

(1982) 09 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2041 of 1974

Madan Lal and another

APPELLANT

Vs

The Chief Engineer, Canals, Irrigation Works, Punjab,
Chandigarh and others

RESPONDENT

Date of Decision : 07-09-1982

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1982) 09 P&H CK 0007

Hon'ble Judges : M.M. Punchhi, J

Bench : Single Bench

Advocate : M.L. Sarin, for the Appellant; A.S. Sandhu, Additional Advocate General, Punjab, Mr. A.S. Nehra for Respondent No. 5 and Mr. G.R. Majitha, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Punchhi, J.—This is a petition under Articles 226 and 227 of the Constitution of India for issuance of a writ in the nature of a certiorari for quashing the order. Annexure P-2, passed on 3rd January, 1974 by the Chief Engineer, Canals, Irrigation Works, Punjab, Chandigarh.

2. The said order has firstly been challenged on the ground of the Chief Engineer to pass such order and secondly on the ground of mala fide, it having allegedly been passed in favour of Lal Chand, respondent No. 5, at the instance of Shri Bal Ram, the then Deputy Minister Irrigation, Punjab, Chandigarh, and now the Speaker of Lok Sabha, New Delhi.

3. The broad averments in the petition are that the petitioners are owners and shareholders in a sizeable piece of land in village Sher Garh, tehsil Fazilka, district Ferozepore. The said land has been provided irrigation facilities Shri Lal Chand, respondent No. 5, is an owner and shareholder of land in village Waryam Khara which too receives canal irrigation. The main source of irrigation to the entire area surrounding is by a canal known as Ramsara Minor which emanates

from a bigger canal known as Maluk Pur Distributory, as revealed in plan Annexure P-1 appended with the petition. Ramsara Minor at point "A" enters the revenue estate of Jhurar Khera; travels further in the revenue estate of Waryam Khera and then ends at a tail in or about the revenue estate of Sher Garh (the village of the petitioners) bifurcating in two watercourses. A number of watercourses emanate from the Ramsara Minor on both its banks. On its left bank, there are watercourses marked as R.D. 78782-L, R.D. 72752, R.D. 75870-L and R.D. 76530 which are meant for the areas of Village Jhurar Khera and Waryam Khera. The last watercourse on the left side is the tail watercourse R.D. 88725-L meant for village Sher Garh. Similarly, on the right bank, there are watercourses R.D. 76460 R.R.D. 84946-R for villages Jhurar Khera and Waryam Khera. Lastly, tail watercourse R.D. 88725-R is meant for Shergarh.

4. The petitioners aver that during the regime of the Akali Government, when Shri Parkash Singh Badal was the Chief Minister the shareholders of Village Jhurar Khera, who were predominantly Akalis, managed to get approved by political pressure from the Chief Minister a Fall (Thokar) at R.D. 72752-L. By such construction obviously the level of water at R.D. 72752-L would have risen and made available more water in the two watercourses at R.D. 72752-L and R.D. 78782-L meant for village Jhurar Khera. However, the same measure was not executed at the spot for allegedly the petitioners and other shareholders of village Sher Garh had made representation to higher authorities. However, on 7-5-1974, the petitioners learnt from the officers of the Canal Department working at the site that a Fall was going to be constructed immediately at point "F" shown in plan, Annexure P-1, at a point R.D. 76530-D. This point "F" was downstream than the one originally proposed during the Akali Government. This obviously would have the effect of raising the water level at point "F" to the advantage of all the watercourses upstream leaving the remainder water for the two tail watercourses and one watercourse in between at R.D. 84946-R. The petitioners claimed that this measure had been taken because Shri Lal Chand, respondent No. 5, was closely related to Shri Bal Ram, respondent No. 4, and for that reason at his instance. Further, the petitioners maintained that the entire action was violative of the provisions of sections 20, 30-A, 30-B and 30-C of the Northern India Canal and Drainage Act and the rules framed thereunder. According to the petitioners, everything had been done ex parte and without issuing any notice to them with regard to the shifting or even construction of the Fall as detailed in the impugned order, Annexure P-2. And if the Fall was made as proposed, very little supply of water would reach the tail of the canal in question for irrigating the land of the petitioners and other shareholders of village Sher Garh, and this would lead to grave and manifest injustice to them.

