
So this petition by the petitioner-Sarpanch is accepted, and the order, dated August 27, 1965, of the Magistrate is quashed, with a direction that he will now proceed to dispose of the application of respondent 2 under section 51 of Punjab Act 4 of 1953 on merits and in accordance with law. There is no order in regard to costs.

R. N. M.

CIVIL MISCELLANEOUS

Before Shamsher Bahadur, J.

RAM RIKH,—*Petitioner.*

versus

STATE OF HARYANA AND OTHERS,—*Respondents.*

Civil Writ No. 91 of 1967

March 1st, 1968.

Northern India Canal and Drainage Act (VIII of 1873)—Ss. 30-B and 30-F—Scheme not approved by the Divisional Canal Officer—Power of revision by Superintending Canal Officer—Whether exists.

Held, that the jurisdiction of the Superintending Canal Officer is to revise the scheme which has been approved by the Divisional Canal Officer. Rejection of a scheme *in toto* cannot be said to be a scheme which has been approved by the Divisional Canal Officer and consequently the power of interference by the Superintending Canal Officer does not exist. Sub-section (3) of section 30-B of the Northern India Canal and Drainage Act, 1873, does not empower or authorise the Superintending Canal Officer to frame a scheme when none has been approved by the Divisional Canal Officer. The scheme has to emanate with the Divisional Canal Officer who has to approve it as it is published or in such modified form as he considers proper after hearing the objections. When the scheme itself does not commend itself to the Divisional Canal Officer who does not submit it to the Superintending Canal Officer for approval, the matter ends there. The power of interference with an approved scheme does not imply power to make a scheme afresh, which has not been approved by the Divisional Canal Officer. The power of interference by the Superintending Canal Officer is also not spelled out from the provisions of section 30-F of the Act.

Ram Rikh *v.* State of Haryana, etc. (Shamsher Bahadur, J.)

Petition under Article 226 of the Constitution of India, praying that a writ in the nature of certiorari mandamus or any other appropriate writ, order or direction be issued quashing the order of Superintending Canal Officer, respondent No. 2, dated 13th December, 1966.

B. S. CHAWLA, ADVOCATE, for the Petitioner.

MUNISHWAR PURI, ADVOCATE FOR ADVOCATE-GENERAL, R. S. CHAUDURI, ADVOCATE, for respondent No. 4.

ORDER

SHAMSHER BAHADUR, J.—What is challenged in this petition under Article 226 of the Constitution of India is the order passed by the Superintending Canal Officer (Annexure A) in the purported exercise of power under sub-section (3) of section 30-B of the Northern India Canal and Drainage Act (hereinafter called the Act).

The petitioner Ram Rikh shared the use of the outlet RD 19500 from Sukhchain Distributory along with respondents 4 and 5, Birbal and Parbhu. Birbal, the fourth respondent, wanted some change in the alignment of the watercourse and moved the Divisional Canal Officer for that purpose in the year 1966. A scheme was published in accordance with the provisions of section 30-A of the Act and after hearing the parties the Divisional Canal Officer did not accede to the request of Birbal that the alignment should pass through the fields of the petitioner and the fifth respondent. The Superintending Canal Officer, in the exercise of his revisional powers, however, granted him the relief he had sought. The petitioner feeling aggrieved has moved this Court in *certiorari* proceedings.

Now, under sub-section (2) of section 30-A, every scheme which is prepared under sub-section (1) has to mention the various requirements like the estimated cost, alignment of the proposed watercourse and the particulars of the share-holders to be benefitted and other persons affected thereby. Under sub-section (1) of section 30-B, objections may be filed to the scheme so framed and sub-section (2) says that :—

“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.”

No scheme seems to have been approved by the Divisional Canal Officer, nor was it in consequence in need of any modification. Sub-section (2) is followed by the important sub-section [sub-section (3)] which gives the Superintending Canal Officer the power either *suo motu* or on the application by any person aggrieved "by the approved scheme" at any time to "revise the scheme approved by the Divisional Canal Officer". Clearly, the jurisdiction of the Superintending Canal Officer is to revise the scheme which has been approved by the Divisional Canal Officer. Rejection of a scheme *in toto* cannot be said to be a scheme which has been approved by the Divisional Canal Officer and consequently the power of interference by the Superintending Canal Officer does not exist. Plainly, the sub-section does not empower or authorise the Superintending Canal Officer to frame a scheme when none has been approved by the Divisional Canal Officer. The scheme has to emanate with the Divisional Canal Officer who has to approve it as it is published or in such modified form as he considers proper after hearing the objections. When the scheme itself does not commend itself to the Divisional Canal Officer who does not submit it to the Superintending Canal Officer for approval, the matter ends there. Mr. Puri, the learned counsel for the State, submits that the power of interference with an approved scheme also implies power to make a scheme afresh even though it has not been approved by the Divisional Canal Officer. I am afraid, this power cannot be inferred or derived from sub-section (3) which provides for a revision by the Superintending Canal Officer only of a scheme approved by the Divisional Canal Officer.

Nor can I accede to the submission of Mr. Puri that the power of interference by the Superintending Canal Officer can be spelled out from the provisions of section 30.F of the Act which says that :—

"On execution of the scheme the Divisional Canal Officer shall, by requisition in writing, direct the share-holders to take over and maintain the watercourse and on failure of the shareholders to comply with this direction, he shall make arrangements for maintenance of the watercourse at the shareholders' cost.....".

This section deals with a situation where a scheme of the Divisional Canal Officer subject to such revisions as have been made in it by the Superintending Canal Officer under sub-section (3) has to be executed and where the share-holders concerned refuse to comply with its provisions.

Phuman Singh, etc. v. State of Punjab, etc. (Gurdev Singh, J.)

I am afraid, the Supperintending Canal Officer has passed an order which was beyond his jurisdiction to do so and I would accordingly quash the same. The petition will be allowed with costs.

R. N. M.

CIVIL MISCELLANEOUS

Before Gurdev Singh, J.

PHUMAN SINGH AND OTHERS,—Petitioners.

versus

STATE OF PUNJAB, AND OTHERS,—Respondents.

Civil Writ No. 595 of 1966

Civil Misc. No. 210 of 1968

March 3rd, 1968.

Land Acquisition Act (I of 1894)—Ss. 5-A and 6—Objections filed under section 5-A—Objections not decided—Notification under section 6 issued—Such notification—Whether valid and conclusive.

Held, that the provisions of section 5-A of Land Acquisition Act with regard to the necessity of notice to the persons interested and affording them an opportunity to be heard are mandatory and their non-compliance vitiates the proceedings. If the objections filed under section 5-A are not considered by the authorities, the acquisition proceedings subsequent to the filing of the objections are not in order. In view of the non-compliance with the provisions of section 5-A, the notification issued under section 6 of the Act is without jurisdiction and the conclusiveness which attaches to such a notification vanishes.

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari or any other appropriate writ, order or direction be issued, quashing the declarations No. C-47(25) -W-1/7646-A and No. C-47(24)-W-1/7646, dated the 14th March, 1966 under section 6 of the Land Acquisition Act, published in the Punjab Government Gazette (Extraordinary), dated March 14, 1966, acquiring 110.07 acres and 111.098 acres of land, respectively.

J. S. WASU AND S. S. DEWAN, ADVOCATES, for the Petitioners.

R. S. MONGLA, ADVOCATE, FOR THE ADVOCATE-GENERAL, for the Respondents.