
(1971) 03 P&H CK 0030
In the Punjab And Haryana At Chandigarh
Case No : C.W. No. 677 of 1966

Ram Singh, etc.

APPELLANT

Vs

Bishan Sarup Bansal, Superintending Canal Officer etc.

RESPONDENT

Date of Decision : 17-03-1971

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Northern India Canal and Drainage Act, 1873 — Section 16, 21, 22, 28, 30

Citation : (1973) 2 ILR (P&H) 169

Hon'ble Judges : R.S. Narula, J;P.C. Jain, J

Bench : Division Bench

Advocate : Sarjit Singh, for the Appellant; H.S. Toor, for A.G. for Respondents 1-5 and 6 and B.S. Shant, for the Respondent

Judgement

P.C. Jain, J.—Ram Singh and Balbir Singh have filed this petition under Articles 226 and 227 of the Constitution of India, for the issuance of an appropriate writ, order or direction, quashing the order of the Superintending Canal Officer, dated 1st April, 1966 (copy Annexure "D" to the petition).

2. The Petitioners are right holders of village Nahran, Tehsil Mansa, District Bhatinda, so also Respondents 6 and 7. It is stated in the petition that there was a watercourse existing in the fields of Kishan Singh Respondent on the common wot of Killa Nos. 4, 5, 6 and 7, in rectangle No. 89, shown as "CB" in the site plan attached to the petition as Annexure "A". Teja Singh Respondent was irrigating his fields through watercourse "CB". The Sub-Divisional Officer, during the Warabandi, fixed the turn of water of the Petitioners first and Kishan Singh and Teja Singh Respondents were to take their turn of water after them from watercourse "CB".

3. It is further stated that Teja Singh and Kishan Singh Respondents somehow or the other took in their heads to demolish the Khal "CB", and tried to get a new Khal "AB", "shown in the plan Annexure "A", constructed from the fields of the Petitioners. Teja Singh and Kishan Singh, Respondents 6 and 7, managed to get

an order from the Sub-Divisional Officer to the effect that Khal "AB" be got excavated with the help of police force. Feeling aggrieved from the action of the Sub-Divisional Officer, the Petitioners filed an appeal on which the Divisional Canal Officer, Respondent No. 2, issued a stay order on 11th March, 1965, and finally accepted the application of the Petitioners and ordered that the Warabandi on watercourse "CB" as framed by the Ziladar be prepared (copy Annexure "C" to the petition).

4. Dissatisfied from the order of the Divisional Canal Officer, Teja Singh Respondent filed a revision u/s 68 of the Northern India Canal and Drainage Act (hereinafter referred to as the Act) which was allowed by the Superintending Canal Officer and the impugned order was passed on 1st April, 1966 (copy Annexure "D" to the petition). It is the legality and correctness of that order which has been challenged by the Petitioners by way of this petition.

5. Separate returns in the shape of affidavits have been filed on behalf of the Superintending Canal Officer and Teja Singh Respondent No. 7 in which the material allegations made in the petition have been controverted.

6. Certain allegations of mala fides have been made in the petition but those are not pressed by the learned Counsel for the Petitioners. The only ground urged before me by the learned Counsel for the Petitioners is that the impugned order could not be passed by the Superintending Canal Officer u/s 68 of the Act. According to the learned Counsel, construction of a new watercourse or realignment of a watercourse which was already in existence, could be done only by following the procedure as laid down in Sections 30-A to 30-D of the Act and not u/s 68 of the Act. On the other hand it is contended by the learned Deputy Advocate General that the realignment or construction of a watercourse could be ordered u/s 68 of the Act. In support of his contention, reliance is placed on an unreported decision of this Court in Bakshi Singh v. Chief Engineer Irrigation Punjab and Ors. C.R. No. 91 of 1965, decided on 14th May, 1965, wherein Falshaw C.J., observed that Section 68; Sub-section (2) does refer to disputes regarding construction of watercourses. However, in an unreported decision in Inder Singh and Ors. v. The State of Punjab and Ors. I have taken a view that Section 68 applies only to existing watercourses and a new watercourse cannot be ordered to be constructed by exercising powers u/s 68 of the Act. I have also held that for realignment or construction of a water course, the procedure as laid down under Sections 30-A to 30-F has to be followed. Mr. Rattan Singh, learned Counsel submits that only a casual reference has been made to Sub-section (2) of Section 68 and no definite finding has been given that under Sub-section (2) of Section 68, the appropriate authority has jurisdiction to order construction of watercourse. However, I am not inclined to accept this contention as a view is expressed by the learned Chief Justice that Section 68(2) does refer to disputes regarding construction of watercourses. In this situation, the proper and appropriate course would be to get an authoritative decision on this point, that being whether construction of new watercourses or realignment of a watercourse

can be ordered u/s 68 of the Act or not. Accordingly I direct that the papers of this case be laid before my Lord, the Chief Justice, for appropriate orders.

