

with the provisions of this Part' within section 80 of the Act. If there had been such a non-compliance with the requirement of sub-section (3) not merely the Election Commission under section 85, but the Election Tribunal under section 90(3) would *prima facie* not merely be justified, but would be required to dismiss the election petition."

There is no doubt that it was further observed by the Supreme Court even in *Ch. Subbarao's case* (4) that if there is a substantial compliance with the requirements of section 81(3), the election petition cannot be dismissed. The question of substantial compliance would have been incomplete in respect of something insignificant or irrelevant. In the present case the copy furnished by the petitioner is incomplete in material particulars.

(18) From the language and scheme of sections 80 and 86 of the Act and Article 329 of the Constitution, and in the face of the authoritative pronouncements of the Supreme Court in *Ch. Subbarao's case* (4) and in *Jagat Kishore Prasad Narain Singh's case* (8), there appears to me to be no escape from the conclusion that if those requirements of section 81(3) which are mandatory are not complied with in a given case, the Court has no discretion in the matter and cannot condone the default, but must dismiss the petition. I accordingly decide the preliminary issue in favour of the respondent and against the petitioner.

(19) In view of the findings recorded by me, I must dismiss this petition with costs, and I order accordingly. Counsel's fee Rs. 300.

B. S G.

CIVIL MISCELLANEOUS

Before A. D. Koshal, J.

HAZURA SINGH,—Petitioner.

versus

THE STATE OF PUNJAB, etc.—Respondents.

Civil Writ No. 2569 of 1970.

July 30, 1971.

Northern India Canal and Drainage Act (VIII of 1873)—Section 30-FF—Proceedings for reconstruction of a demolished water course—Whether must

Hazura Singh v. The State of Punjab, etc. (Khosla, J.)

be commenced by an application made to the Divisional Canal Officer only—Sub-Divisional Officer—Whether has jurisdiction in the matter—Orders in appeal passed by the Divisional Canal Officer and Superintending Canal Officer against the order of Sub-Divisional Officer in such matter—Whether legal.

Held, that section 30-FF in the Northern India Canal and Drainage Act, 1873, is the only section under which the reconstruction of a demolished water course can be ordered. According to this section, the Divisional Canal Officer is the only authority before whom proceedings can be initiated. Such proceedings must also commence with an application made by the party affected by the demolition and in no other way. The Sub-Divisional Officer has no jurisdiction to proceed in the matter. The order passed by the Divisional Canal Officer in appeal against the order of the Sub-Divisional Officer is not in pursuance of any application under sub-section (i) of Section 30-FF of the Act and hence is also tainted with illegality. The Superintending Canal Officer has also no jurisdiction to vary the order passed by the Divisional Canal Officer in appeal on the assumption that it is legally good. (Para 2)

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 decision of the application filed by the petitioner for removal of water-course "EXY" from his fields situated in the area of the revenue estate Rao Ke Kalan, Tehsil Moga, District Ferozepur, Chak of outlet R.D. 29375/L, Wadhni Distributory, and order, dated 8th April, 1970 of Respondent No. 2 and the order dated 20th July, 1968 of Respondent No. 4.

K. C. Puri, and S. K. Goyal, Advocates, for the petitioner.

Gurbachan Singh, Advocate, for Advocate-General, Punjab.

Narinder Singh, Advocate for Respondent No. 5.

JUDGMENT

KOSHAL, J.—(1) The facts leading to this petition under Articles 226 and 227 of the Constitution of India would be better appreciated with reference to a plan which is appended to the petition as Annexure "A". In that plan the L-Shaped *khal* in dispute is delineated by the letters EXY and runs along the western and southern boundaries of *killa* No. 12 of rectangle No. 122. Admittedly this *khal* lies in land belonging to the petitioner and was demolished by him in the year 1968. Respondent No. 5 who had been using the *khal* earlier for irrigating his fields, made an application to the

Sub-Divisional Officer (Canals), respondent No. 4, who, after making an investigation, passed an order on the 20th of July, 1968 (Annexure "C" to the petition) holding that respondent No. 5 had been using the disputed *khal* for the preceding 15 years and directing that it be restored through police help. The *khal* was so restored and the petitioner, therefore, went up in appeal to the Divisional Canal Officer (respondent No. 3) who, on the 24th of February, 1970, set aside the order of respondent No. 4 on the following grounds (Annexure "G" to the petition) :

- (1) The Dhuri Khal (which is shown in the plan in blue and is delineated by letters ABCDEFG) was running through the fields of respondent No. 5.
- (2) A number of *khals* was already running the fields of the petitioner and thus causing him loss.
- (3) If there is some raised area with respondent No. 5, he can irrigate it by "*bharai*".

(2) The order passed by respondent No. 3, however, was set aside in second appeal on the 8th of April, 1970, by the Superintending Canal Officer, respondent No. 2, (Annexure "H" to the petition) "in the interest of irrigation and on technical grounds". His reasoning is reproduced here :

"Both the parties have been heard in detail. The Dhuri Khal ABCDEFG not only irrigates the tak of the appellants and respondents but even goes further D/S to irrigate a good lot of area in the Chak of outlet R.D. 29,375/L Wadhni Disty.

The country slope being from North to South, this Dhuri Khal cannot irrigate the field Nos. 122/16, 17, 18 and 123/20. So he has to resort to irrigation from the link W/C EXY."

(3) It is the order of the Superintending Canal Officer passed in second appeal which is impugned by the petitioner.

