
(2003) 01 P&H CK 0255
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1353 of 1983

Shri Naranjan Singh and Others

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

Date of Decision : 15-01-2003

Acts Referred:

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

Citation : AIR 2003 P&H 183

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

Bench : Single Bench

Advocate : G.S. Bhandari, D.A.G, for the Appellant; H.S. Mann, for the Respondent

Final Decision : Allowed

Judgement

N.K. Sodhi, J.—Challenge in this writ petition is to the order dated 15-12-1982 passed by the Superintending Canal Officer, UBDC Circle, Amritsar whereby the order of the Divisional Canal Officer dated 14-9-1982 allowing the application of the petitioners for restoration of the demolished watercourse had been set aside.

2. Petitioners and respondents 3 and 4 are the proprietors of Village Bakhatpur Tehsil and District Gurdaspur. Petitioners filed an application before the Divisional Canal Officer u/s 30-FF of the Northern India Canal and Drainage Act, 1873 (for short the Act) complaining that respondents 3 and 4 had demolished the watercourse AB shown in the site plan through which they were irrigating their lands for the last several years and the prayer made was that the said watercourse be restored. On receipt of this application, the Divisional Canal Officer directed the Zildar to submit a report in the matter. The Zildar recorded the statements of the shareholders and got the plan prepared and after holding an inquiry, he reported that the watercourse AB which was existing since long had been demolished by respondents 3 and 4 and that the same be ordered to be restored. On receipt of this report, the Divisional Canal Officer issued notices to all the concerned shareholders of the village including respondents 3 and 4

and after recording their statements and hearing them and after making a spot inspection, came to the conclusion that the watercourse AB had been existing at the spot since ages and that the petitioners herein were irrigating their lands from outlet RD 9670 through the watercourse AB. He also found that portion AB of the watercourse ABC had been demolished by respondents 3 and 4. He accepted the application filed by the petitioners and directed respondents 3 and 4 to reconstruct the demolished watercourse at their own expense within a period of seven days from the date of the order failing which the watercourse would be got constructed at their expense. Feeling aggrieved by this order, respondents 3 and 4 filed an appeal before the Superintending Canal Officer who after hearing the concerned shareholders set aside the order of the Divisional Canal Officer holding that new outlet at RD 9670 had been sanctioned by him only in March, 1982 and, therefore, the benefit of the use of watercourse AB could not be said to have been prescribed by way of easement. He, thus, allowed the appeal and dismissed the application filed by the petitioners before the Divisional Canal Officer. It is against this order that the present petition has been filed under Article 226 of the Constitution.

3. I have heard the learned Deputy Advocate General and also the learned counsel for private respondents and perused the record of the writ petition and am of the view that the writ petition deserves to succeed. When the petitioners approached the Divisional Canal Officer, the latter made an inquiry and found that the disputed watercourse AB had been demolished by respondents 3 and 4. He also found that this water-course had been in existence for the last several years. He, therefore, directed respondents 3 and 4 to reconstruct the same at their own expense. In appeal, the Superintendent Canal Officer set aside the order only on the ground that the outlet at RD 9670 from Ram Tirath Minor of Roranwali Distributory had been sanctioned by him only in March, 1982 and he, therefore, came to the conclusion that the watercourse AB could not have been prescribed by way of easement. It is clear from the file that the petitioners had earlier been irrigating their lands from outlet RD 5566-R through the same watercourse AB. They must have applied for a new outlet and the same was sanctioned by the Superintending Canal Officer in March, 1982 whereafter the petitioners started irrigating their lands from outlet at RD 9670 but through the same watercourse AB. The change of outlet from RD 5566-R to RD 9670 had nothing to do with the watercourse AB and nor is the same under challenge in this petition. He did not sanction any watercourse but only a new outlet at RD 9670 from which the petitioners started irrigating their lands through the same watercourse AB. The watercourse remained the same even after the change of the outlet. It appears that the Superintending Canal Officer has confused the opening of a new outlet with the watercourse. Even according to the site plan produced by respondents 3 and 4 with their written statement, the watercourse AB is shown to exist. The certified copy of the plan (Annexure P-5 with the writ petition) which pertains to the command area of outlet RD 5566-R as in April, 1957, shows the existence of watercourse AB. It is, thus, clear that the

watercourse AB had been in existence for the last more than two decades and that the petitioners were irrigating their lands through this watercourse. They were initially irrigating their lands from outlet RD 5566-R but later they started irrigating the lands from outlet RD 9670 but through the same watercourse AB. The finding that the watercourse AB had been demolished by respondents 3 and 4, as found by the Divisional Canal Officer, has not been reversed by the Superintending Canal Officer. In this view of the matter, the Superintending Canal Officer was not justified in setting aside the order passed by the Divisional Canal Officer who had ordered the restoration of the demolished watercourse in terms of Section 30-FF of the Act, merely because a new outlet had been sanctioned in March, 1982. The impugned order of the Superintending Canal Officer, thus, suffers from an error apparent on the face of the record warranting interference by this Court.

4. The matter can be looked into at from another angle as well. Assuming (though it is not so) that the Superintending Canal Officer had sanctioned the watercourse AB temporarily for a period of one year, the same was demolished by respondents 3 and 4 within a few months of its sanction and that is why the petitioners were before the Divisional Canal Officer in June, 1982 and the Divisional Canal Officer allowed their application by his order dated 14-9-1982. Even the appeal filed before the Superintending Canal Officer was decided in December, 1982. It means, a watercourse sanctioned for one year was demolished even before that period had expired. This could not be done and the Divisional Canal Officer was right in ordering its restoration and the Superintending Canal Officer was in error in setting aside that order.

5. In the result, the writ petition is allowed, the impugned order dated 15-12-1982 passed by the Superintending Canal Officer set aside and that of the Divisional Canal Officer dated 14-9-1982 restored leaving the parties to bear their own costs. The Divisional Canal Officer will now ensure that the demolished watercourse is reconstructed by respondents 3 and 4 at their own expense within one month from the date of receipt of a copy of this order.