ORDER OF THE DIVISION BENCH

7. Detailed facts have been given in the referring order dated 17th December, 1969, which should be read as a part of this judgment. The question that was referred by me, is in the following terms:

Whether construction, of new watercourses or realignment of a watercourse can be ordered u/s 68 of the Northern India Canal and Drainage Act (Act No. VIII of 1873) (hereinafter referred to as the Act) or not.

This matter had come up for hearing earlier on November 3, 1970, when on a question of fact it was submitted by Mr. Toor, learned Counsel for the State, that A-B was in fact the sanctioned watercourse and that by the impugned action no new watercourse at points A-B had been ordered to be constructed. This remained only a submission without substantiation as Mr. Toor was not in possession of the original records of the department. Accordingly at the request of the learned Counsel the case was adjourned to enable him to obtain the records. The case was again put up for hearing before us on 22nd January, 1971. Mr. Toor again reiterated his contention that in fact A-B was the sanctioned watercourse and in support of his contention, sought our permission to produce the original records which were not available with him. In substance, the contention of the learned Counsel was that in case it was accepted and found as a matter of fact that A-B was the sanctioned, watercourse, then it was not at all necessary to answer the question; but we did not think it proper to adopt that course and decided to determine the reference. As the learned Counsel for the parties wanted time to argue the case, the same was adjourned and finally :came, up for hearing before us on 19th February, 1971.

8. Mr. Surjit Singh, learned Counsel for the Petitioners, argued the. case with ability and submitted that u/s 68(2) of the Act, construction of a new watercourse or realignment could not be ordered, that under this section no new right could be created, that this sub-section envisaged determination of mutual rights and liabilities in respect of use, construction or maintenance of existing watercourses, that the word "construction" existing in the sub-section could not be interpreted to mean that the appropriate authority could order construction of a new watercourse and that construction of a new watercourse or realignment could be ordered only after following the procedure laid down under Sections 30-A to 30-D of the Act. In support of his contentions, the learned Counsel made reference to the various sections in the Act as well as to several amendments in those sections and also to the aims and objects necessitating the amendments.

9. After giving our thoughtful consideration to the entire matter we find that there is considerable force in the contentions of the learned Counsel for the Petitioners.

10. The Act is of the year 1873. There have been various amendments in it. The original Section 68 is in the following terms:

68. Whenever a difference arises between two or more persons in regard to their mutual rights or liabilities in respect of the use, construction or maintenance of a watercourse, any such person may apply in writing to the Divisional Canal Officer stating the matter in dispute. Such officer shall thereupon give notice to the other persons interested that, on a day to be named in such notice, he will proceed to inquire into the said matter. And after such inquiry, he shall pass his order thereon, unless he transfers (as he is hereby empowered to do) the matter to the Collector, who shall thereupon inquire into and pass his order on the said matter.

Such order shall be final as to the use or distribution of water for any crop sown or growing at the time when such order is made, and shall thereafter remain in force until set aside by the decree of a Civil Court.

This section appears in Chapter IX, the heading of which is "OF JURISDICTION". This section provides procedure for the settlement of differences as to mutual rights and liabilities of persons in respect of the use, construction or maintenance of a watercourse. It is also provided in this section that the order made by the Divisional Canal Officer shall be final so far as it relates to the use or distribution of water until such order is set aside by the decree of a Civil Court. u/s 67, Civil Courts are given jurisdiction to decide claims against the State Government in respect of anything done under this Act except where the jurisdiction of the Civil Courts is expressly barred. It is also provided that no such Court shall, in any case, pass an order as to the supply of canal water to any crop sown or growing at the time of such order. At this stage reference may be made to Sections 16, 21, 22 and 30 as they existed before they were deleted in the year 1965 by the Northern India Canal and Drainage (Punjab Amendment) Act, 1965, Punjab Act No. 23 of 1965. These sections read as under:

16. Any persons desiring to use the water of any canal may apply in writing to the Divisional or Sub-Divisional Canal-Officer of the division or sub-division of the canal from which the watercourse is to be supplied, requesting such officer to construct or improve a watercourse at the cost of the Applicants.

