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(2001) 05 P&H CK 0193

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 6902 of 2001

Sharanjit Singh	APPELLANT
Vs	
The State of Punjab and others	RESPONDENT

Date of Decision: May 14, 2001

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2002) 3 RCR(Civil) 265

Hon'ble Judges: N.K. Sud, J; Jawahar Lal Gupta, J

Bench: Division Bench

Advocate: Malkeet Singh, for the Appellant;

Final Decision: Dismissed

Judgement

Jawahar Lal Gupta, J.
The third Respondent filed a petition alleging inter alia that Sharanjit Singh, the present Petitioner, had demolished the existing watercourse. He prayed for its restoration. The Divisional Canal Officer, after thorough consideration of the matter, found that there was an existing watercourse. It had been demolished by the present Petitioner. He. therefore, ordered its restoration. Aggrieved by the order, the Petitioner filed an appeal before the Superintending Canal Officer. He perused the "file, spot map and other documents...and found that the watercourse is depicted as on point A,B,C,D,E and portion A,B is shown to be running at the spot, whereas portion at point B,D & E is found to be dismantled." He further found that watercourse B, C is also running. He came to the conclusion that the watercourse had been demolished and. thus, ordered its restoration. Copies of the orders passed by the two authorities have been produced as Annexures P-4 and P-5. Aggrieved by the orders, the Petitioner has filed the present writ petition. He prays that both the orders be quashed.

2. We have heard Mr. Malkeet Singh Ld. Counsel for the Petitioner. He has made a two-fold submission. Firstly, it has been contended that the authorities had acted illegally inasmuch as the enquiry was got conducted through the Ziledar and not by the Divisional Canal Officer personally. Secondly, it has been contended that the watercourse which had allegedly been demolished was, in fact, the personal watercourse of the Petitioner. He was using it for irrigating his fields with the help of a tubwell that is installed therein. The Respondents have erred in holding that the Petitioner had actually demolished the watercourse. On these premises, the counsel maintains that both the orders are liable to be set aside.

3. As for the first contention, it deserves notice that the Divisional Canal Officer had asked for a report from the Ziledar. After receipt of the report he had examined the record and recorded the findings. No prayer was made to the Divisional Canal Officer, it was not contended that the order of the Divisional Canal Officer was vitiated as he had failed to conduct the enquiry personally. Thus, the contention cannot be accepted.

4. Still more, the question as raised is not one of law alone. It is a mixed question of fact and law. The Petitioner had to raise it before the authority so the relevant facts could be considered and a finding recorded. Since the issue was not raised before the Divisional Canal Officer or even the Superintending Canal Officer, we cannot permit the Petitioner to raise it for the first time in proceedings under Article 226 of the Constitution. Even otherwise, nothing has been pointed out to indicate that any prejudice had been caused by the Petitioner. The Ziledar had visited the spot and given a report. Copy of the report has not been produced. It has not been suggested that the report was wrong. There is not even a grievance that any prejudice was caused by the action of the Respondents in relying upon the report given by the Ziledar. Taking these facts cumulatively into consideration, we find ourselves unable to accept the first contention.

5. Ld. counsel has then contended that the Respondent authorities could not have directed the Petitioner to restore a water channel which was being used by him to irrigate his own fields with the water from the tubewell. We are unable to accept even this contention. Firstly, the Petitioner''s case before the authorities was that the alleged water channel did not exist. In fact, according to the Petitioner, there was only a passage at the spot. This was found to be false. In view of this finding, the claim now sought to be made is that the water channel connected the Petitioner''s field with the tubewell.

6. No such contention was raised before the authorities under the Act. It appears that new plea trotted out only to challenge the impugned orders.

7. No other point has been raised.

8. In view of the above, we find no merit in this petition. It is, consequently dismissed in limine.

Sd/- N.K. Sud, J.