

(1973) 10 P&H CK 0015

In the Punjab And Haryana At Chandigarh

Case No : Letter Patent Appeal No. 206 of 1973

Partap Singh and Others

APPELLANT

Vs

Midha Singh and Others

RESPONDENT

Date of Decision : 31-10-1973

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Northern India Canal and Drainage Act, 1873 — Section 20, 3(11), 30

Citation : AIR 1974 P&H 227

Hon'ble Judges : Virender Singh, J;D.K. Mahajan, J

Bench : Division Bench

Judgement

1. This appeal under clause X of the Letters Patent is directed against the decision of a learned Single Judge of this Court where by the learned Judge quashed the orders passed by the Divisional Canal Officer and the Superintending Canal Officer, dated 4th April, 1967 and 15th January, 1969, respectively.

2. The respondents in appeal are residents of village Jangirana, Tehsil and District Bhatinda. Their lands are irrigated from Jangirana Minor R. D. 10580 T. R. The appellants and Gurpanch Singh and others belong to village Bahadargarh Jandian and outlet R. D. 150-R, Lalbhai Distributory commanded part of the area of this village. The appellant filed an application u/s 20 of the Northern India Canal and Drainage Act, 1873(hereinafter referred to as the Act) to the Divisional Canal Officer, Bhatinda Division praying that the area situated in Chak of R. D. 150-R Lalbhai Distributory was not receiving irrigation from the original source and be transferred to outlet R. D. 10580-T. R. Jangirana Minor. This application was allowed by the Divisional Canal Officer after hearing the respondents in the present appeal. This order was confirmed by the Superintending Canal Officer. The translation thereof is Annexure B-1, to the petition.

The respondents in the present appeal, who were dissatisfied with this order, moved a petition under Articles 226 and 227 of the Constitution of India and

their principal contention in the petition was that the order could not be passed u/s 20 of the Act and that the relief could only be granted to the appellants if they had moved an application u/s 30A of the Act. This petition came up for hearing before Mr. Justice P.C. Jain and the learned Judge allowed the same. The learned Judge took the view that the case fell within Section 30-A (1)(b) of the Act. The result was that the order of the Divisional Canal Officer which had been confirmed by the Superintending Canal Officer was quashed. The appellants being dissatisfied with that order have come up in appeal under clause X of the Letters Patent.

3. The contention of Mr. Gujral, learned counsel for the appellants is that the learned Single Judge wrongly applied the provisions of Section 30-A to the facts of the present case. His contention is partially correct. It is, therefore, necessary to set out the pleading which will disclose as to whether the provisions of Section 20 or Section 30-A of the Act would govern the case. In para, 2 of the petition, it is stated that:

"Messrs. Gurpanch Singh, Hardev Singh, Pritam Singh, Darshan Singh, Gurdial Singh and Bagh Singh applied to the Divisional Canal Officer, Bhatinda Division, Bhatinda, u/s 20 of the Northern India Canal and Drainage Act 1873, hereafter called the Act, that the area, which was in the Chak outlet R. D. 150-R Lalbhai Distributory was not receiving proper irrigation from the original source, and if the area mentioned in the aforesaid Chak is transferred to outlet R. D. 10580-T. R. Jangirana Minor, the area in question could receive adequate irrigation."

The reply of the appellants to para 2 is as follows:

"That the facts stated in paras, 1, 2 and 3 of the writ petition under reply are not within the knowledge of answering respondents. However, the answering respondents had made their own separate applications praying for providing water to their fields from R. D. 10580-T.R., which have been allowed. The land of respondents 3 and 4 (Partap Singh and Bagh Singh) sought to be provided water from R. D. 10580, was previously un-commanded, completely, while out of the area of Jagar Singh and Jagraj Singh respondents, only 11.06 acres was previously commanded while the rest of the area was also uncommanded.

