

CIVIL MISCELLANEOUS

Before Tek Chand, J.

TEK CHAND,—*Petitioner*

versus

STATE OF HARYANA AND OTHERS,—*Respondents*

Civil Writ No. 599 of 1967

October 26, 1967.

Northern India Canal and Drainage Act (VIII of 1873)—Ss. 20 and 30-A—Applicability of—Superintending Canal Officer—Whether can review his earlier order.

Held, that section 20 of the Northern India Canal and Drainage Act, 1873 contemplates an application from a person who has not been receiving water from a canal and does not apply to the case of a person who wants "reallotment of areas served by one water-course to another" as provided in section 30-A. Section 20 requires, that the applicant shall not be entitled to use the water-course until he has paid the expense of any alteration of any such water-course necessary in order to his being supplied water through it and also his share of the first cost of such course. This is because the existing water-course has already been maintained at the expense of other right-holders and the new applicant under section 20 has to contribute his share of the first cost. In the case of a right-holder making application under section 30-A, no such contribution is required as he has already made his contribution to one water-course. The Divisional Canal officer, under that section, on his own motion or on the application of a share-holder may prepare a draft scheme to provide for all or any of the matters specified therein. Under section 30-B (2), the Divisional Canal Officer is required to approve the scheme either as it originally was or in a modified form. Under sub-section (3) the Superintending Canal Officer has the power within 30 days from the date of publication of the particulars of the scheme to revise the scheme approved by the Divisional Canal Officer.

Held, that a Superintending Canal Officer has no power of review. Once the decision made on the basis of sections 30-A and 30-B has been confirmed by the Superintending Canal Officer and the scheme as approved by the Divisional Canal Officer has been accepted, it cannot subsequently be disturbed either by the Superintending Canal Officer himself or by any other authority.

Tek Chand *v.* State of Haryana, etc. (Tek Chand, J.)

Writ 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 impugned order of the Superintending Engineer, dated 18th March, 1967.

R. L. SHARMA, ADVOCATE, for the Petitioner.

ANAND SARUP, ADVOCATE-GENERAL (H) WITH J. C. VERMA AND B. S. GUPTA, ADVOCATES, for the Respondents.

ORDER

TEK CHAND, J.—The petitioner, Tek Chand, son of Hardial of village Kaluwas, tehsil Bhiwani, district Hissar, has sought issuance of an appropriate writ, order or direction quashing the order No. 4262/29/3-G (Rohtak), dated 18th March, 1967, of the Superintending Canal Officer, Western Yamuna Canal, West Circle, Rohtak (Annexure A).

The respondents in this case are the State of Haryana, the Superintending Canal Officer and Gulzari, a right-holder of neighbouring village Nathuwas. The petitioner formerly used to receive water for irrigation of his land from an outlet No. 174580/R. During the course of proceedings for consolidation of holdings, the petitioner and other right-holders approached the Canal Department requesting that their lands are not getting proper supply of water in adequate quantity from that outlet and, therefore, their areas should be transferred to outlet No. 180188/R. Both these outlets are in Bhiwani Distributory and at a short distance from each other. The petitioner and other right-holders who wanted water from outlet No. 180188/R were owners of an area measuring 50 standard acres. The Sub-Divisional Canal Officer framed a scheme for purposes of the transfer sought; and according to him it was made under section 30-A of the Northern India Canal and Drainage Act (No. VIII of 1873) but according to the contesting respondents, this matter was dealt with under section 20. The scheme was duly published and ultimately approved in August, 1963. It was mentioned that in view of the amendment of the Act on 11th April, 1963, by Punjab Act No. XXI of 1963, power to prepare the scheme was given to the Sub-Divisional Canal Officer in place of Divisional Canal Officer. Reference was made to sections 30-A to 30-F. Under section 30-B, the

Sub-Divisional Canal Officer submitted the scheme to the Divisional Canal Officer for confirmation which was done on 23rd of December, 1963. This scheme was further submitted by the Divisional Canal Officer to the Superintending Canal Officer, respondent No. 2, who also confirmed it on 31st of January, 1964.