The application shall state the works to be undertaken, their approximate estimated cost, or the amount which the Applicants are willing to pay for the same, or whether they engage to pay the actual cost as settled by the Divisional Canal-Officer, and how the payment is to be made.

When the assent of the Superintending Canal-officer is given to such application, all the Applicants shall, after the application has been duly attested before the Collector, be jointly and severally liable for the cost of such works to the extent mentioned therein.

Any amount becoming due under the terms of such application, and not paid to

the Divisional Canal-officer, or the person authorised by him to receive the same, on or before the date on which it becomes due, shall, on the demand of such officer, be recoverable by the collector as if it were an arrear of land-revenue.

21. Any person desiring the construction of a new watercourse may apply in writing to the Divisional Canal-officer, stating--

(1) that he has endeavoured unsuccessfully to acquire, from the owners of the land through which he desires such watercourse to pass, a right to occupy so much of the land as will be needed for such watercourse;

2. that he desires the said Canal-officer, in his behalf and at his cost, to do all things necessary for acquiring such right;

3. that he is able to defray all costs involved in acquiring such right and constructing such watercourse.

22. If the Divisional Canal-officer considers--

(1) that the construction of such watercourse is expedient, and

2. that the statements in the application are true he shall call upon the Applicant to make such deposit as the Divisional Canal-officer considers necessary to defray the cost of the preliminary proceedings, and the amount of any compensation which he considers likely to become due u/s 28;

and, upon such deposit being made, he shall cause enquiry to be made into the most suitable alignment for the said watercourse, and shall mark out the land which, in his opinion, it will be necessary to occupy for the construction thereof, and shall forthwith publish a notice in every village through which the watercourse is proposed to be taken, that so much of such land as belongs to such village has been so marked out, and shall send a copy of such notice to the Collector of every district in which any part of such land is situate.

30. The procedure hereinbefore provided for the occupation of land for the construction of a watercourse shall be applicable to the occupation of land for any extension or alteration of a watercourse, and for the deposit of soil from watercourse clearances.

The bare reading of these sections clearly shows that the legislature had provided a specific procedure for the construction of new watercourse or the improvement of a watercourse to be followed when an application is made in that regard.

11. In the year 1958, due to construction of canals, the legislature thought of making amendment in certain provisions of the Act with a view to achieve the desired development of irrigation and accordingly by the Northern India Canal and Drainage (Amendment) Act, 1958, Punjab Act No. 21 of 1958, after Section 30, Sections 30-A to 30-G were added. The object of the amendment, as it appears in the Punjab Gazette Extraordinary, dated July 10, 1958, is in the

following terms:

It has been noticed that when a new network of canals is constructed, it takes many years to achieve the desired development of irrigation. One of the main factors responsible for this is the inability of zamindars to agree amongst themselves on a common alignment of the watercourse and consequent delay in their construction. Even on the old canal system the problem exists in an acute form. It has, therefore, been considered necessary to amend the Northern India Canal and Drainage Act, 1873 to overcome these difficulties, and to provide for the lining of watercourse as also for the construction of field drains, regarding which no provision exist at present in the aforesaid Act.

12. As there was duplication of certain provisions the legislature decided to omit Section 16, 21, 22 and 30 and this was done by introducing the Northern India Canal and Drainage (Punjab Amendment) Act No. 23 of 1965.

13. In the year 1963, by the Northern India Canal and Drainage (Punjab Amendment) Act, 1963, Punjab Act No. 21 of 1963, the legislature thought of amending Section 68 of the Act. The object for doing so, as it appears on page 44, Part IX of Lahore Law Times of the year 1963, is in the following terms:

The powers in regard to use and distribution of water and settlement of differences as to mutual rights and liabilities of persons interested in watercourses u/s 68 of the Act are proposed to be vested in the Deputy Collector instead of the Divisional Canal Officer. He is also proposed to be empowered to initiate proceedings under this section suo motu. In order to eliminate delays caused in the determination of these disputes by resort to civil litigation, the jurisdiction of Civil Courts in these matters is proposed to be abolished. Sufficient safeguard against arbitrary decisions is however, proposed to be provided by provision of appeal to the Divisional Canal Officer and revision by the Chief Engineer.

