

Claridges Corbett Hideaway and Another Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Mar-09-1999

Reported in : 1999(3)AWC2283

Judge : Ravi S. Dhavan and ;A.K. Yog, JJ.

Acts : [Northern India Canal and Drainage Act, 1873](#) - Sections 16; [Constitution of India](#) - Article 51A

Appeal No. : C.M.W.P. No. 8494 of 1999

Appellant : Claridges Corbett Hideaway and Another

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : V.K. Birla, Adv.

Judgement :

Ravi S. Dhavan, J.

1. M/s. The Claridges Corbett Hideaway in Ramnagar, district Nainital is a company. The second petitioner Mukund Prasad is the Director of the company known as the Claridges Corbett Hideaway. The petition mentions that the company is doing hotel business at Ramnagar, district Nainital. The occasion to

file the present petition arose when this company M/s. Claridges Corbett Hideaway received a notice dated 18th January, 1999 drawing its attention, which attention had been also drawn earlier that the company had illegally pumped out water from the Dhikuli Canal, and thus, was liable to pay royalty for the unauthorised use of water from this canal distributing water from Kosi river. The company resisted in its defence before the authority, to say, that the water which it draws from the canal coming out of the Kosi river, is not unauthorised nor illegal and, secondly, any charges which have been made for using this water, including penalty, is unwarranted and the assessments are illegal. The contention of the petitioner is that before serving notice on the company, it should have been made aware on what exactly is the function of the authority so as to (a) to prevent drawing water from canal, which is coming out from Kosi river and (b) levying of charge which, otherwise, was in valid.

2. The defence of the petitioner is not so simple as has been made out in the present petition. It appears that the company took the law into its own hands. It is on record that the hotel, which the company constructed next to the Kosi river, had been established in 1993. In the circumstances, the petitioner was receiving repeated notices that the pipelines which it had inserted into the canal, was illegal and that it could not draw water from this canal as the law prohibited it. The attention of the company had been drawn to the [Northern India Canal and Drainage Act, 1873](#), and the Company was told of the Unauthorised use of water, which it had already made. The first notice received by the company had required it to stop drawing water through pumps from the canal which came out from the Kosi river. The company ignored and resisted these notices. The company indicated to the authorities, under the Act, that it had bought the hotel next to the Dhikuli canal and the pump house was already there, having been installed by the previous owner, one Devi Dutt Himwal. It was the contention of the company that they had not installed the pump to draw water from the Dhikuli Canal, as the pump already existed as part of the establishment and they bought the whole of it and converted it into a hotel. The company was indicating to the authorities that about 1.25 kms. away from their establishment, there was another irregular pump drawing water from the same canal and the water from that pump is being utilised by the company for its gardens. The company placed on record that it had no

knowledge that there were any restrictions on behalf of the irrigation department. In its defence, before the authorities, the company contended that it had 8 acres of land. One acre houses the hotel and the rest are gardens. The company accepts that the hotel has a swimming pool for which arrangements have been made between 1993 to 1997 by drawing water from the canal, out from the Kosi river. The company also places on record that as the canal is lower than the hotel complex, there can be no natural flow of the canal and in the circumstances, it had to make arrangements by drawing water from the canal by pumps. The company intimated the authorities that it is removing its pump and simultaneously contends that arrangements be made to bring waters of the Kosi river by canal to flow near the establishment of the company. This last request of the company, it is explained, is within the amplitude of Section 16 of the Act. The company is now applying to the authorities, desiring the use of waters of the canal coming out of the Kosi river. A sort of ex-post facto sanction.

3. In the meantime, the company has been assessed on charges for use of water from the canal, and penalty for having used these waters from a public canal, unauthorisedly and illegally. The company questions the basis of the assessment of charges and penalty.

4. Before the Court, the question is not as to how much the company has been assessed to pay as charges, as penalty or otherwise for unauthorised use of water from a public canal.

5. This case cannot be seen in isolation of a notice to the Company under the Act. The petitioner, a hotelier, is in business to run a hotel. It draws water from an irrigation canal, a public canal. A hotel means, toilets, urinals, kitchen, laundry, garden, swimming pool, captive capacity to store water, septic tanks and drainage. Not to be forgotten are throwaway items : garbage and man-made litter. It is not that the canal was made after the hotel and for the hotel. The canal was part of a public scheme : the purpose is irrigation.

6. The hotel business of the company is based in the northern part of the State ; the division of Kumaon, district of Nainital. What concerns the Court is that if the example of the company is followed by others, then, there is no end of the matter

and this will be a totally misplaced idea of tourism.

7. The contention of the company is that such tourism brings in money. May be, such tourism destroys the eco-system. Nature, has also to be left alone, so that its delicate balance is not disturbed. Kumaon and Garhwal, are studded with lakes, streams, water channels, including man-made ones. This is a delicate water system not meant for exploiting beyond what nature generates.

8. The Court mentions these aspects as the [Northern India Canal and Drainage Act, 1873](#) is not limited to canals, channels and streams. The definition is very wide. It indicates embankments, water-courses, lakes, natural collection of water. Thus, the definition of 'canal' as has been used in the Act needs to be looked at ;

"Canal" includes,--

(a) all canals, channels and reservoirs constructed, maintained or controlled by the Government for the supply or storage of water ;

(b) all works, embankments, structures, supply and escape channels connected with such canals, channels or reservoirs ;

(c) all water courses as defined in the second clause of this section ;

(d) any part of a river, stream, lake or natural collection of water, or natural drainage-channel to which the State Government has applied the provisions of Part II of this Act.'

9. This Act may have been legislated more than a hundred years ago. It was at a time when there was a very little violation of the environment and basically the purpose of the enactment was to control waters for irrigation and perhaps any vessel traffic on the river streams and the reservoirs. The Act ought not to be seen in isolation. The [Constitution of India](#), which came after the Act, brought Article 48A to declare that the State shall endeavour to protect and improve the environment and to safeguard the forest and wild life of the country. The Constitution saw amendments in 1977. Article 51A in no uncertain terms declares and seeks protection and improvement of the natural environment including

forests, lakes, rivers and wild life. This Article talks in terms of scientific temper, humanism and the spirit of inquiry and reform and to strive towards excellence in all spheres of individual and collective activity.

10. For the Court, the question is not of any incorrect assessment on the water charges levied on the petitioner. The petitioner in any case has already drawn water illegally and now takes recourse to the law to regularise the illegal activities.

11. In the first place, the hotel of the petitioner should not have been allowed next to the likes of a canal, channels, reservoir, river, stream and lakes, etc. within the meaning of the Act. The Court is concerned that such commercial activities pollute the streams, lakes and rivers in the hill divisions of Kumaon and Garhwal.

12. There is no occasion for the High Court to issue a writ on the petition.

The writ petition is dismissed.

A copy of the judgment be marked down to the Chief Secretary of the State of Uttar Pradesh and also to the Secretary, Environment. Government of India.

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