

Before S. S. Saron, J.

BHARAT SINGH AND OTHERS,—Petitioner

versus

**THE DIVISIONAL CANAL OFFICER
AND OTHERS,—Respondents**

CWP No. 7884 of 2008

11th November, 2010

Constitution of India, 1950—Art. 226—Haryana Canal and Drainage Act, 1974—S.20—Petition filed by a Co-sharer seeking transfer of land for purpose of irrigation to another outlet dismissed upto Chief Canal Officer—Other co-sharers also failing before Canal authorities in proceedings initiated for transfer of land for purposes of proper irrigation—Matter attained finality—Chief Canal Officer on an application by a Co-sharer ordering shifting of area—Challenge thereto—Various orders passed showing that there has been due consideration of matter at various stages and by different authorities under 1974 Act—Matter has been finally decided and adjudicated upon, it would be just and expedient not to permit the same to be agitated again—Order of Chief Canal Officer is against public policy and administration of justice—Petition allowed, order of Chief Canal Officer set aside.

Held, that once a petition for a relief had been pursued by one or some of the co-sharers and thereafter subsequent petitions filed by some other co-sharers for similar relief, the subsequent petitions if not wholly barred by the principle of *res judicata*, the petitioners of the subsequent petitions would in any case be estopped from re-agitating the same claim again. As a matter of public policy, it would be prudent that a party is estopped from agitating the same issue again and again which has been finally decided. However, in a case where there has been improper consideration or an erroneous decision or there has been a fraud, collusion or failure of any fair and real trial of the matter, the issue finally determined in a summary proceedings may require fresh consideration. The same is not the position in the present case. The various orders passed in the present

case show that there has been due consideration of the matter at various stages and by the different authorities under the Act. Therefore, once the matter has been finally decided and adjudicated upon, it would be just and expedient not to permit the same to be agitated again. The Chief Canal Officer,—*vide* order dated 8th April, 2008 having unsettled the settled position of not shifting the water course, had not only prevented finality of decisions that has been reached at but has conveyed a wrong message that a litigant may go on filing applications for a relief claimed and even if the same is denied it could be granted at some subsequent stage. This clearly is against public policy and administration of justice.

(Para 14)

Ashok Verma, *Advocate for the petitioners.*

Sudhir Makkar, Sr. DAG, Haryana for respondents No. 1 to 3.

S.R. Hooda, *Advocate for respondent No. 4.*

S.S. SARON, J.

(1) The present petition has been filed under Articles 226/227 of the Constitution of India seeking quashing of the order dated 8th April, 2008 (Annexure P9) passed by the Chief Canal Officer, Bhakra Water Services Unit (BWSU), Haryana Irrigation Department, Sinchai Bhawan, Panchkula (respondent No. 3).

(2) The dispute between the petitioners and Mohinder Singh (respondent No. 4) relates to transfer of an area of 20.08/20.08 acres of land for the purposes of irrigation from the 'chak' of outlet RD12000/L Rajli Minor to chak of outlet RD No. 8920/R Kharak Minor of village Badhwar, District Hisar.

(3) Mohinder Singh (respondent No. 4) has four brothers namely Bharat Singh, Bharmvir Singh, Dhup Singh and Sube Singh. They are all co-sharers in the land measuring 20.08 acres, which is sought to be got transferred by them from the 'chak' of outlet RD 12000/L Rajli Minor to 'chak' of outlet RD 8920/R Kharak Minor.

(4) Bharat Singh one of the brothers of Mohinder Singh (respondent No. 4) had earlier in the year 1990 initiated proceedings for transfer of the aforesaid land from the chak of outlet RD12000/L Rajli Minor to chak of

outlet RD No. 8920/R Kharak Minor of village Badhawar, District Hisar on the ground that the area of 20.08 acres was not being properly irrigated from the existing source and that some area belonging to Bharat Singh was already in the 'chak' of the proposed outlet ; besides, he was ready to bear the costs of adjustment of both the aforesaid outlets. It is submitted that the said application was dismissed,—*vide* order dated 14th September, 1990 (Annexure P2) by the Divisional Canal Officer, Hisar Bhakra Canal Division, Hisar. Appeal against the same filed by Bharat Singh was dismissed on 15th January, 1991 (Annexure P3) by the Superintending Canal Officer, Hisar Bhakra Canal Circle, Hisar and revision against the same filed by Bharat Singh was also dismissed,—*vide* order dated 17th November, 1997 (Annexure P4) by the Chief Canal Officer, Bhakra Water Services Unit, Haryana.

