

M/s Radha
Krishan
Hoshiar Singh
v.
Sarup Lal
and another
—
Narula, J.

Constitution, and, therefore, even if this point was not taken up before the learned Subordinate Judge and may, therefore, be argued to have been waived, the waiver would not disentitle the plaintiff to raise the question before this Court for the first time. If the order of the Panchayat is vitiated on the above account, the order of the Subordinate Judge must fall with it.

Mr. Harbhagwan Singh, the learned counsel for the petitioner, has tried to raise several other points in support of this application, but I have not heard him on those points because of the view I am taking of the second contention raised by him.

I, therefore, allow this petition and set aside and quash the order of the Panchayat of village Bhuran, dated 26th June, 1962, and of the Court of S. Gurpartap Singh Chahal, Subordinate Judge, First Class, Jind, dated 28th February, 1963, referred to above, and direct the Panchayat to re-decide the case in the light of the above observations. Nothing stated in this order would be interpreted to decide any other question which may be raised by any of the parties before the Panchayat. As no one has appeared to oppose this petition, there will be no order as to costs.

R. S.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

PIYARE LAL AND OTHERS,—*Petitioners*
versus

THE STATE OF PUNAB AND OTHERS,—*Respondents*

Civil Writ No. 2552 of 1965

1965

October, 26th.

Northern India Canal and Drainage Act (VIII of 1873)—S. 30 A
(1) (d)—Any other matter—Whether covers closure or the opening or the shifting of the outlet.

Held, that clause (d) of sub-section (1) of section 30-A of the Northern India Canal and Drainage Act, 1873, is wide enough to cover "any other matter" not specified in clauses (a), (b) and (c) of that sub-section, which might be considered to be necessary for the proper maintenance and distribution of supply of water. The closure or the opening or the shifting of an existing outlet would certainly be such a matter in appropriate cases. The Divisional Canal Officer, therefore, has the authority and jurisdiction under

section 30-A(1) (d) of the Act to direct the closure of an existing outlet in appropriate cases in accordance with the detailed procedure set out in sections 30-B to 30-D of the Act.

Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of mandamus, certiorari, or any other appropriate writ, order or direction be issued quashing the orders of respondents Nos. 2 and 3, dated 24th August, 1965 and 25th May, 1965.

PURAN CHAND, ADVOCATE, for the Petitioners.

L. D. KAUSHAL, SENIOR DEPUTY ADVOCATE-GENERAL WITH JAGMOHAN SETHI AND D. C. GUPTA, ADVOCATES, for the Respondents.

ORDER

NARULA, J.—The Executive Engineer, Narwana Division, in his capacity as Divisional Canal Officer passed an order, dated 26th August, 1965 directing the abolition, i.e., closure of water outlets Nos. RD116725-R, 116975-R and 119230-R, which were situated in or about village Dhamtan, tehsil Narwana, district Sangrur. The petitioners are owners of about 78 acres of land in that village which was irrigated from outlet No. 119230-R. The Sub-Divisional Canal Officer after hearing objections of all concerned made a recommendation on 25th May, 1965 (copy Annexure 'A' to the writ petition) to the effect that the existing two outlets Nos. 116725/Right and 119230/Right be abolished and a new outlet at R.D. 115655/Right be sanctioned subject to confirmation by the Divisional Canal Officer. The Divisional Canal Officer directed the closure of all the three outlets and directed the opening of a new outlet at 116975-R, under the remodelling scheme, as stated above.

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The above-said order of the Divisional Canal Officer has been impugned in this case by Shri Puran Chand, the learned counsel for the petitioners, on two grounds, namely:—

- (i) that the Canal authorities have no jurisdiction whatever under section 30-A or 30-B of the Canal and Drainage Act to cancel or close an existing water outlet in any circumstances whatsoever; and
- (ii) that even if it is held that the Canal authorities have such jurisdiction, the impugned orders are liable to be set aside as they have been passed in violation of section 30-B(1) of the Act inasmuch as the scheme in question for the opening of the new watercourse was not properly published as required by law.

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His ancilliary grievance under the second heading is that the petitioners have been refused even a copy of the scheme and the Chak plan for which they had made an application in writing.

In his written statement, dated 22nd October, 1965, the Divisional Canal Officer, Narwana Division, has sworn, *inter alia*, as follows:—

“The decision of Sub-Divisional Canal Officer and Divisional Canal Officer, Narwana, were announced under the provisions of sections 30-A and 30-B, respectively according to the Gazette Notification, dated 25th April, 1963.” “No new watercourse has been provided. The decision is aimed to extend irrigation to a big tract of land. The land of the applicant is not at a higher level and will get the full irrigation facilities. The water level in the channel at the head of the proposed outlet is 748.82 whereas the natural surface level of the land of the petitioners varies from 741 feet to 743 feet.” “The changes proposed are in the interest of irrigation and are allowed under sections 30-A and 30-B of the Canal Act. The irrigation of land of the petitioners will not suffer”. “The scheme was properly published as required under the law.”

In view of the statements of fact and assurances given in the written statement of the Canal authorities no manifest injustice appears to have been done to the petitioners by the impugned orders.

