

(2002) 01 P&H CK 0048
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 509 of 2000

Satbir Singh and Others

APPELLANT

Vs

The Deputy Collector, Hisar Water Services Division, Hisar
and Others

RESPONDENT

Date of Decision : 08-01-2002

Acts Referred:

Haryana Canal and Drainage Act, 1974 — Section 15, 17, 18, 55

Citation : (2002) 3 RCR(Civil) 206

Hon'ble Judges : N.K. Sodhi, J; Jasbir Singh, J

Bench : Division Bench

Advocate : Ashok Verma, for the Appellant; Shailender Jain, for the Respondent

Final Decision : Allowed

Judgement

Jasbir Singh, J.—Petitioners have challenged the order dated 6.4.1999 (Annexure P-3) passed by the Superintending Canal Officer, Bhakra Water Services Circle No. 1, Hissar (respondent No. 3) vide which he has set aside the order dated 4.12.1998 passed by the Divisional Canal Officer and restored the order dated 7.10.1998 (Annexure P-1) passed by the Deputy Collector, Hissar.

2. The facts leading to the filing of this writ petition are that respondent No.5 Beli Ram filed one application before respondent No. 1 u/s 55 of the Haryana Canal & Drainage Act, 1974 (hereinafter referred to as "the Haryana Act") for amendment of his turn of water/warabandi from watercourse AB to watercourse CDE as shown in the site plan (Annexure R4/1). The application was opposed by the petitioners on the ground that the land of the respondent Bell Ram is being irrigated from a different watercourse and as such his turn of water cannot be fixed at the watercourse shown as CDE in the site plan. Respondent No. 1, after hearing the parties accepted the demand of respondent No.5 on the ground that the watercourse CDE is a lined watercourse and fixing of turn of water/warabandi of respondent No.5 at that watercourse will be in the interest of justice. The decision was challenged by the petitioners before the Divisional Canal Officer—

respondent No.2, who reversed the order dated 7.10.1998 passed by respondent No.1, vide his order dated 4.12.1998. Private respondents No.4 and 5 feeling aggrieved by the order Annexure P-2, filed a revision petition before respondent No.3, who set aside the order passed by respondent No.2 and restored the order passed by respondent No.1 vide his order dated 6.4.1999. Hence, the present writ petition has been filed.

3. Shri Ashok Verma learned counsel appearing on behalf of the petitioners contended that while exercising the powers u/s 55 of the Haryana Act, respondent No.1 has no jurisdiction to shift the land of a co-sharer from one watercourse to another watercourse which has been done in the present case and as such the order having been passed without any jurisdiction deserves to be set aside. He further contended that respondent No.1 and 3 have failed to appreciate the legal controversy involved. The powers which are to be exercised by the Divisional Canal Officer under Sections 17 and 18 of the Haryana Act have been exercised by respondent No.1 without adopting the proper procedure and the area has been shifted from one watercourse to another watercourse without any jurisdiction.

4. Mr. Shailnder Jain, Advocate appearing on behalf of the private respondents contended that the turn of water/warabandi as sanctioned by respondent No. 1 is running at the spot for the last more than 3 years and furthermore, by shifting the turn of water of the private respondents at the watercourse CDE no prejudice has been caused to the petitioners and he prayed that the writ petition be dismissed.

5. After hearing the counsel for the parties, this court is of the opinion that respondents No.1 and 3 have shifted the area of the private respondents from watercourse AB to watercourse CDE under the garb of fixing of turn of water/warabandi. Such a power is not available to them under the provisions of Section 55 of the Haryana Act. The area of a Co-sharer can be shifted from one watercourse to another watercourse by the Divisional Canal Officer while exercising the powers under Sections 17 and 18 of the Haryana Act. The provisions of Section 68 of the Northern India Canal and Drainage Act, 1873 (hereinafter referred to as "the Act") which are pari materia to the provisions of Section 55 of the Haryana Act, came up for consideration before this Court in *Inder Singh and Ors. v. The State of Punjab and Ors.* 1970 P.L.J. 36 and *Ram Singh and Anr. v. Sh. Bishan Sarup Bansal, Superintending Canal Officer, 2nd Bhakra Main Line Circle, Hissar and Ors.* 1971 P.L.J. 593 and this Court opined that the Deputy Collector, while exercising the powers u/s 68 of the Act has no jurisdiction to change the alignment of the watercourse. This can only be done by the Divisional Canal Officer, while exercising the powers u/s 30-A to 30-G of that Act.

6. The present case is squarely covered by the above mentioned judgments of this Court. The contention of Sh. Shailender Jain that vide the impugned orders no prejudice has been caused to the petitioners is of no substance. Since, both

the orders are without jurisdiction, the question whether any prejudice has been caused to the petitioners or not, is immaterial.

7. In view of the reasoning given above, the writ petition is allowed. Orders Annexures P-1 and P-3 are quashed. No order as to costs.

Sd/- N.K. Sodhi, J.