(5) The present petition has been filed seeking quashing of the order dated 8th April, 2008 (Annexure P9) passed by the Chief Canal Officer (respondent No. 3). The impugned order is based on the proceedings now initiated by Mohinder Singh (respondent No. 4). The earlier proceedings initiated by Bharat Singh one of the brothers of Mohinder Singh (respondent No. 4) for transfer of area of 20.08 acres, including the area of 16.81 acres having been lost upto Chief Canal Officer, the other four brothers including Mohinder Singh (respondent No. 4) filed an application in the year 2000 before the Divisional Canal Officer (respondent No. 1) for transfer of 16.81 acres area out of the total area of 20.08 acres. The Divisional Canal Officer, (respondent No. 1),—*vide* order dated 29th September, 2000 (Annexure P5) dismissed the application and in appeal, the Superintending Canal Officer, BWSC No. 1, Hisar (respondent No. 2) remanded the case to the Divisional Canal Officer (respondent No. 1) for fresh decision. After remand, the Divisional Canal Officer (respondent No. 1),—*vide* order dated 9th January, 2002 (Annexure P6) again dismissed the application. Mohinder Singh (respondent No. 4) alongwith his three brothers aggrieved against the same filed an appeal before the Superintending Canal Officer (respondent No. 2) who dismissed the same .—*vide* order dated 5th October, 2004. In this manner two rounds of litigation were lost by Mohinder Singh (respondent No. 4) and his brothers for the transfer of land for the purpose of irrigation to another outlet. There was no further challenge to the order dated 5th October, 2004. Thereafter, another application was filed by Mohinder Singh (respondent No. 4) in the year 2007 before the

Divisional Canal Officer (respondent No. 1) seeking transfer of aforesaid 20.08 acres of land from the chak of outlet RD12000/L Rajli Minor to chak of outlet RD No. 8920/R Kharak Minor of village Badhwar District Hisar on the same ground on which transfer had also been rejected. The Divisional Canal Officer (respondent No. 1) rejected the application,—*vide* order dated 17th April, 2007 (Annexure P7). Mohinder Singh (respondent No. 1) aggrieved against the same filed an appeal before the Superintending Canal Officer (respondent No. 2) who dismissed the same,—*vide* order dated 13th September, 2007 (Annexure P8). Mohinder Singh (respondent No. 1) then filed an appeal against the orders dated 17th April, 2007 (Annexure P7) and 13th September, 2007 (Annexure P8) before Shri A.K. Kalra Chief Canal Officer (respondent No. 3). It is submitted that due to heavy political pressure and with a *malafide* intention to accommodate Mohinder Singh (respondent No. 4) at the cost of the petitioners and other shareholders and in complete disregard to the earlier orders passed, has,—*vide* order 8th April, 2008 (Annexure P9) allowed the appeal of Mohinder Singh (respondent No. 4). It is submitted that the matter having been considered on several occasions and having been rejected, the same would operate as *res judicata* between the parties. In any case, it is submitted that the impugned order dated 8th April, 2008 (Annexure P9) passed by the Chief Canal Officer (respondent No. 3) amounts to review of the earlier order dated 17th November, 1997 (Annexure P4) which is impermissible in law.

(6) In response learned counsel appearing for respondent No. 4 has submitted that 20.08 acres area of Mohinder Singh (respondent No. 4) is not getting proper irrigation from chak of outlet RD12000/L Rajli minor. Therefore, the Chief Canal Officer (respondent No. 3),—*vide* order dated 8th April, 2008 (Annexure P9) rightly ordered the shifting of the said area to the chak of outlet RD 8920/R Kharak distributory. It is submitted that by shifting the area, better percentage of irrigation is provided to Mohinder Singh (respondent No. 4) and there is no illegality or infirmity in the same. It is further submitted that convenient, easy and better irrigation is the primary factor which is to be considered and in the present case, the area as has been shifted would get better and convenient irrigation. It is also submitted that principle of *res judicata* is not applicable in a case of summary proceedings and application for providing necessary irrigation in respect of the land in question would always be maintainable.