Gulzari, respondent No. 3, being dissatisfied with the scheme as to transfer of 50 standard acres from outlet No. 174580/R to 180188/R, filed objections, before the Divisional Canal Officer which were rejected. He then made a representation in the form of an appeal to respondent No. 2 on 17th of January, 1964. The appeal was allowed on 18th of March, 1967 and the transfer of area, measuring 50 standard acres to outlet R.D. 180188/R was not approved. It may be mentioned that it took more than three years for respondent No. 2 to dispose of the appeal. The petitioner feels aggrieved from this order which he impugns. There is also another offshoot which may be noticed. The petitioner had made an application to the Sub-Divisional Canal Officer for the supply of water from outlet No. 180188/R through the fields of respondent No. 3 and this was approved on 9th of September, 1965, by him. The respondent No. 3 felt dissatisfied and filed an appeal to the Divisional Canal Officer which the latter decided on 22nd of March, 1966, modifying the order of the Sub-Divisional Canal Officer and demarcating a different link water-course for carrying water. The channel carrying water to the petitioner's field would not pass through the land of respondent No. 3. The copy of the order of Divisional Canal Officer is Annexure B. Respondent No. 3 did not feel satisfied with the modification and filed a further appeal before respondent No. 2 on 12th of April, 1966, on the plea that previous appeal dated 17th January, 1964, against the transfer of an area had not been decided and the Divisional Canal Officer's decision to grant a link water-course to the petitioner was illegal. Respondent No. 2 asked the Divisional Canal Officer to decide the matter but the latter wrote back to say that it would be better if the appeal of respondent No. 3 of 17th of January, 1964, along with the other appeal pending before respondent No. 2 be disposed of by him together. Copy of this communication to respondent No. 2 from the Divisional Canal Officer is Annexure C. It has already 18th of March, 1967, declining to set aside the transfer of an area of 50 standard acres from the former outlet No. 174580/R to 180188/R. The petitioner feels aggrieved from this decision and maintain that been mentioned that respondent No. 2 allowed Gulzari's appeal on it is liable to be quashed for several reasons.

Tek Chand *v.* State of Haryana, etc. (Tek Chand, J.)

The principal reason advanced is that the impugned order was made not under section 20 but under sections 30-A and 30-B of the Act. These three sections are produced below:—

“20. Supply of water through intervening watercourse.— Whenever application is made to a Divisional Canal Officer for a supply of water from a canal, and it appears to him expedient that such supply should be given, and that it should be conveyed through some existing watercourse, he shall give notice to the persons responsible for the maintenance of such watercourse to show cause, on a day not less than fourteen days from the date of such notice why the said supply should not be so conveyed; and after making enquiry on such day, the Divisional Canal Officer shall determine whether and on what condition the said supply shall be conveyed through such watercourse.

When such officer determines that a supply of canal water may be conveyed through any watercourse as aforesaid, his decision shall when confirmed or modified by the Superintending Canal Officer be binding on the applicant and also on the persons responsible for the maintenance of the said watercourse.

Such applicant shall not be entitled to use such watercourse until he has paid the expense of any alteration of such watercourse necessary in order to his being supplied through it, and also such share of the first cost of such watercourse as the Divisional or Superintending Canal Officer may determine.

Such applicant shall also be liable for his share of the maintenance of such watercourse so long as he uses it.

30-A (1). Notwithstanding anything contained to the contrary in this Act and subject to the rules prescribed by the State Government in this behalf, the Divisional Canal Officer may, on his own motion or on the application of a shareholder, prepare a draft scheme to provide for all or any of the matters, namely:—

- (a) The construction, alteration, extension and alignment of watercourse or realignment of any existing watercourse.

-
- (b) reallocation of areas served by one watercourse to another;
 - (c) the lining of any watercourse;
 - (cc) the occupation of land for the deposit of soil from watercourse clearances;
 - (d) any other matter which is necessary for the proper maintenance and distribution of supply of water from a watercourse.
- (2) Every scheme prepared under sub-section (1) shall, amongst other matters, set out the estimated cost thereof, the alignment of the proposed watercourse or realignment of the existing watercourse, as the case may be, the site of the outlet, the particulars of the shareholders to be benefited and other persons who may be affected thereby, and a sketch plan of the area proposed to be covered by the scheme.

30-B. (1) Every scheme shall, as soon as may be after its preparation, be published in such form, and manner as may be prescribed by rules made in this behalf for inviting objections and suggestions with respect thereof within twenty-one days of the publication.

- (2) After considering such objections and suggestions, if any, the Divisional Canal Officer shall approve the scheme either as it was originally prepared or in such modified form as he may consider fit.
- (3) The Superintending Canal Officer may *suo motu* at any time or on an application by any person aggrieved by the approved scheme made within a period of thirty days from the date of publication of the particulars of the scheme under section 30-C, revise the scheme approved by the Divisional Canal Officer:

Provided that such revision shall not be made without affording to the person affected an opportunity of being heard." The term "watercourse" is defined under section 3 to mean "any channel which is supplied with water from a canal, but which is not maintained at the cost of the State Government, and all subsidiary works belonging to any such channel."

