

(1968) 11 P&H CK 0036
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 105 of 1968

Nand Singh and others

APPELLANT

Vs

Superintending Canal Officer and others

RESPONDENT

Date of Decision : 21-11-1968

Acts Referred:

Citation : (1968) 11 P&H CK 0036

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Advocate : Tejinder Singh Doabia, for the Appellant; H.S. Giant and Advocate-General, Punjab for the Respondent No. 1, Mr. S.S. Dhaliwal and Mr. B.S. Dhillon for Respondents Nos. 2 to 4, for the Respondent

Final Decision : Allowed

Judgement

B.R. Tuli, J.—Petitioners Nos. 1 to 13 are residents of Khadur Sahib, tehsil Tarn Taran, district Amritsar, where they hold lands which are being irrigated by out let No. RD 9665/R. Respondents Nos. 2 to 4 are also residents of village Khadur Sahib and are getting water from RD 9960/R. They gave an application to the canal authorities requesting that thirteen acres of their land should be placed on RD 9665/R for irrigation purposes. Their application came up for hearing before the Divisional Canal Officer, who passed an order on 3rd September, 1966, granting the request of the respondents that they should get water from RD 9665/R from which the petitioners are getting water, The petitioners filed an appeal against that order before the Superintending Canal Officer which was accepted by him on 17th March, 1967, and the order of the Divisional Canal Officer was set aside, Respondents Nos. 2 to 4 tiled a review application before the Superintending Canal Officer on 7th April, 196/ which has been termed by the Superintending Canal Officer as a revision petition. After inspecting the site and hearing the parties, he accepted this application and confirmed the decision of the Divisional Canal Officer on 7tb December, 1967, calling it as an appeal.

2. There is no provision in the Northern India Canal and Drainage Act allowing

the power of review to the Superintending Canal Officer, while deciding the appeal on 17th March, 1967. the Superintending Canal Officer acted as quasi judicial tribunal and unless the statute gave him the power of review, he had no right to rehear, review, alter or vary his previous order dated the 17th of March, 1967. It has been held by a Full Bench of five Judges of this Court in *Deep Chand and another v. Additional Director Consolidation of Holdings, Punjab* and another I.L.R (1964) 1 P&H. 665 : 66 P.L.R.318 as under:

A judicial or quasi, judicial tribunal has no inherent power to rehear, review, alter or vary any judgment or order after it has been entered or drawn up on the ground that it is later considered to be erroneous on the merits. To concede such a wide power of review would introduce into judicial and quasi-judicial decisions, disconcerting element of permanent uncertainty and unpredictability tending to give an impression of quasi-judicial lawlessness, which cannot be upheld. If Courts do not possess such a wide and sweeping power, It is difficult to concede such a wide power in statutory judicial or quasi judicial tribunals. The power of review can only be exercised if allowed by the statute and to the extent permitted and subject to the conditions imposed by the statute.

In view of this judgment the Superintending Canal Officer had no jurisdiction to pass the order dated the 7th of December, 1967, annexure "B" to the writ petition. It was held by Tek Chand J. in *Tek Chand v. State of Haryana* (1968) 70 P.L.R. 337. that:

Once the decision made on the basis of sections 30-A and 30-B has been confirmed by the Superintending Canal Officer and the scheme as approved by the Divisional Canal Officer has been accepted it cannot subsequently be disturbed either by the Superintending Canal officer himself or by any other authority.

3. On behalf of the respondents it has been argued that the petitioners were present before the Superintending Canal Officer when the review application was heard by him but did not raise the plea that the review application was not competent and, therefore, the petitioners should not be allowed to raise this plea in this Court for the first time.

It was held by a Full Bench of this Court in *Devinder Singh and another v. Deputy Secretary cum Settlement Commissioner, Rural, Rehabilitation Department, Punjab* I.L.R (1934) P&H. 905 : 66 P.L.R. 555, as under:

Where there is inherent lack of jurisdiction in an inferior Tribunal and the matter is patent on the record, the failure of a party to raise objection on the point of jurisdiction would not by itself debar it from getting relief on that score in a writ petition. Want of inherent or initial Jurisdiction goes to the very root of the matter and neither consent nor acquiescence of a party can vest a Tribunal with Jurisdiction where the order in the very nature of things is a nullity having been made by a Tribunal without any Jurisdiction in the matter. The proposition of law is well-established that consent can never give Jurisdiction and a decision made

without jurisdiction is void and cannot be validated by the express or implied consent of a party to the proceedings. Total want of Jurisdiction is an infirmity which is fatal to the proceedings and no amount of consent can cure it. There is also a distinction between want of inherent jurisdiction and irregular exercise or assumption of jurisdiction, and while consent cannot clothe a Tribunal with jurisdiction where none exists, irregular exercise or assumption of jurisdiction can always be waived.

In view of this authority there is no bar to the petitioners" raising this plea of want of jurisdiction, in the Superintending Canal Officer to review his previous order, in this writ petition.

4. Respondents Nos. 2 to 4 have stated in their return that the order dated the 17th of March, 1967 of the Superintending Canal Officer was void and without jurisdiction but at the hearing it has not been shown bow.

5. For the reasons giving above this petition succeeds as "the Superintending Canal Officer ".had no jurisdiction to review his previous order. The result is that this petition is accepted with costs and the order of the Superintending Canal Officer, dated the 7th of December, 1967, annexure "B" to the writ petition, is hereby quashed. Counsel"s fee Rs.100/-.