
(2013) 05 P&H CK 0170

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 11495 of 2004 (O and M)

Lachhman Singh

APPELLANT

Vs

Superintending Canal Officer and Others

RESPONDENT

Date of Decision : 28-05-2013

Acts Referred:

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

Citation : (2013) 171 PLR 266

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Advocate : Jasmail Singh Brar, for the Appellant; Sandeep Singh, A.A.G., Punjab for Respondent Nos. 1 and 2 and None for Resp. Nos. 3 and 4, for the Respondent

Final Decision : Allowed

Judgement

K. Kannan, J.—The writ petition challenges the correctness of the orders passed by authorities under the Northern India Canal and Drainage Act, 1873 (for short, "the Act"). Through the impugned orders, the petitioner's objection to a priced watercourse sought at the instance of respondent No. 3 over a piece of land which is held in co-ownership with respondent No. 3 has been rejected. The petitioner's grievance is that the Canal Officer does not have a right to sanction watercourse over a piece of land in which the respondent No. 3 did not have exclusive right, but which was held in co-ownership with the petitioner. Through the impugned order, a watercourse of one karam in breadth (5-1/2 feet) was sanctioned in Khasra No. 1379 through the area of Lachhman Singh and Ajmer Singh (arrayed as 4th respondent) sons of Chanan Singh. The petitioner has filed a rough plan along with the petition to state that the property in Khasra No. 1379 is held in co-ownership by the petitioner with the 3rd respondent and it is claimed by the 3rd respondent that she has purchased some properties in Khasra Nos. 1378, 1377 and 1371, which are west of the property in Khasra No. 1379. The properties in Khasra Nos. 1378, 1377 and 1371 are classified in the village records as nehri and irrigated through a watercourse previously which, according

to the petitioner, has access through two other watercourses which are distinct from the property through which the 3rd respondent now wants to lay a course. The petitioner's objection is that the Canal Officer has no power to sanction a watercourse without the concurrence of the co-owner and if watercourse is still insisted, the 3rd respondent cannot have sanction without securing the partition of the property held in common. According to him, the procedure u/s 30-A of the Act contemplates the preparation of a draft scheme and after its publication u/s 30-B of the Act after objection taken through any person who is interested in causing such an objection, then the order could be passed and a scheme published in the manner contemplated u/s 30-C of the Act.

2. I have seen through the order passed by the Superintendent Canal Officer, Sirhind in appeal and the earlier order passed by the Divisional Canal Officer under P4. P4 records the objection of the petitioner but the officer has found that it is in the interest of better irrigation a nearer and appropriate course could be sanctioned and the petitioner cannot have any objection. In the order passed by the Superintending, Canal Officer, he has observed that the petitioner himself did not avail of several opportunities and that the watercourse was being sanctioned after a spot inspection and the recommendation of the Zildar and Sub Divisional Officer, Gholia. The procedure provided u/s 30-A to C of the Act requires a preparation of a draft scheme which could be on its own motion or on the application of a shareholder and the draft will consider the construction, alteration, extension and alignment of any watercourse. Sub-clause (2) of Section 30-A of the Act directs that every scheme prepared shall set out the particulars of the shareholder to be benefited and other persons, who may be affected thereby. Inherently, therefore, the preparation of a draft scheme is only to enlist whatever objections are there by persons whose own holding of the lands may be affected by the sanctioning of a particular course. Once a draft scheme is proposed, it shall be published and then after hearing the objections, the authority may approve, modify or reject the scheme. If, in this case, the objection by the petitioner has been that there was already a watercourse for the property in Khasra Nos. 1378, 1377 and 1371 going through in two different courses drawn in the plans, there ought to be a consideration of how and why the continuation of such course is not possible. No person can be compelled to suffer a loss of property by carving out a channel through a land which is held exclusively or jointly with another. It is a fundamental position of law that a co-owner has a right to a fractional share in every inch of property. Another co-owner cannot bring upon the property any additional burden without the concurrence of the other co-owner. The 3rd respondent who is already a co-owner with the petitioner in Khasra No. 1379 cannot, therefore, seek for sanctioning of a watercourse over a joint property without the concurrence of the petitioner who is a co-owner. If such a concurrence is not obtained, then it should only be after securing a partition of such property and taking the watercourse through his own property that is divided and brought to its exclusive holding. Contrarily, if the Canal Officer is of the view that a watercourse can go

only over a particular person's property, then such an order can also be passed but not without providing sufficient compensation for a compulsory nature of subjecting a property to an additional burden. In either case, in the light of the objections, the Canal Officer could not have merely observed that such a watercourse is necessary for better cultivation.

3. The order passed by the authorities is erroneous and it has not taken note of the objections which are placed by him regarding the inconvenience and the burden which the petitioner had to suffer if a watercourse was taken over his land when there were other courses open. The orders impugned are quashed and the authorities will be at liberty to reopen the issue and then follow the procedure of proper notice to the petitioner and hear him on the objections and explore possibilities of alternate courses in the light of the objections raised by the petitioner. The writ petition is allowed on the above terms.