
(1981) 07 P&H CK 0036
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1775 of 1969

Nazar Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 20-07-1981

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Northern India Canal and Drainage Act, 1873 — Section 20, 30A, 30B, 30C, 30D

Citation : (1981) 3 ILR (P&H) 638

Hon'ble Judges : C.S. Tiwana, J

Bench : Single Bench

Advocate : H.S. Toor, for the Appellant; B.S. Wasu, for A.G., for the Respondent

Final Decision : Dismissed

Judgement

C.S. Tiwana, J.—In this writ petition filed under Articles 226 and 227 of the Constitution 25 residents of village Pehruman have challenged an order dated October 6, 1964, passed by the Divisional Canal Officer, Respondent No. 3, recommending u/s 20 of the Northern India Canal and Drainage Act, (hereinafter called the Act) that Banta Singh, Respondent No. 4, should be allowed to irrigate his land from outlet RD 71740-R. The recommendation made by Respondent No. 3 was subsequently accepted and confirmed by the Superintending Engineer, Respondent No. 2. The Petitioners contended that the case of Respondent No. 4 was for a change of outlet from outlet RD 76530 R to outlet RD 71740-R and for that reason the procedure prescribed by Section 30-A to 30-F of the Act was required to be followed. The action taken u/s 20 of the Act was said to be without jurisdiction and hence it was to be quashed. Section 20 of the Act provides as follows:

Whenever application is made to a Divisional Canal Officer for a supply of water from a canal and it appears to him expedient that such supply should be given and that it should be conveyed through some existing water course, he shall give notice to the persons responsible for the maintenance of such watercourse to

show cause, on a day not less than fourteen days from the date of such notice why the said supply should not be so conveyed; and after making enquiry on such day, the Divisional Canal Officer shall determine whether and on what condition the said supply shall be conveyed through such watercourse.

When such officer determines that a supply of canal water may be conveyed through any watercourse as aforesaid, his decision shall when confirmed or modified by the Superintending Canal Officer be binding on the Applicant and also on the persons responsible for the maintenance of the said watercourse.

Such Applicant shall not be entitled to use such watercourse until he has paid the expense of any alteration of such watercourse necessary in order to his being supplied through it and also such share of the first cost of such watercourse as the Divisional or Superintending Canal Officer may determine.

Such Applicant shall also be liable for his share of the maintenance of such watercourse so long as he uses it.

Section 30A of the Act provides for the construction, alteration, extension and alignment of any watercourse or re-alignment of any existing watercourse to another. Thus the point for determination in this petition is whether Respondent No. 4 wanted a new supply of water from the canal or he wanted the re-allotment of his area served by one watercourse and also re-allotment of areas served by one watercourse to another. Reliance was placed by the Petitioner on *Jaswant Lal and Ors. v. Superintending Engineer Western Jumna Canal Rohtak and Ors.* 1966 P.L.R. 945. It has been held in that case that Section 20 of the Act is not attracted to the case of extension of watercourse though it does deal with the supply of water through some existing watercourse. In case of supply of water through extension of watercourse recourse has to be had to the provisions contained in Section 30-A to 30-F of the Act.

2. The Petitioners put forward this kind of case that it had been decided at the time of the consolidation of holdings in the year 1961 that a right holder could not transfer his irrigated land from one outlet to another. Another provision was on this point that after repartition the right holders would be entitled to receive the canal irrigation facilities on their old outlets. According to them, Respondent No. 4 wanted to change the irrigation facilities from one outlet to another and for that reason action could not be taken u/s 20 of the Act. As appearing from the authority cited above, the decision of this petition would depend on the determination of this fact whether Respondent No. 4 was enjoying any irrigation facilities from any outlet before the proceedings were taken u/s 20 of the Act. The State of Punjab Respondent No. 1 and Respondents Nos. 2 and 3 took up this stand in para 2 of the written statement that Banta Singh, Respondent No. 4, never got his land irrigated from outlet RD 76530-R. It was again emphasised in para 4(ii) of that return that Respondent No. 4 wanted ; the supply of water from a canal, as earlier he had never been allowed any canal water for his land. No such material has been placed on record by the Petitioners from which it

could be inferred that Respondent No 4 had actually obtained any supply of water through outlet RD 76530-R. Learned Counsel for the Petitioners made a reference to the impugned order itself in which it was mentioned that by taking the spot levels it was found that Respondent No. 4 is land could be better commanded from outlet RD-71740-R though it lay within the chak boundary of outlet RD-76530-R. This statement of fact in the impugned order cannot lead to this inference that Respondent No. 4 was irrigating his land from outlet RD-76530-R. Furthermore, it is mentioned in the same order that the land of Respondent No. 4 was not included in the command area of outlet RD-76434-R, as the same had been classified as Chahi This finding is thus given against the Petitioners that they had not been able to prove that Banta Singh's case relates to the change of outlet and for that reason the ruling in Jaswant Lal's case cannot be made applicable. Action by the irrigation authorities had been rightly taken u/s 20 of the Act. The petition is consequently dismissed but in view of the peculiar facts of the case the parties are left to bear their own costs.