Act, 1894, shall be payable by the shareholders in proportion to the culturable commanded area under the scheme held by each one of them to the owner or occupier of any land for such acquisition and on failure of payment, the amount shall be recoverable as arrears of land revenue.

(5) A person aggrieved from the order of the Divisional Canal Officer in respect of compensation may prefer an appeal within thirty days of the passing of the order to the Collector whose decision shall be final.

From the bare reading of this section, it is clear that this only relates to the acquisition proceedings which have to be started for acquiring land for the implementation of the scheme. There is no provision made in this section empowering the Divisional Canal Officer to change the alignment of a sanctioned water course. In my view the entire procedure adopted by the Divisional Canal Officer was wholly illegal and without jurisdiction. It is contended by Mr. Megh Raj, learned Counsel for Respondents 2 and 3 that the petitioners had given their consent for the new water course and as such they are not legally entitled to challenge the impugned orders. I am unable to agree with this contention of the learned Counsel on the grounds that:

(i) There is no proof on the record of this file nor is there any mention in the written statements filed by the official Respondents and the private Respondents

that the Petitioners had consented to the change of the alignment of the water course "Lnabcjm" to Abcdm", and

(ii) an order which is wholly without jurisdiction cannot be sustained because the Petitioners had given their consent.

Thus the only irresistible conclusion that, on the admitted facts, can be arrived at is that the impugned order of the Divisional Canal Officer is wholly without jurisdiction and cannot be sustained. The effect would be that the order of the Superintending Canal Officer affirming the decision of the Divisional Canal Officer also falls through.

4. No other point is urged.

5. For the reasons recorded above, I allow this petition and quash the impugned order of the Divisional Canal Officer, dated nil, copy Annexure "C" to the petition) and that of the Superintending Canal Officer dated 6/13th November, 1968 (copy Annexure "E" to the petition). The Petitioners shall have their costs of this petition from Respondent No. 1. Counsel fee Rs. 100/-