

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

RSA No.5085 of 2014 (O&M)

Date of decision: 06.12.2018

Samunder Singh

..... Appellant

Versus

State of Haryana and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present:- Mr. Narender Kaajla, Advocate  
for the appellant.

Mr. Saurabh Girdhar, AAG, Haryana  
for respondents No.1 to 3.

Mr. Ajit Sihag, Advocate  
for respondents No.4 and 5.

Mr. J.K. Sehrawat, Advocate  
for respondent No.6.

\*\*\*\*\*

**ANIL KSHETARPAL, J.(ORAL)**

Plaintiff-appellant is in the regular second appeal against the judgment passed by the learned First Appellate Court reversing the judgment passed by the trial Court.

Plaintiff through the present suit had challenged two orders passed by the Canal Authorities dated 15.03.2007 and 30.04.2007. Learned trial Court upheld the order dated 15.03.2007 as it was passed after hearing the parties and giving them opportunity of hearing. However, the trial Court found that the order dated 30.04.2007 which is stated to be an order correcting a mistake was found to have been passed without giving opportunity of hearing to any one and non-speaking.

Two appeals were preferred. One by the State and second by defendants No.9 and 10. Learned First Appellate Court has held that since the order passed on 30.04.2007 was only ordering correction of the previous order, therefore, the hearing was not required.

Learned counsel for the parties have been heard at length. Counsel for the respondent has pointed out that Section 56 of the Haryana Canal and Drainage Act, 1974 enables the officers to correct the clerical errors either of its own motion or on the application of any of the parties. Section 56 of the Act is extracted as under:-

***“56. Correction of clerical errors.***

*Clerical or arithmetical mistakes in an order passed by an officer under this Act arising from any accidental slip or omission may at any time be corrected by the authority concerned either of its own motion or on the application of any of the parties.”*

It is nowhere provided that the correction can be ordered without hearing the affected parties. It is not disputed before this Court that the alleged correction of the clerical error had adversely affected the rights of the plaintiffs. In such circumstances, an affected party has to be given opportunity of hearing.

Hence, the order without following the procedure prescribed under the Act is void-ab-initio. The right of hearing has to be read into the statutory provision failing which such provision would be rendered ultravires.

Learned counsel for the respondent further submitted that the jurisdiction of the Civil Court is barred. It will be noted that once the order is without hearing to the affected parties, the order is void-ab-initio, therefore, the Civil Court would have jurisdiction.

Keeping in view the aforesaid facts, the order dated 30.04.2007 is set aside. State of Haryana or its officials shall be entitled to pass a fresh order after granting opportunity of hearing to the concerned parties.

The pending miscellaneous application, if any, shall stand disposed of accordingly.

Appeal is allowed.

06.12.2018  
Dinesh Bansal

( ANIL KSHETARPAL )  
JUDGE

|                           |          |
|---------------------------|----------|
| Whether speaking/reasoned | Yes / No |
| Whether Reportable        | Yes / No |