

Balbir Singh and ors. Vs. Executive Engineer and anr.

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Court : Allahabad

Decided On : Oct-11-1956

Reported in : AIR1957All204

Judge : Agarwala and ;M.L. Chaturvedi, JJ.

Acts : [Northern India Canal and Drainage Act, 1873](#) - Sections 27, 33, 34 and 35

Appeal No. : Special Appeal No. 295 of 1955

Appellant : Balbir Singh and ors.

Respondent : Executive Engineer and anr.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : D. Sanyal, Adv.

Disposition : Appeal dismissed

Judgement :

Agarwala, J.

1. This is a special appeal from an order of a learned single Judge of this Court dismissing a writ petition.

2. The appellants are residents of village Kheri Sarai, pargana Bhooma Sambhal Hera, post office Miranpur, District Muzaffarnagar. On the morning of 2nd of May 1953 the pucca head of the Betawali minor (sub-canal) was found broken by the canal patrol on duty. The matter was investigated, and it was found that the villagers of Mauza Kheri Sarai and other villages had derived benefit by irrigating their fields from the water from the canal.

It could not be discovered who had broken the canal head. The Assistant Engineer recommended a punitive rate for this unauthorised use amounting to Rs. 20,858/2/- for all the four villages. This was reduced by the Divisional Canal Officer to a single rate which came to Rs. 10,429/1/-. This amount was further reduced by the Additional District Magistrate in appeal. He held that the appellants used the water on the days on which they were entitled to use it and that they were not aware of the breach in the canal.

3. A writ petition was then filed in this Court by the appellants praying that the order imposing the charges upon them may be quashed. The grounds urged in support of their application were, firstly, that the finding of the Additional District Magistrate being that the appellants used the water of the canal only on the days on which they were permitted to use the water and that they were not aware of the breach in the canal, they were not liable to pay any punitive charges; secondly, that the order of the Executive Engineer was illegal inasmuch as he was not satisfied that an investigation was made by a canal officer; and thirdly, that the Executive Engineer did not consider judicially an application made by the appellants on the 9th January 1954. The learned single Judge rejected these contentions and dismissed the writ petition.

4. In this appeal only one point has been urged before us namely that the order imposing the tax or charges was without jurisdiction. The argument is that since the appellants used the water on the day on which they were entitled to use it and it had not been established that they had broken the canal head or that they knew of the breach, they were not liable for any charge over & above the ordinary charge that was leviable from them.

5. When water, is used in an unauthorised manner the villagers whose land is benefited by such use are liable to a charge for such use. This may or may not be in addition to the ordinary charges those villagers may be liable for the ordinary use of water. Sections 33 to 35 of the Northern India. Canal and Drainage Act, 1873, provide for the levy of such charges.

These sections clearly empower the canal authorities to impose charges for water which has been used in an unauthorised manner. When the person through whose act or neglect such use has occurred cannot be identified the charge may be levied firstly on 'the person on whose land such water has flowed if such land has derived benefit therefrom,' and if nobody's land has derived benefit then on 'all the persons chargeable in respect of the water supplied through such water-course'.

If water is allowed to run to waste and if the person through whose act or neglect the water was allowed to run to waste cannot be discovered, then 'all the persons chargeable in respect of the water supplied through such water-course shall be jointly liable.' All charges for the unauthorised use or for waste of water may be recovered in addition to any penalties incurred on account of such use or waste.

The charges made under Sections 33 to 35 appear to be made over and above the regular charges for use of water and also over and above the penalties which may be incurred on account of such use or waste. The charges are levied at different rates according to the different circumstances of the person liable.

Rule 27 of the Rules made under the Act provides for the levy of such charges. There is a double punitive rate and a single rate. The appellants not having been found to be privy to the injury to the canal head or to be guilty of using the water knowing that the canal head had been broken, were made liable to a single rate by the Additional District Magistrate.

Prom a perusal of Sections 33, 34 and 35 it is clear that where an unauthorised use has occurred persons who have not been guilty of any injury to the canal or of any act on account of which the unauthorised use has occurred are also liable for the charge for the unauthorised use of the water. The facts that the appellants did not cause the breach in the canal and were ignorant of the breach are therefore

immaterial. It is conceded that there was a breach in the canal and that water overflowed and irrigated the appellants' fields.

6. It was urged that even if Sections 33 to 35 empower the canal authorities to impose a charge for use of water when the person whose land is irrigated did not do anything towards its user but his land has derived benefit therefrom on account of water having overflowed the canal, Rule 27 does not impose a charge for such use. Rule 27 runs as follows:

'Charge leviable for water used without permission or at a time prohibited by proper authority, or for the irrigation of debarred fields.

'Persons using water without permission or at a time prohibited by proper authority (i. e. during tatils) or for the irrigation of a field which has been debarred from canal irrigation under Rule 7 shall, in addition to the ordinary rate which would be leviable, be chargeable with a punitive rate equal to the above ordinary rate for each separate and distinct occasion on which the water is so used; provided that in every such case the Divisional Canal officer may impose a lower charge if he thinks fit.

In the case, however, of persons wilfully cutting the banks or placing bunds in the bed of a canal, for the purpose of irrigating their fields, the punitive rate may in each case, at the discretion of the Divisional Canal Officer, be increased to twice the ordinary rate.

If the water has been used for irrigation the areas irrigated shall be measured and notice shall at once be given on each such occasion to the persons concerned that they will be charged in the demand statement under this rule for the area so watered.'

7. The marginal note shows that the rule has been made under Section 35, Section 35 speaks of charges for unauthorised use or for waste. The expression 'unauthorised use' in Rule 27, refers in our opinion, to Sections 33 and 35. These sections, as already said, empower the levying of a charge on a person whose land has derived benefit by the water overflowing it even though the person by

whose act or neglect such use has occurred cannot be identified.

The expression 'unauthorised use' in Section 35 and Rule 27, in our opinion, includes the case of a person who may not have deliberately broken the canal or taken water to his land in an unauthorised manner but on whose land water has flowed giving benefit to it by such overflow. The levy of the charge in the present case therefore falls within the purview of Rule 27.

8. There is therefore no force in this appeal. It is dismissed but in the circumstances of the case we direct that the parties will bear their own costs of this appeal.

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