(1982) 09 P&H CK 0028

In the Punjab And Haryana At Chandigarh

Case No : R.O.R. Nos. 488 to 490 of 1977-78

Punjab State APPELLANT

Vs

Baldev Singh RESPONDENT

Date of Decision : 01-09-1982

Acts Referred:

Citation : (1983) PLJ 496 : (1985) RRR 369

Hon'ble Judges : K.S.Narang, F.C.

Advocate : B.S. Gullani, Advocate., Advocates for appearing Parties

Judgement

K.S. Narang, F.C.

1. These are three revision petitions filed by the State of Punjab under Sections 35 of the Northern India Canal and Drainage Act against the order dated 17.10.1977 of the Commissioner, Ferozepur Division, in cases involving cuts made in the canal. As the facts and legal issues involved in this case are common to all the three petitions, a single order a copy of which will be placed on each of the files, will dispose of all the three cases.

2. Briefly, the facts of the case are that SubDivisional Officer Canal, Teona Sub Division, submitted these cases to the Collector for imposition of penalty under Section 35 of the Northern India Canal and Drainage Act, 1873 against Santa Singh, Hardit Singh and Kaur Singh. A case was made out by the Sub Divisional Officer, (Canal) that the cut was effected at R.D. No. 117445/R of Kot Bhai Distributary on different dated during 1972 which resulted in the fields of the respondent being irrigated in an unauthorised manner. After hearing the parties, the Collector vide his order dated 22.9.1976 imposed a special charge to the extent of ten times of the occupiers rates as worked out by the Department in Naqsha Tawan in addition to ordinary occupiers rates. Against this order, Baldev Singh filed separate appeals before the Commissioner, Ferozepur, who accepted the appeals and set aside the order passed by the Collector vide his single order dates 17.10.1977. It is against this order that the State Government have now come up in revision before me urging mainly that order of the Commissioner is

erroneous and not sustainable in law. It has also been urged that the Commissioner had grossly erred in holding that the special charges which were to be recovered from Santa Singh, the deceased father of the respondent, cannot be recovered from his sons, the charges being in the nature of penalty which was leviable only on the person actually guilty of the offence default.

3. I have heard the learned counsel for the State and have also gone into the detailed reasoning advanced by the Commissioner in support of his conclusion. The Commissioner analysed and discussed the provisions of section 33, section 34 and section 35, but in a general way, concluded without any basis that action taken against the respondent was a penal action decided against the father of the respondent. To quote him :

"Since, the word ''penalty'' has been used in section 35, the said special charges are in the nature of penalty and, as such, could be levied on Santa Singh alone and not on his successorininterest. I, therefore, find that there is merit in the contention raised by the counsel for the appellants. The appeals are accordingly accepted and the impugned order is set aside."

4. The conclusion of the Commissioner is based on an inference that special charges are in the nature of penalty consciously levied for a default or offence. He seems to have clearly overlooked the fact that section 35 of the Act itself very clearly distinguishes special charges are not a penalty imposed as such. This is clear from the wording of Section 35 reproduced below :

"Section 35. Charges recoverable in addition to penalties(1) All charges for the unauthorised use or waste of water may be recovered in addition to any penalties incurred on account of such use or waste. (2) All questions including questions pending for disposal on the commencement of the Northern India Canal and Drainage (Punjab Amendment) Act, 1965, under Section 33 or Section 34 shall be decided by the Collector, (3) An appeal shall lie to the Commissioner against the decision of the Collector under subsection (2) within a period of thirty days from the date of such decision. (4) the Financial Commissioner may suo motu at any time or on an application made in this behalf by an aggrieved person within a period of thirty days from the date of the order, revise an order passed in appeal under subsection (3)."

Section 33 clearly stipulates liability when persons using water unauthorisedly cannot be identified. It lays down that if water supplied through a canal is used in unauthorised manner, and if the persons by whose act of neglect such use has occurred cannot be identified, the liability for unauthorised use of water will be on persons on whose lands such water has flowed, if such land has derived benefit therefrom. In the alternatives, if such persons cannot be identified or if such land has not derived benefit therefrom, all the persons chargeable in respect of the water supplied through the canal shall be liable or jointly liable to the charge made for such use. It would appear to be the scheme of the Act if the person(s) making unauthorised use of water can be identified they shall be liable to penalty. Section 35, however, makes clear that the charges recoverable for the use of water would be in addition to the penalties. A clear distinction has, therefore, been made between the penalties levied under the Act and charges recovered on account of unauthorised use of water where persons using such water cannot be identified. It is obvious from the facts of this case that the Sub Divisional Officer (Canal) returned clear finding that the fields of the respondent were irrigated in an unauthorised manner. Special charges are levied for the benefit which accrued to the land as such and not a particular person. The fact that in the course of the proceedings the ownership of the land changed, should not, therefore, cause any prejudice to the charges recoverable on account of unauthorised use of water on the land in question. As successorininterest of Santa Singh, the respondent Baldev Singh and also other owners of the land benefitting from unauthorised irrigation are equally liable to the special charges which have become leviable on the land.

5. In the light of the above discussion, I would hold that the conclusion of the Commissioner is based on an erroneous interpretation of law and cannot, therefore, be sustained. In accepting the revisions, I would strike down the orders of the Commissioner dated 17.10.1977 and uphold the orders of the Collector, Irrigation dated 22.9.1976.

6. Since, the orders were reserved, these may be communicated to the parties.