Nor am I inclined to agree that the Canal authorities could not in any circumstances whatsoever direct the closure of an existing outlet. Shri Puran Chand has relied on the judgment of Shamsheer Bahadur, J., in *Manjit Singh and others v. The Superintending Engineer, Upper Bari Doab Circle, Amritsar and others* (1), wherein it was held that there was no authority given to the Divisional Canal Officer under section 20 of the Act to shut or change the existing outlet and the petition was allowed on that basis. The learned counsel for the petitioners urges that section 20 has been erroneously mentioned in that case though the entire procedure adopted by the

(1) I.L.R. (1964)2 Punj.1=1964 P.L.R. 495.

Canal authorities mentioned in that judgment shows that the case had been taken up under section 30-A of the Act. I am unable to agree with this contention of the learned counsel. In the very opening sentence of the judgment, the learned Judge has clearly stated that the question raised in the case related to the power of the Canal authorities under section 20 of the Act. Even the provisions of the section have been quoted in the judgment. I, therefore, hold that the above-said judgment of Shamsheer Bahadur, J., is no authority for holding that an existing outlet cannot be closed even in accordance with a scheme framed and properly published under sections 30-A and 30-B of the Act.

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Reference was then made by Shri Puran Chand to the judgment of D. K. Mahajan, J., in *Kishan Singh and others v. The State of Punjab and another* (2). It would be appropriate to set out a substantial part of that judgment in this case:—

“In the petition two grievances were made (1) that a decision had been taken to shift the outlet and (ii) that the size of the outlet has to be reduced from 12" × 12" to 6" × 6". In the return filed by the State it is categorically stated that the outlet is not being shifted. Therefore, one of the grievances is no longer there. With regard to the second grievance, it is admitted that the outlet has been reduced in size. There is no specific provision in the Northern India Canal and Drainage Act, 1873, which permits such a course. Possibly action can be taken under section 30-A of the Act, but there is a regular procedure prescribed in sections 30-B to 30-D of the Act in this behalf. It is admitted by the counsel for the State, that the procedure prescribed by the aforesaid provisions, has not been followed in this case for the action taken in the matter of reduction of the outlet. Therefore, it is obvious that the reduction of the size of the outlet is without authority of law and is not justified.—”

(2) I.L.R. (1965)1 Punj. 564=1965 Current Law Journal (Pb.). 39.

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There is no doubt that the learned Judge (Mahajan), J. did observe that there appeared to be no specific provision in the Act which permitted the reduction in the size of the outlet. But it is significant that the learned Judge took care to mention that such an action could possibly be taken under section 30-A of the Act. In that case (*Kishan Singh's case*) the impugned action had been taken without having resort to the procedure prescribed under sections 30-B to 30-D of the Act and was, therefore, set aside.

Shri Lachhman Dass Kaushal, the learned Deputy Advocate-General, appearing for the Canal authorities, invites my reference to section 30-A(1)(d) of the Act which reads as follows:—

“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 shareholder, prepare a draft scheme to provide for all or any of the matters, namely:—

(a) _____

(b) _____

(c) _____

(d) any other matter which is necessary for the proper maintenance and distribution of supply of water from a watercourse.”

Shri Puran Chand states that clause (d) of sub-section (1) of section 30-A relates only to supply of water from a watercourse and does not justify interference with any outlet. I do not think there is any force in this contention. Clause (d) referred to above is wide enough to cover “any other matter” not specified in clauses (a), (b) and (c) of sub-section (1) of section 30-A, which might be considered to be necessary for the proper maintenance and distribution of supply of water. The closure or the opening or the shifting of an existing outlet would certainly be such a matter in appropriate cases. I, therefore, hold that the Divisional Canal Officer has the authority and jurisdiction under section 30-A(1)(d) of the Act to direct the closure of an existing outlet in appropriate cases in

accordance with the detailed procedure set out in sections 30-B to 30-D of the Act. There is no force in the second contention of the learned counsel. A vague allegation of the scheme not having been properly published was made in the petition and equally vague reply has been given that the publication was made according to rules. Unless some specific allegation is made against the manner in which the scheme was published it is impossible for the respondents to give a better reply. This contention cannot, therefore, be allowed to prevail for want of any definite particulars.

No other point has been argued before me in this case.

The writ petition fails and is dismissed but the parties are left to bear their own costs.

R. S.

APPELLATE CIVIL

Before S. K. Kapur, J.

KARAM NARAIN,—*Appellant*

versus

NARSINGH DASS,—*Respondent*

S.A.O. No. 62-D of 1965

Delhi Rent Control Act (LIX of 1958)—S. 14(6)—Displaced Persons (Compensation and Rehabilitation) Rules (1955)—Rule 34—Evacuee property transferred on 25th May, 1963, with effect from 1st October, 1955—Period of five years under section 14(6)—Whether to be counted from 1st October, 1955—Rule 34—Whether ultra vires.

1965

November. 15th.

Held, that Rule 34 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955, by fiction makes purchasers—transferees of evacuee property as owners from a given date. This fiction, which has been created by law, must be taken to its logical conclusion and full effect given thereto. When the law itself regulates the date of transfer and fixes it at a particular point of time, that must, for the purposes of section 14(6) of the Delhi Rent Control Act, 1958, also be taken as the date of transfer. Under this section the date of acquisition must mean the date when the law deems the owner to have acquired the property. Hence when the evacuee property is transferred on 25th May, 1963, with effect from 1st October, 1955, in pursuance of Rule 34, the period of five years under section 14(6), must be counted from 1st October, 1955.

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