The amended Section 68, reads thus--

68. Powers of Deputy Collector to order use or distribution of water and settlement of differences as to mutual rights and liabilities of persons interested in watercourse:

(1) The Deputy Collector may, if in his opinion it is necessary so to do, pass an order as to the use or distribution of water from a watercourse amongst persons in arty estate or a group of estates or in any holding or group of holdings in such estate or estates:

Provided that no such order shall be passed by the Deputy Collector without making an enquiry into the matter and without giving a notice to all the persons interested that, on a day to be named in such notice, he shall proceed to inquire into the said matter.

2. Whenever a difference arises between two or more persons in regard to their

mutual rights or liabilities in respect of the use, construction or maintenance of a watercourse, any such person may apply in writing to the Deputy Collector stating the matter in dispute.

3. On receipt of an application under Sub-section (2), the Deputy Collector shall give notice to the other persons interested that, on a day to be named in such notice, he shall proceed to inquire into the said matter, and after the inquiry he shall pass an order thereon.

4. An order passed under Sub-section (1) or Sub-section (3) as to the use or distribution of water for any crop sown or growing at the time when such order is made or with regard to the construction or maintenance of a watercourse shall, subject to an order passed on appeal or revision under Sub-sections (5) and (6), be final.

5. An appeal shall lie to the Divisional Canal Officer against an order referred to in Sub-section (4) within a period of thirty days from the date of such order.

6. The Superintending Canal Officer, within whose jurisdiction the watercourse is situated, may, suo motu or on application made in this behalf by an aggrieved person, revise an order passed in appeal by a Divisional Canal Officer under Sub-section (5):

Provided that no such application shall lie unless it is made within a period of thirty days from the date of such order.

7. No order passed under this section shall be liable to be called in question in any Civil Court.

14. So far as the question before us is concerned the amended section does not make any difference as Sub-section (2) is couched in language similar to the one appearing in the unamended Section 68.

15. From the history of the relevant provisions of the statute that has been brought out above, it is clear that the legislature did not intend to use the word "constitution" in Sub-section (2) with a view to empower the Deputy Collector to permit construction of a new watercourse as for that purpose specific procedure had been provided in Sections 30-A to 30-G of the Act. Deputy Collector has been defined in the Act to mean "an officer appointed as such by the State Government to assist the Divisional Canal Officer in revenue matters arising in a division of a canal." It is inconceivable that the legislature would have authorised the Divisional Canal Officer to allow construction of a new watercourse only after following a detailed procedure while a Deputy Collector below the rank of the Divisional Canal Officer would have been given this power without following any such procedure. In the light of the various amendments that have been off and on made by the legislature in the present Act, a simple reading of Sub-section (2) of Section 68 of the Act leaves no manner of doubt that the word "construction" of a watercourse here relates to a watercourse which has already been provided in accordance with law after following the statutory provisions. In

the aims and objects reproduced above which necessitated the introduction of Punjab Act No. 21 of 1958, it is clearly stated that the amendments were being brought in, in order to provide for the aligning of watercourse as also for the construction of field drains regarding which no provision existed in the Act. Section 68 of the Act was in existence at the time of amendment and the word "construction" had also been used in that section, if under this section construction of a new watercourse could also have been allowed then in the aims and objects referred to above it could not have been stated that for the aligning of watercourse as also for the construction of field drains no provision existed in the Act.

16. At this stage I may advert to the decision of Chief Justice D. Falshaw in *Bakhshi Singh v. Chief Engineer Irrigation Works Punjab and Ors.* CR. No. 91 of 1965, which has been noticed in my referring order. In that case the Deputy Collector had sanctioned a warabandi and also the extension of a watercourse u/s 68 of the Act. That order was modified on appeal by the Divisional Canal Officer, but was restored in revision by the Chief Engineer.

The learned Chief Justice while upholding that order observed as follows:

It is contended that the Chief Engineer had no jurisdiction to pass this order on the ground that the procedure regarding alteration or alignment of watercourses was laid down in Section 30-A which did not by Section 68 confer any power of revision on the Chief Engineer. Section 68, however, in Sub-section (2) does refer to disputes regarding construction of watercourses and in my opinion it would not be proper to interfere and I accordingly dismiss the petition but leave the parties to bear their own costs.

From the relevant portion of the judgment reproduced above, it is clear that the learned Chief Justice considering the circumstances of that case, did not find it proper to interfere with the order of the appropriate authority. These observations are in the nature of obiter and cannot be read to mean that under Sub-section (2) of Section 68, construction of new watercourses can be ordered.

17. For the reasons recorded above I have no hesitation in holding that under Sub-section (2) of Section 68, construction of a new watercourse or realignment of a watercourse cannot be ordered. The reference is answered accordingly.