(7) I have given my thoughtful consideration to the contentions of the learned counsel appearing for the parties and with their assistance gone through the records of the case. The proceedings for transfer of 20.08 acres of land from chak of outlet RD12000/L Rajli Minor to chak of outlet RD No. 8920/R Kharak Minor of village Badhawar, District Hisar was initiated on the application of Mohinder Singh (respondent No. 4). Mohinder Singh (respondent No. 4) has four brothers namely Bharat Singh, Dharamvir Singh, Dhup Singh and Sube Singh. All the four brothers are co-sharers in the aforementioned area of 20.08 acres, the transfer of which is sought from chak of outlet RD12000/L Rajli Minor to chak of outlet RD No. 8920/R Kharak Minor of village Badhawar, District Hisar. Bharat Singh one of the brothers of Mohinder Singh (respondent No. 4) earlier filed an application in the year 1990 before the Divisional Canal Officer (respondent No. 1) seeking transfer of the aforementioned area of 20.08 acres in the manner as has now been sought. It was alleged by Bharat Singh that the area of 20.08 acres was not receiving good and proper irrigation from the existing source ; besides, some area that belonged to him was already in the chak of proposed outlet and that he was ready to bear the cost of adjustment of both the aforesaid outlets. The said application of Bharat Singh for transfer of 20.08 acres of land from chak of outlet RD12000/L Rajli Minor to chak of outlet RD No. 8920/R Kharak Minor of village Badhwar, District Hisar was dismissed,—*vide* order dated 14th September, 1990 (Annexure P2) passed by the Divisional Canal Officer, Hisar Bhakra Canal Division, Hisar. Bharat Singh aggrieved against the said order, filed an appeal under Section 20(1) of the Haryana Canal and Drainage Act, 1974 (“Act” for short) which was dismissed,—*vide* order dated 15th January, 1991 (Annexure P3). Bharat Singh then filed an appeal under Section 20(2) of the Act against the orders dated 14th September, 1990 (Annexure P2) and 15th January, 1991 (Annexure P3) passed by the Divisional Canal Officer and the Superintending Canal Officer respectively before the Chief Canal Officer which was also dismissed,—*vide* order dated 17th November, 1997 (Annexure P4).

(8) The Divisional Canal Officer in his order dated 14th September, 1990 (Annexure P2) observed from the irrigation statement that the irrigation of the area sought to be got transferred was 151% from the existing source against the intensity of 62%. As such irrigation in the area of Bharat Singh

was much better from the existing source. Besides, FSL (Floor Service Level) of the existing outlet was 718.49 and FSL of the proposed source was 716.25. The area under transfer had a very good command from the existing source than the proposed source as was clear from the command statement attached with the case. The Superintending Canal Officer in his order dated 15th January, 1991 (Annexure P3) observed that the water course from the present source was lined and the proposed source was still unlined. Irrigation development of the existing chak was 110%. Besides, the area in question from the existing source itself was 151% which was identical to the irrigation of the proposed chak. Bharat Singh, it was observed, had two acres area in the proposed chak whereas he had 20 acres area in the existing chak of both 'Kurras' on the existing source. FSL from the existing source was also observed to be higher than that from the proposed source. The area was held to be fairly well commandable from the existing source and there was no likelihood of further improvement in command from the proposed source. The Chief Canal Officer in his order dated 7th November, 1997 (Annexure P4) observed that the area in question had better command from the existing source as compared to the proposed source and the optimum length of the water course had already been lined whereas the water course of the proposed chak of the outlet in most of the length was unlined. The irrigation of both the outlets i.e. existing and that of the proposed was more than the designed intensity. Therefore, the intensity would not further improve as it had already reached the intensity of 54% against the designed intensity of 62%.

(9) After the said proceedings initiated by Bharat Singh had finished, the other four brothers i.e. Mohinder Singh (respondent No. 4), Dharamvir Singh, Dhup Singh and Sube Singh in the year 2000 filed an application before the Divisional Canal Officer (respondent No. 1) for transfer of 16.81 acres area out of the total area of 20.08 acres. The area was reduced so as to show that a separate and different claim was being raised. The said application of Mohinder Singh (respondent No. 4) and his brother was dismissed by the Divisional Canal Officer, Hisar Water Services Division, Hisar (respondent No. 1),—*vide* order dated 29th September, 2000 (Annexure P5). It was found that demand was not genuine and accordingly it was disallowed. The four brothers including Mohinder Singh (respondent No. 4) then filed an appeal against the order dated 29th September, 2000

(Annexure P5) before the Superintending Canal Officer who remanded the case to the Divisional Canal Officer for fresh decision. The Divisional Canal Officer again examined the case and, —*vide* order dated 9th January, 2002 (Annexure P6) rejected and dropped the scheme set up by the brothers including Mohinder Singh (respondent No. 4). Aggrieved against the order dated 9th January, 2002 (Annexure P6) of the Divisional Canal Officer, Mohinder Singh (respondent No. 4) and his brother filed an appeal before the Superintending Canal Officer which was dismissed, —*vide* order dated 5th October, 2004. The said order dated 5th October, 2004 of the Superintending Canal Officer was not assailed further. In this manner Mohinder Singh (respondent No. 4) and his brothers were not successful in getting the 20.08 acres of land and then 16.81 acres of land transferred from the chak of outlet RD. 12000-L Rajli Minor to chak outlet R.D. 8920-R Kharak Minor in the two rounds of litigation.