5. Annexure P-2 is a letter issued by the Chief Engineer Canals to the Superintending Engineer, Ferozepore Canal Circle, Ferozepore on 3-1-1974 conveying his approval to the shifting of Fall of 2.53 from R.D. 72752 to R.D. 76530 of Ramsara Minor with a F.S.L. of 603.77/601.24 upstream and downstream of R.D. 76530 as recommended by him. He further ordered that the

change in the design data should be incorporated in the L. Section already approved by his office.

6. Separate returns have been filed. Respondents Nos. 1 to 3 being of official respondents, on the affidavit of the Superintending Engineer, have maintained that there was a policy approved by the Government of Punjab for giving enhanced supply to the area in question by means of increasing water allowance from 2.75 cusecs per 1,000 acres area to 3.50 cusecs per 1,000 acres. In furtherance of that policy it was maintained that the channels had to be remodelled, as also the outlets in the tract, for receiving enhanced supply of water. The competency to design the channel (Ramsara Minor) fell within the domain of Chief Engineer, Irrigation Works, Punjab. According to him, fall at R.D. 72572 was initially designed as a control point with the object of observing the gauge and to (sic) shortage, if any, passing downstream of the Fall. It was also maintained that such sanction was purely based on technical considerations and the Chief Engineer, Irrigation Works, was fully competent to sanction/add any masonry structure in the channel in the nature of Fall and control point in order to improve the command and maintenance of the regime of the channel. Later, the Chief Engineer, while redesigning the outlets on the channel, noticed that if the Fall was fixed at R.D. 72572, other outlets between R.D. 72572 to 76530 would become non-modular and thus in order to feed the outlets falling in reach R.D. 72572 to 76530, he thought it essential to shift the Fall from R.D. 72572 to 76530 downstream to raise the full supply level in the channel in that reach. Accordingly, the Chief Engineer in the interest of irrigation during November, 1933 recommended the change. And it being in the interest of irrigation was finally approved by the Chief Engineer to provide adequate working head to outlets falling in the reach R.D. 72572 to R.D. 76530. The allegations of the petitioners that the change had been effected at the instance of Shri Bal Ram to help his relation was denied and even the relationship was denied for want of anything on the record. With regard to the applicability of the provisions of sections 30-A to 30-C of Northern India Canal and Drainage Act, it was asserted that the approval/construction/sanction, of any Fall on a channel was not governed by the said provisions and rather the same was governed by Canal Rules as laid down in Paras 42 and 43 of the Irrigation Manual for which no preparation or publication of the Scheme was required. Finally it was emphatically asserted by the official respondents that the sanction of Fall at R.D. 76530, Ramsara Minor would not affect the supplies of water to the outlets of the petitioners and the tail of the channel. This assertion of the respondents did not attract any rejoinder by the petitioners.

7. The affidavit of Lal Chand, respondent No. 5, is in terms of the same as that of the official respondents. With regard to the asserted relationship with Shri Bal Ram, Speaker of the Lok Sabha, he stated that he was not directly related to him. He, however, admitted that his father's brother was Shri Bahadur Ram. However, he denied that Shri Bal Ram was highly interested in him. Shri Bal Ram, respondent No. 4, in his affidavit denied that Shri Lal Chand, respondent No. 5,

was his close relation He denied that Shri Bahadur Ram was married to his real sister. He further denied of his being instrumental in getting the order, Annexure P-2, passed and termed the assertion of the petitioners to be in bad taste and of sinister designs.

