

Gajan Singh and others v. The State of Punjab and others (Mahajan, J.)

paid thereon. It may be mentioned that this figure was calculated by the learned counsel for the parties and was agreed to by them. In all other respects, the appeal is dismissed. In the circumstances, there will be no order as to costs in this Court.

A. N. GROVER, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

GAJJAN SINGH, AND OTHERS,—*Petitioners.*

versus

THE STATE OF PUNJAB, AND OTHERS,—*Respondents.*

Civil Writ No. 2046 of 1966.

March 15, 1967.

The Northern India Canal and Drainage Act (VIII of 1873) as amended by Act XXIII of 1965—Ss. 30-A, 30-B and 30-E—Scheme prepared for water-course under S. 30-A of unamended Act and approved by Superintending Engineer finally—Application for changing water-course made after coming into force of the Amending Act and Superintending Engineer, acting under S. 30-B(3) altering the water-course—Order of the Superintending Engineer—Whether valid—Power of review—Whether can be exercised by Superintending Engineer—Constitution of India (1950)—Article 226—Order without jurisdiction but no manifest injustice done—Whether can be challenged.

Held, that if the Superintending Engineer had passed an order under section 30-E of the Northern India Canal and Drainage Act and given effect to what had been approved by him earlier, no objection could have been taken to that order. But what the Superintending Engineer did was that instead of giving effect to what he had approved under the old Act, he provided a new water channel from B to C, from C to D, and from D to F. This course could only be adopted by recourse to the provisions of Section 30-A and not otherwise. This is abundantly clear from the combined reading of the old provisions as well as the new ones. No power of review has been conferred on the Superintending Engineer and he cannot review his own order. The power of revision is only against an order of a subordinate authority. Therefore, the impugned order, by which he has altered his own previous order, is certainly without jurisdiction.

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Held, that the contention that no injustice had been caused to the petitioner, has no meaning when an order wholly without jurisdiction has been passed.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the order of respondent No. 2, dated 6th September, 1966.

BALDEV SINGH JAWANDA, ADVOCATE, for the Petitioner.

K. S. KAWATRA, DEPUTY ADVOCATE-GENERAL PUNJAB, J. S. WASU
AND S. S. DEWAN ADVOCATES, for the Respondents.

ORDER

MAHAJAN, J.—This petition under Articles 226 and 227 of the Constitution is directed against the order of the Superintending Engineer, Tube-well Circle, Chandigarh, dated the 6th of September, 1966 (Copy Annexure 'B' to the writ petition), whereby the water-course A B F has been altered by water-course B C D F in the plan agreed to by both the parties and marked by me to-day as Exhibit C-1. The objection of the petitioner is that the Superintending Engineer had no jurisdiction to alter the water-course A B F by having recourse to the provisions of section 30-B(3) of the Northern India Canal and Drainage Act, 1873, as amended by Punjab Act No. 23 of 1965. The argument is this that under the unamended Act a scheme, when it was prepared under section 30-A, was finally approved by the Superintending Engineer and his order was final inasmuch as no appeal or revision against that order was provided. The watercourse A B F was prepared under the old Act. After the coming into force of the amended Act an application was made by Jang Singh, respondent No. 4, on the ground that the watercourse A B F bifurcated his fields and it be removed. On his application the Superintending Engineer proceeded to act under section 30-B(3) and in exercise of the revisional powers conferred by that provision altered the watercourse A B F to B C D F. This course, according to the learned counsel for the petitioners, is not permissible, because the revisional power is only against the order of subordinate officer, namely, the Divisional Canal Officer, who is admittedly equal in rank to the Executive Engineer, and the revisional officer is admittedly of the rank of the Superintending Engineer. Mr. K. S. Kwatra, who appeared for the State of Punjab, raised the contention that the Superintending Engineer had not approved the watercourse A B F, but had in fact approved a watercourse between *Kila* Nos. 23

State of Punjab *v.* Bhagwan Singh Grewal (Pandit, J.)

and 24, 18 and 17, 13 and 14, 8 and 7 of rectangle No. 95. If the Superintending Engineer had passed an order under section 30-E and given effect to what had been approved by him, no objection could have been taken to that order. But what the Superintending Engineer did was that instead of giving effect to what he had approved under the old Act, he provided a new water channel from B to C, from C to D, and from D to F. This course could only be adopted by recourse to the provisions of Section 30-A and not otherwise. This is abundantly clear from the combined reading of the old provisions as well as the new ones. No power of review has been conferred on the Superintending Engineer and he cannot review his own order. The power of revision is only against an order of a subordinate authority. Therefore the impugned order, by which he has altered his own previous final order, is certainly without jurisdiction.

Mr. Kwatra finally urged that no injustice had been caused to the petitioners. This contention has no meaning when an order wholly without jurisdiction is passed.

Mr. J. S. Wasu, who appears for Jang Singh, has raised the contention that the point which has now been made by the petitioners' learned counsel was not raised in the writ petition. This contention loses sight of the fact that a supplementary petition was filed by the learned counsel with the leave of this court, and in it the contention has been raised. The State has put in a reply to the supplementary petition and the position remains where it was. The stand taken up by the Canal authorities in their reply is not justified.

For the reasons recorded above, I allow this writ petition, quash the order (Annexure 'B'), passed by the Superintending Engineer and direct that he should give effect to his final order passed under the old Act, and in case he wants to shift the watercourse, he should take proceedings in accordance with section 30-A of the Act. In the circumstances of the case, there will be no order as to costs.

R. N. M.

APPELLATE CIVIL

Before A. N. Grover and Prem Chand Pandit, JJ.

STATE OF PUNJAB,—*Appellant.*

versus

BHAGWAN SINGH GREWAL,—*Respondent.*

Regular First Appeal No. 137 of 1963.

March 16, 1967.

Limitation Act (IX of 1908)—Art. 102—Time-scale of pay charged and the Government employee's pay fixed at lesser amount than due under revised