(1981) 11 P&H CK 0028

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 702 of 1972

Mihan Singh and others		APPELLANT
	Vs	
State of Punjab and others		RESPONDENT

Date of Decision: Nov. 3, 1981

Citation: (1982) ILR (P&H) 84 : (1982) PLJ 293 : (1985) RRR 311

Hon'ble Judges: B.S.Dhillon, J

Advocate: T.S. Mangat, Advocate., Advocates for appearing Parties

Judgement

B.S. Dhillon, J. (Oral)

1. Civil Writ Petition Nos. 702, 757, 841 and 862 of 1972 are being disposed of by a common judgment as the facts and the law point on the basis of which the same have to be disposed of are common.

2. Briefly stated, the undisputed facts are that a Bandh known as Dhikansu Bandh starts from village Padiras, Tehsil Rajpura, District Patiala and extends to river Ghaggar near village Lachhru Khurd, Tehsil Rajpura. The petitioners in all the writ petitions own Land in villages situate on both sides of the said Bandh. It is not disputed that no water flows through this Bandh from any stream or river or from any canal. The water collected in the area of the Bandh during the rainy season is taken into the channel and is made to flow in river Ghaggar. Some water from this Bandh over flowed the lands of the petitioners in the years 1970 to 1972. The respondent authorities under the Northern India canal and Drainage Act, 1873 (hereinafter referred to as the Act) took steps to charge Abiana from the petitioners as according to the respondents, the lands of the petitioners were being irrigated from the water from the channel connecting the Bandh. This action of the respondents is sought to be impugned in all these writ petitions on the short ground that the overflow rain water from the Bandh, which entered into the fields of the petitioners, cannot be made the basis for charging Abiana as the Bandh or the channel in question is not a canal within the meaning of the provisions of section 3 of the Act. The case set up by the respondents in the return is that the work in

question is a channel within the meaning of clause (B) of section 3 of the Act and, therefore, the respondents were right in making the demand.

3. The provisions of section 3 of the Act, are as follows :

"3. Interpretation clause. In this Act, unless there be something repugnant in the subject or context :

(1) Canal. ''Canal'' includes

(a) all canals, channels and reservoirs constructed, maintained or controlled by the State Government for the supply or storage of water;

(b) all works, embankments, structures, supply and escape channels connected with such canals, channels or reservoirs;

(c) all watercourses, as defined in the 2nd clause of this section;

(d) all parts of a river, stream, lake or natural collection of water, or natural drainage channel, to which the State Government had applied the provisions of Part II of this Act;

(e) a field drain for the purpose of section 70 of this Act.

(2) ... ... ",

4. Under section 5 of the Act, which is the first section in Part II of the Act, whenever it appears expedient to the State Government that the water of any river or stream flowing in a natural channel, or of any lake or other natural collection of still water should be applied or used by the State Government for the purpose of any existing or projected canal or drainage work, the State Government may by notification in the Official Gazette, declare that the said water will be so applied or used after a day to be named in the said notification, not being earlier than three months from the date thereof. This section of the Act would show that if a particular work is covered under the definition of clause (d) of section 3 of the Act, in that case a notification has to be issued by the State Government under section 5 and it is only then that the water supplied from the said work can be held to be water supplied from the canal and, therefore, Abiana can be levied under the provisions of the Act. The case of the respondents that the present work is covered under the definition of clause (b) of section 3 of the Act appears to be untenable. The reading of the provisions of the Act would show that under clause (a) of section 3 of the Act all canals, channels and reservoirs constructed, maintained or controlled by the State Government for the supply or storage of the water can be termed as canals within the meaning of the said section. Under clause (b) of section 3 of the Act, all works, embankments, structures, supply and escape channels connected with such canals, channels or reservoirs, can be termed as canals. It would thus be seen that under clause (a) of section 3 of the Act, it is a necessary ingredient that a canal, channel or a reservoir should have been constructed, maintained or controlled by the State Government

for the supply or storage of water. In the present case, it is quite obvious that the work has been constructed to drain out the water of the area and to throw the same in river Ghaggar. It has not been constructed by the State Government for the supply or storage of water. Since clause (b) of section 3 of the Act is necessarily connected with clause (a) of that section, therefore, the present work cannot be termed to be covered under the definition of clause (b). The said work can appropriately be held to be covered by the definition of clause (d). It is the natural collection of the water which is being sought to be drained out from the work in hand and the said work can only be held to be a canal if the State Government had applied the provisions of Part II of the Act to the said work. It may be pointed out at this stage that realising the fallacy in the plea of the State to bring the project work in question under clause (b) of section 3 of the Act, the State Government subsequently became wiser and treated the work in question as one under clause (d) of section 3 of the Act and made applicable the provisions of Part II of the Act to the said work by issuing notification dated 17th May, 1973 which was to come into fore on or after 1st November, 1973. The present work, i.e. Dhikansu Bandh has been mentioned at S. No. 209 in the said notification. From what has been stated above, it is clear that the water supplied from the work in hand in question could not be made the basis for the charging of Abiana before 1st November, 1973. In all the writs petitions, the recovery of the Abiana pertains to the period from 1970 to 1972, I.e., before the provisions of Part II of the Act were enforced as regards this work.

5. For the reasons recorded above, all these writs are allowed with costs and the official respondents are restrained from recovering Abiana from the petitioners for the alleged supply of water from the work in question before 1st November, 1973.