
(2013) 09 P&H CK 0161

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 18094 of 2011

Megha Singh

APPELLANT

Vs

The Superintending Canal Officer and Others

RESPONDENT

Date of Decision : 10-09-2013

Acts Referred:

Citation : (2014) 173 PLR 385

Hon'ble Judges : Rakesh Kumar Jain, J

Bench : Single Bench

Judgement

Rakesh Kumar Jain, J.—Petitioner has challenged the validity of order dated 1.8.2011 passed by respondent No. 1 by which order dated 29.12.2010 passed by respondents No. 2 in his favour has been reversed. The petitioner has alleged that respondent No. 3 moved an application to respondent No. 2 u/s 30B of the Northern India Canal and Drainage Act, 1873 [for short "the Act"] for sanctioning a water-course on payment towards the Northern side of Killa No. 11/2 of Rectangle No. 26-for canal irrigation of his land comprising in Khasra No. 6/2, 15/2. He also impleaded the owner of Killa No. 10/2 as party before respondent No. 2 so that water-course along with the "Pahi" (Path) may be sanctioned for his fields. Respondent No. 2 vide his order dated 29.12.2010 declined the prayer made by respondent No. 3. Aggrieved against the order of respondent No. 2, respondent No. 3 filed appeal which has been allowed by respondent No. 1 vide his order dated 1.8.2011.

2. The case set up by the petitioner is that respondent No. 3 was getting canal irrigation for his area long time ago and at that point of time he shifted his turn of water for his other land. However, at this stage, he cannot be allowed to have water-course through the land of the petitioner. He has referred to Section 30A and 30B of the Act to contend that the Divisional Canal Officer may on his own motion or on the application of a shareholder prepare a draft scheme which is also required to be published in such form and manner as may be prescribed by rules. But in the present case, no such scheme has ever been prepared or

published. It is also contended that respondent No. 4 is owner of land comprising in Khasra No. 10/2 which abuts the pahi" (path) on its Northern side and for the convenience of all, water-course may be allowed to be merged alongside the "pahi" in Khasra No. 10/2 for which the petitioner has always been ready to compensate respondent No. 4 for the land which would be used for watercourse and the petitioner would get a piece of land from respondent No. 3 in Khasra No. 15/2. It is also alleged that only 4 marlas of land is required for water-course and would not create any hindrance in the smooth cultivation of his land.

3. In reply filed by respondent No. 3, it is averred that for the purpose of better irrigation of his land, the sanction of water-course from the field of the petitioner was given keeping in view the level of land as irrigation from the other side was not feasible. The interest of the petitioner would also be looked after as respondent No. 3 is ready to make the payment of price of the land.

4. In reply filed by respondent No. 4, he has denied the suggestion of the petitioner for taking the water-course alongwith the "pahi" from Khasra No. 10/2.

5. I have heard learned counsel for the parties and perused the record.

6. There is no dispute that as per Section 30A of the Act, the Divisional Canal Officer, on the application of the shareholder, has to prepare a draft scheme for the purposes of construction, alteration, extension and alignment of any water-course or realignment of any existing water-course. Respondent No. 3 has prayed for sanctioning of one karam width water-course on the Northern line of Killa No. 26/11/2 to SDO, Raikot, Canal Sub Division, Dadd Hoor which falls within the definition of construction of water-course for which a draft scheme has to be prepared by DCO, the estimated cost thereof, particulars of shareholders to be benefited and other persons who may be affected thereby and a sketch plan of the area proposed to be covered by the scheme. If, the scheme is prepared, it has to be published in the format and manner prescribed under the Rules in order to invite objections and suggestions within 21 days of the publication and thereafter considering the objections and suggestions, may approve, modify or reject the scheme. Since, no such procedure has been adopted there-" fore, the impugned order passed by respondent No. 1 is patently illegal which is even otherwise based upon only one reasoning that the water-course in favour of respondent No. 3 is to be sanctioned in the interest of better irrigation without even referring to the provisions of law referred to above. Keeping in view of the aforesaid discussion, the impugned order dated 1.8.2011 passed by respondent No. 1, is found to be patently illegal. Hence, the writ petition is hereby allowed and the impugned order dated 1.8.2011 passed by respondent No. 1 is quashed.