

(1996) 09 P&H CK 0142
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6904 of 1989

Shavinder Singh and Others

APPELLANT

Vs

The Superintending Canal Officer and Others

RESPONDENT

Date of Decision : 10-09-1996

Acts Referred:

Northern India Canal and Drainage Act, 1873 — Section 30FF(2)

Citation : (1997) 115 PLR 121 : (1997) 2 RCR(Civil) 168

Hon'ble Judges : N.K. Kapoor, J

Bench : Single Bench

Advocate : Ravinder Chopra and R.S. Chauhan, for the Appellant; Nirmaljit Kaur, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Kapoor, J.—Petitioners seek issuance of a writ of certiorari for setting aside the order passed by the Superintending Canal Officer dated 30.3.1989 affirming the order of the Divisional Canal Officer dated 28.1.1988 or for issuance of any other appropriate writ, order or direction.

2. Respondent Nos. 2 to 8 filed an application before the Divisional Canal Officer for transferring their area measuring 87 acres from outlet RD No. 12611/L Rattewala to outlet No. 15000/L. As per application, it was stated that outlet No. 12611/L is at a low lying place and so the applicants are not getting proper irrigation for their land. This was contested by the present petitioners stating that the level of outlet No. 12611/L is at least 5 feet higher than the level of outlet No. 15000/TL. Divisional Canal Officer on considering the matter found substance in the plea of the respondents and so ordered for transfer of the area of the respondents vide order dated 28.1.1988. The appeal preferred against this order of the Divisional Canal Officer was dismissed by the Superintending Canal Officer vide order dated 30.3.1989.

3. The petitioners have challenged the aforesaid two orders on the grounds,

namely, (i) that the order of respondent No. 1 is cryptic and non speaking; (ii) that outlet No. 12611/L is at least 5 feet higher than the level of outlet No. 15000/L and so it is wrong to suggest that the respondents are not getting proper irrigation for their area from outlet No. 12611/L; (iii) that the inclusion of this area in outlet No. 15000/TL is likely to reduce the turn of water of the petitioners; (iv) that the irrigation of outlet No. 12611/L is about 100% whereas irrigation of outlet No. 15000/TL is only 60% and (v) that the order has been passed on extraneous ground as Sukhmander Singh's, Divisional Canal Officer, relations have purchased the land which is sought to be transferred to outlet No. 15000/TL. Lastly, no notice has been issued to the petitioners as per Act and Rules and so the entire proceedings are vitiated; that no proper procedure as prescribed u/s 30-A of the Act has been complied with; that no enquiry has been conducted by the Divisional Canal Officer u/s 30FF(2) of the Act; that the enquiry was not conducted from Zildar and other junior officers and so the orders passed upon such an enquiry are legally unsustainable.

4. Separate written statements have been filed by respondent No. 1 and respondents No. 2 to 5, 7 and 8. All the material averments made in the petition have been specifically denied/controverted. The official respondent has justified the passing of the order stating that both the impugned order are in conformity with the provisions of the Act and the Rule. It is after spot inspection and keeping in view the interest of the irrigation that the petitioner's case was found meritorious. Similarly, private respondents too have controverted all the material averments made by the petitioner. According to the contesting respondents, in fact, each and every objections now being highlighted has been specifically examined by the authorities and finding the same to be devoid of any substance passed the order transferring the area of the answering respondents as prayed for.

5. The case, indeed, has chequered history. First time the case of the contesting respondents was examined by the Divisional Canal Officer vide order dated 27.4.1982. On appeal, the Superintending Canal Officer vide order dated 15.12.1982 remanded the case of the Divisional Canal Officer to complete certain formalities and rehear the case. Once again, Divisional Canal Officer after hearing the parties decided in favour of respondents No. 2 to 8 vide order dated 30.11.1988. Again the Superintending Canal Officer remanded the case to the Divisional Canal Officer. It is in these circumstances that for the third time the case came up to the Divisional Canal Officer who after hearing the parties found substance in the case of respondent No. 2 to 8 and so ordered the transfer of the area from outlet No. 12611/L to 15000/TL. Divisional Canal Officer has observed that the land of the respondents being at the tail is, in fact, not receiving proper irrigation. The respondents, however, are able to irrigate their fields through tubewells. It is keeping in view the interest to better irrigation that the area was ordered to be transferred. Similarly, Superintending Canal Officer found no substance in any of the contentions raised by the appellate justifying notification/reversal of the order of the Divisional Canal Officer. So the order of the Divisional

Canal Officer was affirmed by the Superintending Canal Officer. Various objections highlighted in the petition, in fact, have been considered by the authorities while passing the impugned order, namely, publication of scheme; inviting of objections of all concerned and examining the case on its merit after inspecting the spot. As noticed by the authorities below, the area was got examined by Zildar and other functionaries and keeping in view their report, Divisional Canal Officer found the case of the private respondents to be meritorious. Whether spot inspection by the functionary of a canal department at the behest of Divisional Canal Officer vitiates the order in any manner was subject matter of adjudication in case reported as *Karam Singh v. Superintending Canal Officer, Sirhind Canal Circle, Ludhiana* and Ors.(1988) 94 P.L.R. 254, wherein it was held as under :-

"The notice to the person responsible for the demolition has to be issued after a thorough enquiry, and after giving a definite finding. If he chooses to call for a report to facilitate a detailed enquiry, that cannot be said to vitiate the Order. Calling for such a report is a part of the enquiry. However, it does not flow from the statute that the Divisional Canal Officer himself could not call for a report from his subordinates. He has to satisfy himself, on the basis of some material, and there existed a watercourse which has been demolished or enlarged or obstructed to. Even the Courts whose procedure is regulated by CPC have been getting the enquiries made by Local Commissioners sought to subject to limitations prescribed by law, and based their judgments on the report of the Local Commissioner, After the enquiry if the Divisional Canal Officer is prima facie satisfied that the water-course has been demolished, he issues a notice to the concerned party or parties, and after hearing him/them passes such an order as envisaged by Sub-section (2) of Section 30-FF of the Act. Of course, he can not conclude the case with the report of the Sub Divisional Canal Officer but has to give an opportunity to the parties to put forward their cases, hear them and decide the matter on the basis of the evidence. Sub section (4) of Section 30-FF of the Act provides a right of appeal to the party who is aggrieved by an order passed by the Divisional Canal Officer."

6. It is worth noticing that before the Divisional Canal Officer, the objectors even have expressed their willingness to the transferring of the area to outlet No. 15000/TL in case Ram Singh etc. agreed to give 5 Killas to them. Such a plea, indeed, bring out the hallowness of the plea set up by the petitioners. In any case, both the authorities have examined the case on merit i.e. the interest of better irrigation. The impugned orders having been passed in conformity with the Act and the Rules call for no interference.

7. Resultantly, writ petition being devoid of merit is dismissed.