8. Firstly, dealing with the question of mala fide, it is to be noticed that the petitioners' positive claim as laid out in paragraph 6 of the petition is that Lal Chand, respondent No. 5's father was Sultan Ram who is a brother of Bahadur Ram and this Bahadur Ram was married to the sister of Sh. Bal Ram, respondent No. 4 So far as respondent No. 5 is concerned, he has not denied his relationship with Bahadur Ram but has rather asserted that he is not directly related to Sh. Bal Ram. Sh. Bal Ram, on the other hand, has on affidavit stated that his real sister was not married to Bahadur Ram. From these averments, the learned counsel for the petitioners asserts that Lal Chand, respondent No. 5, has not categorically asserted that he is not related to Shri Bal Ram and even the latter has not categorically asserted that he is not related to Bahadur Ram in any manner. In this situation, learned counsel for the petitioners maintains that reading between the lines, it was clear that respondents Nos. 4 and 5 were related in some manner which they were concealing, and may be not in the manner in which the petitioners had asserted their relationship which they have denied. The argument of the learned counsel cannot prevail for whatever has been asserted by the petitioners has adequately been denied, to counter any suggestion of relationship between respondents Nos. 4 and 5 inter se. This Court will not enter into any controversy in that regard or to hold an inquiry to discover any remote relationship as suspected between respondents Nos. 4 and 5 inter se. The fact remains that the relationship as asserted by the petitioners has been denied. This disputed question of fact cannot be determined in these proceedings and thus the charge that the impugned action was taken at the instance of respondent No. 4 falls to the ground. The plea on that score is thus rejected

9. Learned Counsel for the petitioners then contended that the impugned action was violative of the provisions of sections 20, 30-A, 30-B and 30-C of the Northern India Canal and Drainage Act. A bare perusal of these provisions would show that these sections cover questions and problems arising from or of watercourses and not canals. Section 20 covers up a situation of supplying of water through an intervening watercourse. Sections 30-A, 30-B and 30-C cover up a matter of a Scheme providing for the construction, alteration, etc., of a watercourse as also the areas to be served by it, its lining and of any other matter which is necessary for the purpose of maintenance and distribution of supply of water from a watercourse. None of these sections cover up the case of a canal. Section 3(1) of the aforesaid Act defines canal to include, amongst others, all canals, channels and watercourses, as defined in sub-clause (2) of section 3(1). Watercourse in the said sub section has been defined to mean any channel which is supplied water from a canal, but which is not maintained at the cost of the State Government and all subsidiary works belonging to any such channel. Thus the distinguishing feature between a canal and a watercourse is

that a canal is maintained at State expense and so may be a watercourse, but a watercourse which is not maintained at the cost of the State Government would be a watercourse to which the provisions of Sections 20, 30-A, 30-B and 30-C of the said Act would apply. A Division Bench of this Court in *Kundan Lal v. The Divisional Canal Officer and others* 1968 P.L.J. 324 had taken the view that from the definition of the words "canal" and "watercourse" appearing in the Act. It would appear that whereas all watercourses are canals, every canal is not a watercourse. It was further observed that whereas a canal may be maintained by private persons or may be maintained at the cost of the State Government, a watercourse as defined in the Act can only be such a channel conveying water which is not maintained at the cost of the State Government. With regard to an "outlet", it was observed that it was a contrivance constructed in a canal from which water is supplied in a smaller canal and that there was nothing in the Act to indicate that an outlet must like a watercourse be maintained at the cost of the private persons.

10. Now here the Fall is to be constructed by the State Government at its cost and in its channel which is a canal for the purposes of the Act. It is nobody's case that the channel is maintained by private persons, much less the petitioners. The channel belonging to the State Government and structure sought to be raised therein being at its expense, the channel and the contrivance do not fall within the meaning of the term "watercourse" as known to the Act. And if that is so, none of the provisions of sections 20, 30A, 30-B and 30-C of the Act would be applicable, as invoked by the petitioners. Even otherwise, such act of respondents Nos. 1 to 3, has positively been asserted, to maintain gauge over the upstream and downstream waters so as to increase irrigation at both points in view of the remodeling of the channel. It has positively been asserted by the respondents that the Fall will not affect the supplies to the outlets of the petitioners situated at the tail of the channel. In this view of the matter, no injustice has been caused to the petitioners, much less manifest injustice, which would occasion this Court to interfere in writ jurisdiction. Neither on precept/principle nor on equity has any case been made out in favour of the petitioners. Thus, the second contention, as raised by the petitioners, too must fail.

For the view I have taken, this petition merits dismissal and is accordingly dismissed, but without any order as to costs.