
(1988) 06 P&H CK 0008
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 5126 of 1986

Karam Singh

APPELLANT

Vs

Superintendent Canal Officer, Sirhind Canal and Others

RESPONDENT

Date of Decision : 01-06-1988

Acts Referred:

Northern India Canal and Drainage (Amendment) Act, 1874 — Section 30
Northern India Canal and Drainage Act, 1873 — Section 68, 8

Citation : AIR 1988 P&H 277 : (1988) 94 PLR 254

Hon'ble Judges : Veeraswami Ramaswami, C.J;Ujagar Singh, J;G.R. Majithia, J

Bench : Full Bench

Judgement

G.R. Majithia, J.—The facts lie in a narrow compass. The petitioner, by mutual agreement with Mukhtiar Singh, dug a private watercourse passing through the land of the latter and compensated him by giving him 5 Karamas of land. The arrangement continued for quite some time. Respondent No. 3 got the Warabandi sanctioned showing the private watercourse. The Warabandi was sanctioned on the basis of a watercourse which was allowed by mutual consent. The petitioner objected to the running of the watercourse through his land on the ground that he never approved the watercourse, and he dismantled it.

2. Respondent No. 3 filed an application before the Canal Authorities, alleging that the petitioner had dismantled the sanctioned watercourse which may be restored.

3. The Divisional Canal Officer got the spot inspected through Zildar. Jaitu, who, in turn, submitted the report to the Sub-Divisional Officer, Dhapai. On receipt of the report the Divisional Canal Officer issued notices to the parties for hearing. recorded the oral evidence produced, heard the arguments, and finally passed a speaking order dated March 12, 1986(Annexure P2). It is this order which has been challenged through this writ petition.

4. It is pleaded that S. 30-FF of the Northern India Canal and Drainage Act, 1874(for short, the Act) imposes an obligation on the Divisional Canal Officer to

make an enquiry himself on an application filed by any affected person who alleges demolition, alteration or enlargement of a water-course. But in the instant case, the spot enquiry was conducted by the Divisional Canal Officer through the Zildar who, in turn, submitted the report to the Sub-Divisional Canal Officer, and the latter recommended to the Divisional Canal Officer for the restoration of the watercourse. It is also averred that S. 30-FF of the Act does not empower the Divisional Canal Officer to get the matter enquired through his subordinates. He has to make the enquiry himself.

5. It was further alleged that the watercourse was a private one which came into existence under an oral agreement between the petitioner and Mukhtiar Singh. Respondent No. 3 was not a party to the agreement. The warabandi which was sanctioned by the Canal Authorities somewhere in 1974-75 would not regularise the watercourse. The Divisional Canal Officer can order the restoration of a watercourse which is either sanctioned by law or an agreement between the parties, or which has been prescribed by way of easement. An unauthorised watercourse cannot be allowed to exist.

6. The Divisional Canal Officer (respondent No. 2) has, in his reply, controverted the allegations made by the petitioner. It is, inter alia, pleaded that the watercourse which was demolished had been running for about 20 years: that the land of respondent No. 3 was receiving irrigation through the dismantled watercourse. It is further pleaded that respondent No. 2 afforded ample opportunity to the parties to plead their case and that after a proper enquiry he ordered the restoration. It is also pleaded by him that the case was only prepared by the Zildar and the Sub-Divisional Canal Officer while he himself thoroughly enquired into the matter at the time of hearing.

7. The case came up for motion hearing before S.P. Goyal and D.V. Sehgal. JJ. on September 24, 1986, and the following order was passed :--

"Relying on Kheta Ram v. State of Haryana 1974 PLR 294 and Zora Singh v. Superintending Canal Officer 1982 P LR 240, it is contended that u/s 30FF(2) of the Northern Indian Canal and Drainage Act it is the Divisional Canal Officer who has to personally conduct the enquiry and any decision based on the enquiry got conducted from the junior officers would be without jurisdiction. The provisions of the section do not warrant any such conclusion. We, therefore, feel that the above-noted two decisions require reconsideration by a larger Bench. This petition is, accordingly, admitted and ordered to be placed before the learned Chief Justice for referring the matter to a larger Bench.

x x x x x"

It is in this manner that the matter has been placed before us.