(10) Mohinder Singh (respondent No. 4) in the year 2007 then again initiated the process for seeking transfer of 20.08 acres of land from the chak of outlet RD-12000/L Rajli Minor to the chak of outlet RD-8920/R Kharak Minor on the same ground on which the transfer had twice been declined earlier. The Divisional Canal Officer, —*vide* order dated 17th April, 2007 (Annexure P7) held that the demand of Mohinder Singh (respondent No. 4) was not genuine and hence rejected it. The scheme as published was also dropped. It was observed that from the irrigation statement, the irrigation of the area under transfer was 151% from the existing source against the intensity of 62%. As such, irrigation in the area of Mohinder Singh (respondent No. 4) was much better from the existing source. Moreover, FSL of existing outlet was 719.10 and FSL of proposed source was 717.72. The area under transfer had a very good command from the existing source than the proposed source as was clear from the command statement. Mohinder Singh (respondent No. 4) aggrieved against the said order dated 17th April, 2007 (Annexure P7) of the Divisional Canal Officer (respondent No. 1) filed an appeal before the Superintending Canal Officer (respondent No. 2) who again considered the entire matter and, —*vide* order dated 13th September, 2007 (Annexure P8) dismissed the appeal of Mohinder Singh (respondent No. 4). It was observed that the case had been decided five times by the Divisional Canal Officer, Hisar Water Services Division, Hisar (respondent No. 1), twice by the Superintending Canal Officer, Bhakra

Water Services Circle No. 1, Hisar and once by the Chief Canal Officer, HID, Panchkula (respondent No. 3). There was no change in the circumstances. Besides, Mohinder Singh (respondent No. 4) was applying for transfer of the area again and again and a plea taken by him had been rejected by the canal authorities at every step. It was observed that the Divisional Canal Officer (respondent No. 1), the Superintending Canal Officer (respondent No. 2) and the Chief Canal Officer (respondent No. 3) had already rejected the scheme with the remarks that there was no likelihood of improvement in the irrigation of the area of Mohinder Singh (respondent No. 4). However,—*vide* impugned order dated 8th April, 2008 (Annexure P9) passed by the Chief Canal Officer, BWSU, Irrigation Department, Haryana (respondent No. 3), the appeal of Mohinder Singh (respondent No. 4) has been allowed. It has been observed that the percentage of irrigation of the area in question was only 91% whereas the irrigation from the present source i.e. outlet RD-12000/L Rajli Minor was 151% and from the proposed source i.e. outlet RD-8920/R Kharak minor was 175%. The exhausting lined water course, it was observed, was in a damaged condition and due to the said reason, the water loss had increased thereby diminishing the irrigation of the area in question. Resultantly, the irrigation of the area had gone down to 91%. The intensity of irrigation of the area from the proposed source was much more i.e. 175%. It was observed that there was good justification for the transfer of the area in question to outlet RD-8920/R Kharak Minor.

(11) In the facts and circumstances, the question that arises for consideration is whether the orders earlier passed for transfer of area from one outlet to the other would operate as *res judicata*. This court in exercise of its supervisory writ jurisdiction under Articles 226/227 of the Constitution of India has limited jurisdiction and scope of judicial review does not warrant that the decision reached at by the canal authorities is substituted by that of this Court. However, where a decision has been validly taken in two rounds of litigation earlier and also by the Divisional Canal Officer and the Superintending Canal Officer in respect of the same subject matter and thereafter the impugned order dated 8th April, 2008 (Annexure P9) came to be passed by the Chief Canal Officer, then can it be said to be fair to the parties to go on litigating by filing one application after the other till a favourable order is obtained.