(4) This petition must succeed for the simple reason that the proceedings taken by the canal authorities contravene the express

provisions of section 30-FF of the Northern India Canal and Drainage Act (hereinafter referred to as the Act) which runs thus :

“30-FF. (1) If a person demolishes, alters enlarges or obstructs a watercourse or causes any damage thereto, any person affected thereby may apply to the Divisional Canal Officer for directing the restoration of the watercourse to its original condition.

(2) On receiving an application under sub-section (1), the Divisional Officer may, after making such enquiry as he may deem fit, require, by a notice in writing served on the person found to be responsible for so demolishing, altering, enlarging, obstructing or causing damage, to restore at his own cost. the watercourse to its original condition within such period as may be specified in the notice.

(3) If such person fails to the satisfaction of the Divisional Canal Officer to restore the watercourse to its original condition within the period specified in the notice served on him under sub-section (2) the Divisional Canal Officer may cause the watercourse to be restored to its original condition and recover the cost incurred in respect of such restoration from the defaulting person.

(4) Any person aggrieved by the order of the Divisional Canal Officer, may prefer an appeal within thirty days of the passing of such order, to the Superintending Canal Officer, whose decision on such appeal shall be final.

(5) Any sum which remains unpaid within a period to be specified for this purpose by the Divisional Canal Officer may be recovered by the Collector from the defaulting person as if it were an arrear of land revenue.”

(5) This is the only section under which the reconstruction of a demolished watercourse can be ordered. According to it, the Divisional Canal Officer is the only authority before whom proceedings can be initiated. Such proceedings must also commence with an application made by the party affected by the demolition and in no other way. Neither of these requirements is fulfilled in the present case. Respondent No. 5 made his application not to the

Divisional Canal Officer but to one of his subordinates, namely, the Sub-Divisional Officer who had no jurisdiction to proceed with the application or to pass any order on it. The Divisional Canal Officer was no doubt ultimately moved but that was through an appeal in which the petitioner who was a person responsible for the demolition of the watercourse figured as the appellant. No action was taken by the Divisional Canal Officer in pursuance of any application under sub-section (1) so that the proceedings before him also were tainted with illegality and the order passed by him cannot be deemed to be one sanctioned by section 30-FF. And if that be so, the Superintending Canal Officer had also no jurisdiction to vary that order on the assumption that it was legally good. In this view of the matter all the three orders passed by the canal authorities (Annexures "C", "G" and "H" to the petition) must be held to have been passed in contravention of the provisions of section 30-FF and, therefore, liable to be quashed.

(6) It was urged on behalf of the respondents that even in the situation arising from the finding just above arrived at, the Court should not grant any relief to the petitioner in exercise of its writ jurisdiction inasmuch as if the orders of the canal authorities were quashed, the parties would have to seek relief over again from two of them, namely, the Divisional Canal Officer and the Superintending Canal Officer who had already expressed their opinion on the merits of the case and had done substantial justice to the parties. It is no doubt true that if the Court grants the petition, the parties would be forced to have recourse to the provisions of section 30-FF which envisages the passage of orders with regard to the dispute by the Divisional Canal Officer in the first instance and by the Superintending Canal Officer as the appellate authority. Normally the result would be a duplication of the proceedings already taken but I find that the order of the Superintending Canal Officer is vitiated by an erroneous observation. According to him :

"The country slope being North to South, this Dhuri Khal cannot irrigate the field Nos. 122/16, 17, 18 and 123/20. So he has to resort to irrigation from the link watercourse EXY."

(7) The general slope of the terrain is no doubt from north to south but it appears that this is not true in the case of *killas* Nos. 122/16 and 123/20. A reference to the plan would show that *killa*

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No. 122/25 which lies to the south of *killa* No. 122/16 and to the south-west of *killa* No. 123/20 has a level higher than that of either of them so that both of them can be irrigated without difficulty through *killa* No. 122/25. This means that if the impugned order of the Divisional Canal Officer is upheld, respondent No. 5 would get *khal* EXY merely for facilitating the irrigation of two of his *killas*, namely, 122/17 and 122/18 which also, as remarked by the Divisional Canal Officer, he can irrigate through *bharai* from the Dhuri Khal. It thus appears to me that the reconstruction of *khal* EXY which, as already stated, lies entirely in the fields belonging to the petitioner is not demanded by the ends of justice. However, I am not prepared to substitute my own judgment in this matter for that of the canal authorities who, when approached by either of the parties, would be at liberty to pass such orders as they may think just and proper in the circumstances of the case.

(8) In the result I accept the petition and not only quash the order of the Superintending Canal Officer (Annexure "H" to the petition) but also those passed by the two officers below (Annexures "C" and "G" to the petition). The petitioner shall have his costs of these proceedings. Counsel's fee Rs. 100.

B. S. G.

GENERAL SALES TAX REFERENCE

Before Prem Chand Pandit and Gopal Singh, JJ.

M/S GOYAL OIL MILLS, LUDHIANA,—Appellants.

versus

THE STATE,—Respondent.

General Sales Tax Reference No. 2 of 1969.

August 2, 1971.

Punjab General Sales Tax Act (XLVI of 1948 as amended by VII of 1967)—Sections 10(6) and 20—Purchase tax imposed on an assessee for a particular year—Assessee taking the matter to Court challenging his liability to pay the tax—Tax not paid on that score—Penalty imposed—Court holding the assessee not liable to pay the tax for that particular year—Act amended