8. Section 30FF of the Act reads as under:--

(1) If a person demolishes, alters, enlarges or obstructs a watercourse or causes any damage thereto, any person affected thereby may apply to the Divisional

Canal Officer for directing the restoration of the watercourse to its original condition.

(2) On receiving an application under sub-section (1) the Divisional Canal Officer may, after making such enquiry as he may deem fit, require by a notice in writing served on the person found to be responsible for so demolishing, altering, enlarging, obstructing or causing damage, to restore at his own cost, the watercourse to its original condition within such period as may be specified in the notice.

x x x x x"

9. Interpreting sub-section (2) of S. 30-FF of the Act, Tuli, J. in *Bakhtawar Singh v. Superintending Canal Officer* 1973 PLR 622, observed as under :

"The impugned notice issued is, therefore, without jurisdiction because the Divisional Canal Officer could not delegate the power to any subordinate officer."

The learned Judge opined that since the enquiry had been got conducted by the Divisional Canal Officer through the Zildar and the Sub-Divisional Canal Officer the order based upon such an enquiry was without jurisdiction. This judgment was followed by R.N. Mittal, J. in *Kheta Ram v. State of Haryana* with the following observations :--

"The enquiry is to be made by the Divisional Canal Officer himself and not through any other agency. If he enquiry into the matter through any other officer the notice issued on the basis of that enquiry will be illegal and void."

10. These two judgments were followed by Punchhi, J. in *Zora Singh v. Superintending Canal Officer*. who held as under:--

"The enquiry conceived of is an enquiry to be conducted by the Divisional Canal Officer himself. Concededly, he did not conduct any such enquiry but resorted to the convenient method of getting it done from the Sub-Divisional Officer and relying on his report issued the impugned notice..... Thus, the impugned action, notice and orders are void ab initio."

11. Section 30-FF of the Act provides that if a person demolishes, alters enlarges, or obstructs a watercourse or causes any damage thereto, any person affected thereby may apply to the Divisional Canal Officer for directing the restoration of the watercourse to its original condition. Sub-section (2) of S. 30FF postulates that on receiving an application under sub-section (1), the Divisional Canal Officer may, after making such enquiry as he deemed fit, require by a notice in writing served on the person found to be responsible for so demolishing, altering, enlarging, obstructing or causing damage, to restore at his own cost, the watercourse to its original condition within such period as may be specified in the notice.

12. The notice to the person responsible for the demolition has to be issued after a thorough enquiry, and after giving a definite finding. If he chooses to call for a

report to facilitate a detailed enquiry, that cannot be said to vitiate the order. Calling for such a report is a part of the enquiry. However, it does not flow from the statute that the Divisional Canal Officer himself could not call for a report from his subordinates. He has to satisfy himself, on the basis of some material, that there existed a watercourse which has been demolished or enlarged or obstructed to. Even the Courts whose procedure is regulated by CPC have been getting the enquiries made by Local Commissioners subject to limitations prescribed by law, and based their judgments on the report of the Local Commissioner. After the enquiry, if the Divisional Canal Officer is prima facie satisfied that the watercourse has been demolished he issues a notice to the concerned party or parties, and after hearing him/them passes such an order as envisaged by sub-section (2) of S. 30-FF of the Act. Of course, he cannot conclude the case with the report of the Sub-Divisional Canal Officer but has to give an opportunity to the parties to put forward their cases, hear them and decide the matter on the basis of the evidence. Sub-section (4) of S. 30-FF of the Act provides a right of appeal to the party who is aggrieved by an order passed by the Divisional Canal Officer.

13. The view taken by Tuli J. in Bakhtawar Singh's case (supra) does not lay down the correct law. The interpretation placed on sub-section (2) of S. 30-FF does not flow from it. The other two judgments reported as Kheta Ram i (supra) and Zora Singh (supra) are based upon Bakhtawar Singh's case (supra) and for the same reasons have to be overruled. With respect. the view taken by the learned Judge in Bakhtawar Singh's case (supra) does not emanate from subsection(2) of S. 30-FF. We accordingly overrule all the three decisions being not in accordance with law.

