

# The Indian Law Reports

CIVIL MISCELLANEOUS

Before *Shamsher Bahadur, J.*

MANJIT SINGH AND OTHERS,—*Petitioners.*

*versus*

THE SUPERINTENDING ENGINEER, UPPER BARI  
DOAB CANAL AND OTHERS,—*Respondents*

Civil Writ No. 1486 of 1963.

*Northern India Canal and Drainage Act (VIII of 1873)—*  
S. 20—*Canal authorities—Whether can stop an existing*  
*outlet.*

1963

Nov., 19th.

*Held*, that section 20 of the Northern India Canal and Drainage Act, 1873, is intended to apply to applicants, who desire their fields to be served through an existing water-course and the Divisional Canal Officer is empowered to entertain such applications after due enquiry. It does not vest authority in the Divisional Canal Officer or indeed any other authority appointed under the Act to shut an existing outlet and shift it to another position on the canal. Such a course is perhaps, possible with the assent of the right-holders whose fields are irrigated through the existing outlet.

*Petition Under Articles 226 and 227 of the Constitution, of India praying that an appropriate writ, direction, or order be issued quashing the orders passed by Divisional Canal Officer Jandiala Division, U.B.D.C., Amritsar as the proceedings taken by respondents 1 and 2 were illegal and beyond jurisdiction. The respondents may further be directed not to force the petitioners to stop the irrigation of their lands from the existing old outlet and to irrigate their said fields from the new outlet.*

H. S. GUJRAL, ADVOCATE, for the Petitioners.

S. S. SODHI, ADVOCATE, for the Respondents.

## ORDER

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SHAMSHER BAHADUR, J.—Whether the Canal authorities under the Northern India Canal and Drainage Act have any power to stop an existing outlet under Section 20 of the Act is the question which has been raised in this petition under Article 226/227 of the Constitution of India.

The petitioners, who are twenty in number, claim to have an aggregate irrigated area of 145 acres of land out of 168 acres which are served from outlet No. 21279 of Bhindir distributory of the Upper Bari Doab Canal since 1947. Twelve persons made an application on 24th of May, 1960, to have this outlet shifted to another place. Four out of the twenty petitioners, appended their signatures to this petition. Again, on 5th of June, 1960, fourteen persons, including six of the petitioners, filed a written statement repeating the request for a change in the outlet. The Divisional Canal Officer invited objections to the proposal for a change. Out of the seven persons, who appeared before him, five were in favour of the change and two against. The Divisional Canal Officer recommended a change by his order of 21st of November, 1960, and this was confirmed by the Superintending Engineer on 5th of January, 1961.

The petitioners allege that one Dharam Singh landowner got the thumb-impressions of some of these petitioners on blank sheets of paper misrepresenting that an application would be filed for widening outlet No. 21279. Actually an application was made for change of outlet and to this the majority of the landowners are opposed. In pursuance of the orders of the Superintendent Engineer confirming the proposal made by the Divisional Canal Officer, a notice was sent to the petitioners on 18th of October,

1961, and according to the respondent-State, the proposal was "noted" by the petitioners. In the assertions made by the petitioners, however, neither the proposal nor the order of the Superintending Engineer had ever been assented to by them. When the outlet came to be shifted in June, 1963, the petitioners came to this Court to challenge the orders of the Canal authorities.

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Mr. Gujral, the learned counsel for the petitioners, contends that the outlet being a part of the canal is not covered by section 20 under which the Divisional Canal Officer purports to have exercised his power. Under this section:—

"Whenever application is made to a Divisional Canal-Officer for a supply of water from a canal, and it appears to him expedient that such supply should be given and that it should be conveyed through some existing water-course, he shall give notice to the persons responsible . . . . . and, after making enquiry on such day, the Divisional Canal-Officer shall determine whether and on what conditions the said supply shall be conveyed through such water-course."

A 'water-course' is defined in sub-section (2) of section 3 of the Act as meaning "any channel which is supplied with water from a canal, but which is not maintained at the cost of the State Government and all subsidiary works belonging to any such channel." Canal, under sub-section (1) of section 3 includes "all canals, channels and reservoirs constructed, maintained or controlled by the State Government, for the supply or storage of water." It is not disputed that the outlet which in reality is a connecting link between the canal and the water-course is included in the

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definition of the canal and is constructed and maintain-  
ed by the State Government.

Section 20 is intended to apply to applicants who desire their fields to be served through an existing water-course and the Divisional Canal Officer is empowered to entertain such applications after due enquiry. As I read this section, it does not vest authority in the Divisional Canal Officer or indeed any other authority appointed under the Act to shut an existing outlet and shift it to another position on the canal. Such a course is, perhaps, possible with the assent of the right-holders whose fields are irrigated through the existing outlet. As rightly contended by the learned counsel for the petitioners, the Divisional Canal Officer may and indeed has the power to construct as many outlets as appear to him desirable for the supply of water to the water-courses maintained by the right-holders. Mr. Sodhi, the learned counsel for the State, submits that the Canal authorities can alone Judge whether the existing outlet is the best source of supply to the culturable commanded area or it should be shifted to another and better place. It is argued that the existing outlet No. 21279 being in the lower region of the canal is not calculated to serve all the fields covered in the area to the best advantage. If that were so, there is nothing in the Act to prevent the authorities to construct another outlet and a proper and equitable distribution of the flow can be ensured by the appropriate turns in the *warabandi*. There is no authority given to the Divisional Canal Officer under Section 20 to shut or change the existing outlet and in this view of the matter, this petition must succeed and the orders passed by the Divisional Canal Officer on 21st of November, 1960, and confirmed by the Superintending Engineer on 5th and 8th of January, 1961, are set aside. There would be no order as to costs of this petition.

B.R.T.