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The Khasra numbers 360(19-0), 372(0-10), 373(0-10), 373(21-10), 375(22-0), 376(25-0), total: 88-10-- 11.06 acres, was the only previously commanded area, which has been transferred to R.D. 10580-T.R. and the rest is all previously uncommanded area, rest is all previously uncommanded are, which has now been provided water for the first time from R. D. 10580-T. R., under the impugned order. It is, however, wrong that respondents Nos. 14 to 18, are right holders or residents of village Bahadurgar Jandian, who may have applied u/s 20 of the Northern India Canal and Drainage Act. In fact, they had no area commanded by outlet No.150 Lal Bhai Distributory, at all.... That para, 4 of the writ petition is not admitted to be correct. The petitions of answering

respondents 3 to 6 were allowed by the Superintending Canal Officer, confirming the proposal submitted by the Divisional Canal Officer, by which the uncommanded area of respondents 3 and 4 which was lying within the area of outlet No.150 Lal Bhai Distributory (which, however, was not commanded or irrigated previously from that outlet) was directed to be commanded and irrigated from outlet No. R. D. 10580-T.R. Jangirana Minor. Similarly, the applications of respondents Jagar and Jugraj Singh (5 & 6) were also allowed, by which the bulk of their uncommanded area and 11.06 acres of commanded area, was directed to be irrigated by outlet No. R. D. 10580-T.R."

The State in its written statement merely admitted the allegations in para, 2 of the petition. The only expression used in para. 2 is that the area which was in Chak outlet R. D. 150-R Lalbhai Distributory was not receiving proper irrigation from the original source. This can mean both that the irrigation was inadequate as well as there was no irrigation. It cannot exclusively mean that the entire area of the Chak was receiving inadequate irrigation. This would be clear from the categorical stand taken by the appellants in their return which has already been set out above. They made it abundantly clear in their return that some area of the Chak was not receiving any irrigation. at all while the other was receiving some irrigation, This stand of the appellants finds support from annexure R-1, which is translation of copy of Chakbandi outlet No. 150-R, Lalbhai Distributory, village Jandian. This clearly discloses that 67.78 acres was uncommanded area and only 11.06 acres was commanded area. What we understand from "commanded area" is that it receives water from a canal or an outlet etc. Therefore, "uncommanded area" would actually be an area which is receiving no such supply of water.

In this connection, reference may be made to Section 3(11) of the Act which defines "culturable commanded area" in the following terms:

" "Culturable commanded area" means that portion of the culturable irrigated area which is commanded by flow or lift channel, outlet or State tube-well."

This brings us to the actual controversy in the appeal as to whether the appellants' application u/s 20 of the Act was maintainable or they had to obtain relief u/s 30-A of the Act. Section 20 and Section 30-A of the Act are in the following terms.

"20. When ever 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 water course 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."

"30-A(1) Notwithstanding anything contained to the contrary in this Act and subject to the rules prescribed by the State Government in this behalf, the Divisional Canal Officer may, on his own motion or on the application of a shareholder, prepare a draft scheme to provide for all or any of the matters, namely:--

- (a) the construction, alteration, extension and alignment of any watercourse or re-alignment of any existing watercourse;
- (b) reallocation of areas served by one water course to another;
- (c) the lining of any watercourse;
- (cc) the occupation of land for the deposit of soil from watercourse clearances;
- (d) any other matter which is necessary for the proper maintenance and distribution of supply of water from a watercourse.

(2) Every scheme prepared under sub-section (1) shall, amongst other matters set out the estimated cost thereof, the alignment of the proposed water course or realignment of the existing watercourse, as the case may be, the site of the outlet, the particulars of the 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."

A plain reading of these provisions will show that where a landowner wants irrigation for his land for the first time, he has to make an application u/s 20. u/s 30-A, an application will only lie if the conditions prescribed in any of the clauses (a) to (d) are fulfilled. The learned Single Judge applied clause (b) under the erroneous impression that the entire area of the appellants was commanded area, or, in other words, was irrigated from R. D. 150-R Lalbhai Distributory. This assumption is erroneous. Only part of the area was irrigated. Thus, the position that emerges is this: The application of the appellants was fully justified u/s 20 of the Act so far as 67.78 acres is concerned, but it is not justified so far as 11.06 acres is concerned.

4. For the reasons recorded above, we affirm the decision of the learned Single Judge so far as 11.06 acres is concerned and reverse his decision so far as 67.78

acres is concerned. The appeal with regard to this area i.e. 67.78 acres is allowed. In view of the divided success there will be no order as to costs.

5. appeal partly allowed.