

**(1981) 09 P&H CK 0014**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ No. 1740 of 1971**

Ram Singh and Others

APPELLANT

Vs

The State of Punjab and Another

RESPONDENT

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**Date of Decision :** 28-09-1981

**Acts Referred:**

Northern India Canal and Drainage Act, 1873 — Section 3(2)

**Citation :** (1981) 09 P&H CK 0014

**Hon'ble Judges :** M.R. Sharma, J

**Bench :** Single Bench

**Advocate :** H.L. Sarin, Mr. M.L. Sarin with him, for the Appellant; S.L. Ahluwalia for A.G. Punjab, for the Respondent

**Final Decision :** Allowed

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## Judgement

M.R. Sharma, J.—This judgment will dispose of C.W.Ps. Nos. 1740 and 3538 of 1971.

2. The dispute relates to the right of the petitioners to irrigate their lands from choi which allegedly belongs to them and through which the rain-water coming from the Shivalik hills passes. The petitioners filed a civil suit entitled Ram Singh and others v. The State of Punjab in the Court of the learned Senior Sub-Judge, Hoshiarpur, which was decreed on 30th August, 1957. Therein a declaration had been granted in favour of the petitioners that the disputed choi was located on the lands belonging to them, that it was in their possession and that the respondent State was not entitled to collect any water rates from them.

3. In respect of the aforementioned declaration granted by the learned Senior Sub Judge, the State Government after the issuance of certain notifications under the Northern India Canal and Drainage Act, 1873, claimed that it was entitled to levy abiana on the petitioners. The petitioner then filed C.W.P. No. 2021 of 1963 which was allowed by a learned Judge of this Court on 22nd August, 1967. For the second time, the claim of the petitioners to irrigate their

lands with the water flowing in this choi without payment of abiana was upheld.

4. The State Government, however, issued some further notifications and imposed an abiana on the petitioners because of which they have been compelled to file these two petitions.

5. In paragraph No. 17 of the writ petition it has been specifically averred that the choi in question has not been acquired by the State Government. In the corresponding paragraph of the written statement, it has been mentioned-

There is no question of acquiring the choi as water supplied from a canal or drian is to be utilized and carried by the land owners through a watercourse, which is the property of the share-holders and not of the State u/s 3(2) of the Northern India Canal and Drainage Act VIII of 1873. The water cess has been levied according to law.

6. The position taken in the aforementioned paragraph of the written statement filed on behalf of the State Government is wholly untenable. Once a civil court has given a declaration that the choi in dispute belongs to the land-owners and they have a right to irrigate their lands with the water flowing through this choi without payment of abiana, the State Government cannot without acquiring these rights impose abiana on the petitioners. I, therefore, allow these petitions and restrain the respondents from interfering with the rights of the petitioners to irrigate their lands from this choi without payment of any abiana. This order shall, however, not stand in the way of the State Government to acquire the rights of the petitioners and then to impose abiana on them or on some other persons who are supplying land to this choi. The petitions are allowed with costs. Counsel fee Rs. 100/- in each case.