(12) In the matter of summary jurisdiction, the principle of *res judicata* are normally not applicable. A Division Bench of this Court in **Bhagirath versus Divisional Canal Officer, Sirsa, (1)** held that the doctrine of *res judicata* is not applicable to summary proceedings unless the statute expressly applies to such orders. In the said case, the second application for transfer of area from one outlet to another when an earlier application for transfer had already been rejected upto the level of Chief Canal Officer and there was no change in circumstances, it was held to be not barred. It was observed that the Divisional Canal Officer performs a quasi-judicial function and does not exercise powers of a Court so as to attract the doctrine of *res judicata*. The method in which application is disposed of was not analogous to disposal of a plaint in a civil court nor any issue framed. Reliance was placed on the case ; **Inder Singh and another versus Financial Commissioner, Punjab and others (2)**. In the said case under the Pepsu Tenancy Agricultural Lands Act, 1955, it was observed by the Supreme Court that since the proceedings before the authorities were of summary nature, the doctrine of *res judicata* had no application. Therefore, in a case where a summary procedure is resorted to the principle of *res judicata* was held to be inapplicable. However, a Division Bench of this Court in **Kamlesh versus Deputy Collector, Sirsa and Others, (3)** held that decision of authorities are quasi-judicial in nature and principle of *res judicata* are applicable.

(13) The principle of *res judicata* has been applied by Courts for the purpose of achieving finality in litigation. It is based on the need of giving finality to decisions. The principle is generally applicable in suits and not in proceedings which are of summary nature. The principle is also founded on equity, justice and good conscience which require that a party which has once succeeded on an issue should not be permitted to be harassed by a multiplicity of proceedings involving determination of the same issue again. In any case, even if the principle of *res judicata* is not to fully apply, the principle of estoppel would in any case apply as Mohinder Singh (respondent No. 4) cannot seek determination of the same issue time again. In **Official Trustee of West Bengal versus Stephen Court Limited (4)** it was held that the principles of estoppel, waiver, acquiescence or *res judicata* provide for procedural matter. The said provisions are applied to

(1) 2000 (2) P.L.J. 132

(2) 1997 (1) P.L.J. 52 (SC)

(3) 2006 (1) P.L.J. 593

(4) (2006) 13 S.C.C. 401

put an end to a subsequent litigation. Therefore, it may be noticed that the canal authorities under the Act perform quasi judicial functions and where the rights of the parties have been determined and decided in an earlier litigation it is to be barred in a subsequent litigation that is to say that a quasi judicial authority ought not to allow a fresh determination of a case that has already been adjudicated upon between the parties in an earlier litigation.

(14) As already noticed, initially Bharat Singh brother of Mohinder Singh (respondent No. 4) filed a petition seeking transfer of area measuring 20.08 acres for the purposes of irrigation to another outlet. The said petition was dismissed upto the Chief Canal Officer. Thereafter, Mohinder Singh (respondent No. 4) and his brothers filed a petition which also attained finality with the order being passed by the Superintending Canal Officer. Still thereafter Mohinder Singh (respondent No. 4) yet filed another petition for the same purpose. In proceedings under the Act, Mohinder Singh (respondent No. 4) and his brothers are co-sharers and a cause pursued by one would in the eyes of law be a cause that had been pursued by the other co-sharers as well. This of course would be subject to the absence of fraud or collusion or the failure of any fair and real trial of the matter. Therefore, once a petition for a relief had been pursued by one or some of the co-sharers and thereafter subsequent petitions filed by some other co-sharers for similar relief, the subsequent petitions if not wholly barred by the principle of *res judicata*, the petitioners of the subsequent petitions would in any case be estopped from re-agitating the same claim again. As a matter of public policy, it would be prudent that a party is estopped from agitating the same issue again and again which has been finally decided. However, in a case where there has been improper consideration or an erroneous decision or there has been a fraud, collusion or failure of any fair and real trial of the matter, the issue finally determined in a summary proceedings may require fresh consideration. The same is not the position in the present case. The various orders passed in the present case a reference to which has been made above shows that there has been due consideration of the matter at various stages and by the different authorities under the Act. Therefore, once the matter has been finally decided and adjudicated upon, it would be just and expedient not to permit the same to be agitated again. The Chief Canal Officer, —*vide* order dated 8th April, 2008 (Annexure P9) having unsettled the settled position of not shifting the water course, had not only prevented finality of decisions that has been

reached at but has conveyed a wrong message that a litigant may go on filing applications for a relief claimed and even if the same is denied it could be granted at some subsequent stage. This clearly is against public policy and administration of justice.

(15) Resultantly, the writ petition is allowed and the impugned order dated 8th April, 2008 (Annexure P9) passed by the Chief Canal Officer, BWS, Irrigation Department, Haryana (respondent No. 3) is set aside.

R.N.R.