14. In the present case, the notice was issued to respondent No. 3 after the enquiry. The petitioner and respondent No. 3 had ample opportunity to lead evidence to prove their respective contentions. The enquiry which has been got conducted by the Divisional Canal Officer through the Sub-Divisional Canal Officer for satisfying himself that a watercourse has been demolished can be rebutted. Even otherwise, sufficient safeguard is provided in the statute to rebut the basis of primary satisfaction of the Divisional Canal Officer. This is what has been precisely done by the Divisional Canal Officer in the instant case. In the impugned order. the Divisional Canal Officer observed as under :--

"The enquiry of this application was got conducted through Zildar Jaito. The file was sent to Sub-Divisional Canal Officer Dhepai by Zildar after enquiring into the matter. The Sub-Divisional Canal Officer, Dhapai, sent the file after a spot verification with the recommendation that the watercourse may be reinstated. After having received the file, a notice was issued for 12-3-86 for hearing."

After the service of the notice, the Divisional Canal Officer heard the parties and passed the following order :--

"After serving the notice, the acknowledgement was filed in the file (case) and

the following persons came present on 12-3-1986 :--

1. Sh. Roop Singh Applicant.
2. Sh. Joginder Singh son of Bant Singh.
3. Sh. Bant Singh son of Natha Singh.
4. Sh. Karam Singh son of Puran Singh.

Sh. Rup Singh, etc. at Sr. Nos. 1, 2, 3 stated that the watercourse which was given to their field has been destroyed by Sh. Karam Singh. s/o Sh. Puran Singh, and the same may be restarted This water course was in existence since 20 years.

Sr. No. 4 Sh. Karam Singh stated. that the watercourse which was told to be fallen was neither destroyed by him nor there was any water course as stated by Sh. Roop Singh etc. The watercourse is far off one Acre from his field.

Decision

The case was perused. and the map was seen. The applicant and the other party were heard in detail and argued. The applicant demanded that the watercourse which was given to his field for irrigation and fallen by Sh. Karan Singh may be started (reinstated). The demand of the applicant has been found correct as per detail below :--

1. The Ziledar Jaitu after spot verification (Visit) reported that the watercourse demolished is sanctioned watercourse given to the field of the applicant.
2. Sub-Divisional Officer Dhupai after spot visit on 3-1-1986 reported that the watercourse at ABCD has been demolished. Watercourse ABFG is sanctioned one in warabandi. Watercourse may be restored as recommended by SDO.
3. It is established in arguments that the watercourse which is demolished was running one.
4. The argument of Sh. Karam Singh is not acceptable that the watercourse was not destroyed by him. The warabandi made u/s 68 shows that the watercourse was in existence in running stage.

Keeping in view the above circumstances and irrigation purpose, the watercourse ABCD demolished by Sh. Karam Singh is restored u/s 30-FF of the Northern India Canal and Drg. Act 8 of 1873 as amended. Decision announced in Canal Rest House Jaitu."

15. The action taken by respondent No. 2 is strictly in conformity with the mandatory provisions of sub-section (2) of S. 30-FF of the Act. and no fault can be found with it.

16. There is yet another aspect of the matter which deserves to be noticed. Para No. 4 of the writ petition reads as under :--

"That although the petitioner had made arrangements for irrigating his land by entering into an agreement with Mukhtiar Singh for digging up the private watercourse in the manner mentioned above. Respondent No. 3 in connivance with the canal authorities is alleged to have got Warabandi sanctioned showing the above mentioned private watercourse to be extending from points A to R in the year 1974-75."

The corresponding para of the written statement is in the following terms :--

"Not admitted. The warabandi was sanctioned u/s 68 of the Northern India Canal and Drainage Act 8 of 1873(As amended) and Nakkas were fixed after hearing the concerned shareholders. As per record there is no wari of Mukhtiar Singh on the disputed watercourse."

17. Once Warabandi has been sanctioned in accordance with the procedure prescribed after hearing the concerned shareholders. the remedy, if any, lay under S. 68 of the Act and that cannot be allowed to be urged in a collateral proceeding that the watercourse on the basis of which Warabandi has been fixed is not authorised.

18. In view of the finding recorded above, the writ petition is dismissed. However, we leave the parties to bear their own costs.

19. Petition dismissed.