

Baru

Vs

Dalip Singh and Others

Civil Appeal No. 2416 of 1968

(Jaswant Singh, Syed M. Fazal Ali, JJ)

11.04.1978

JUDGMENT

MURTAZA FAZAL ALI, J. -

1. These appeals involve a common question of law and will be disposed of by one common judgment. It appears that a large tract of land was being irrigated in the villages Sisai Rola, Kajal Khera and Rajpura in District Hissar by R. Ds. Nos. 1000 and 1900. Two applications, one by Baru and 49 others and the other by Rameshwar and 3 others were made to the District Canal Officer under the Provisions of the Northern India Canal and Drainage Act, 1873 (hereinafter referred to as the Act of 1873), for shifting the heads of the aforesaid water courses but these applications were rejected by the District Canal Officer. Thereupon the aforesaid applicants filed separate revisions before the Superintending Canal Officer who allowed the same and passed orders for shifting of the heads of the water courses alluded to above as prayed for by the revisionists. The High Court which was then moved in writ jurisdiction quashed the orders of the Superintending Canal Officer at the instance of the Dalip Singh and others on the ground that no revision lay to the Superintending Canal Officer under the provisions of the Act of 1873 in the circumstances of the case. Aggrieved by the judgment and order of the High Court, the applicants have come up to this Court. We have heard counsel for the parties and we agree with the view taken by the High Court that the aforesaid revision application preferred by Baru and others and Rameshwar and others before the Superintending Canal Officer were not maintainable because the jurisdiction under Section 30-B(3) which runs as follows :

Section 30-B(3) : The Superintending Canal Officer may suo motu at any time or on an application by any person aggrieved by the approved scheme made within a period of thirty days from the date of publication of the particulars of the scheme under Section 30-C, revise the scheme approved by the Divisional Canal Officer. is confined only to a scheme approved by the Divisional Canal Officer. In the instant case, there was no question of approval of any scheme by the Divisional Canal Officer and, therefore, the revisions did not strictly fall within the four corners of Section 30-B, sub-clause (3). It, however, appears from the record that while about 50 co-shares of the water courses had applied for shifting of the heads of the aforesaid water courses, about 15 of the other villagers had opposed this prayer. It was, therefore, a clear case where the Divisional Canal Officer should have considered the desirability of preparing a scheme under Section 30-A(1). For these reasons, while we are clearly of the opinion that there is no error of law in the judgment of the High Court, the fact remains that the applications made by a number of shareholders praying for shifting of the heads of water courses were in reality and in substance applications to the Divisional Canal Officer for preparing a scheme so as to change the heads of the water course or water outlets

to suit their needs. In the circumstances, therefore, while upholding the order of the High Court we direct the Divisional Canal Officer to treat the aforesaid applications filed by Baru and others and Rameshwar and others as applications for preparing a scheme and dispose them of in accordance with Sections 17, 18, 19 and others relevant provisions of Haryana Act 29 of 1974 which has since come into force. The District Canal Officer may allow the aforesaid applicants to file any supplementary or amended application, if they so desire. He will also allow the respondents to file their objections and dispose of the matter as expeditiously as possible in accordance with law. The result is that the appeals are dismissed but in the circumstances with no orders as to costs.

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