Tek Chand v. State of Haryana, etc. (Tek Chand, J.)

It is contended on behalf of the petitioner that section 20 contemplates an application from a person who has not hitherto been receiving water from a canal and does not apply to the case of a person who wants "reallotment of areas served by one watercourse to another" as provided in section 30-A, section 20 requires that the applicant shall not be entitled to use the watercourse until he had paid the expense of any alternation of any such watercourse necessary in order to his being supplied water through it and also such share of the *first* cost of such watercourse. What is of significance is that the existing watercourse has already been maintained at the expense of other right-holders and the new applicant under section 20 has to contribute to a share of the first cost. In the case of right-holder making application under section 30-A, he has already made his contribution to one watercourse. I find that the petitioner's contention has some force.

Rule 2 made under section 20 of the Act by I.B. Notification No. 3041-R-284/45, dated 18th January, 1946, provides that in a case falling under section 20, the Divisional Canal Officer shall announce his decision to the parties interested, and within 30 days from the date of such announcement any person aggrieved by such decision may file an objection thereto in writing before the Superintending Canal Officer. Thus, a power is given to the Superintending Canal Officer to entertain an objection and to confirm or modify the decision of the Divisional Canal Officer. According to respondent No. 3, the impugned decision was made under this Rule. But if section 20 is not applicable, then this Rule is of no avail.

On the other hand, section 30-A makes it clear that the Divisional Canal Officer may on his own motion or on the application of a shareholder prepare a draft scheme to provide for all or any of the five matters specified therein. To my mind, this is a case which comes under (b), reallotment of areas served by one watercourse to another. Under section 30-B, sub-section (2), the Divisional Canal Officer is required to approve the scheme either as it originally was or in a modified form. This was done on 23rd of December, 1963. Under sub-section (3), the Superintending Canal Officer has the power within a period of 30 days from the date of publication of the particulars of the scheme to revise the scheme approved by the Divisional Canal Officer. This was accordingly done on 31st of January, 1964, This fact is also admitted in para 5 of the written statement. This order of 31st of January, 1964, could not be

subsequently reviewed as the Superintending Canal Officer has no such power of review. My attention has been drawn to a decision of Full Bench in *Deep Chand and others v. Additional Director, Consolidation of Holdings and another* (1), that the inherent powers reserved in section 151 of the Code of Civil Procedure cannot be resorted to for permitting a judicial or quasi-judicial tribunal to vary or alter any order passed by it on the ground that it was later considered to be erroneous on the merits. Moreover, the decision of the Superintending Canal Officer made more than three years later on 18th March, 1967, though it had the effect of upsetting his earlier decision of 31st of January, 1964, could not be deemed to be in the exercise of any power under the Act. His earlier decision of 31st of January, 1964, had become conclusive. Once the decision made on the basis of sections 30-A and 30-B has been confirmed by the Superintending Canal Officer and the scheme as approved by the Divisional Canal Officer has been accepted, it cannot subsequently be disturbed either by the Superintending Canal Officer himself or by any other authority. It is not necessary to refer to any other point sought to be made by the petitioner.

I find that to the facts of the case, the provisions of section 30-A (1) (b) are attracted and not of section 20. The impugned order (Annexure A), passed by the Superintending Canal Officer on 18th March, 1967, was without jurisdiction and void. The petition is, therefore, allowed. The petitioner is entitled, in the circumstances, to the issuance of writ of *certiorari* quashing the impugned order. I order accordingly. In the circumstances, I will leave the parties to bear their own costs.

R.N.M.

APPELLATE CIVIL

Before R. S. Sarkaria, J.

HIRA AND OTHER,—Appellants

versus

BIR SINGH AND OTHERS,—Respondents

Regular Second Appeal No. 351 of 1963

November 11, 1967.

Punjab Pre-emption Act (I of 1913) as amended by Act (X of 1960)—Ss. 13, 15(1)(b) Secondly and 17—Right of pre-emption under—Whether vests in the specified relatives or in the whole line of heirs—Brother and brother's sons—Whether have equal and independent right—"Or" in various clauses of S. 15—Construction of.

(1) I.L.R. (1964) 1 Ponj. 665 (F.B.)=1964 P.L.R. 318=1964 Current L.J. 128.