

Jagdish Vs. the Deputy Collector, Rori Division and ors.

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Court : Punjab and Haryana

Decided On : Mar-25-1998

Reported in : (1998)120PLR385

Judge : T.H.B. Chalapathi, J.

Acts : Haryana Canal and Drainage Act, 1974 - Sections 55(2)

Appeal No. : Civil Writ Petition No. 8199 of 1995

Appellant : Jagdish

Respondent : The Deputy Collector, Rori Division and ors.

Advocate for Def. : B.S. Chahar, Adv.

Advocate for Pet/Ap. : Ashok Verma, Adv.

Disposition : Petition allowed

Judgement :

ORDER

T.H.B. Chalapathi, J.

1. In this writ petition, the petitioner is seeking issuance of a writ of certiorari to quash the orders passed by respondents 1, 2 and 3 which are annexed as Annexures P5 to P7 to the writ petition. The petitioner and respondent No. 4 are

brothers. They are irrigating their land from the water course which is marked as XYZ in the plan which is Annexure P1 to the writ petition. The joint holding of the petitioner and his brother 4th respondent and their father Phusa Ram was partitioned among them in the year 1992-93. No separate Naka is provided for the irrigation of holding of the petitioner. He is taking water from point 'A'. The 4th respondent moved an application before the Deputy Collector under Section 55(2) of the Haryana Canal and Drainage Act, 1974 for providing a separate Naka. On his application, a delivery point was fixed at point 'B'. An appeal was filed by the 5th respondent before the Divisional Canal Officer, Rori Division, Sirsa who allowed the appeal on 3.8.1992. Against the said order, the 4th respondent filed a revision petition before the Superintending Canal Officer who dismissed the same by his order dated 28.10.1992. Thereafter the Deputy Collector passed an order on 19.10.1993 on the statement of Shri Jagdish, petitioner herein. The petitioner filed an appeal to the Divisional Canal Officer who also dismissed the appeal filed by the petitioner stating that the office is not in a position to change the decision of the higher Court. In the revision filed by the petitioner, the Superintending Canal Officer modified the decision of the Divisional Canal Officer to remove the grievance of the petitioner by changing the sequences of the waris of Khata No. 76. Challenging the orders passed by respondents 1 to 3 this writ petition has been filed by the petitioner.

2. There is no dispute of the fact that the fields of Phusa Ram, Dalip, Nand Ram and Satya Narain are cultivated by the water course XY and ABCZ. There is a channel from point 'A' running across the field of Dalip to irrigate the fields of Phusa Ram. In between the lands of Dalip and Jagdish the land of Nand Ram is situated. Nand Ram is taking water from point 'A'. The petitioner herein wants to take the water from point 'B' as shown in Annexure P1, but the grievance of the petitioner is that he is not allowed to take water from point 'B' or point 'C' to irrigate his fields. The main channel 'Y' to 'Z' passes through the fields of Dalip, Nand Ram and Jagdish. From the impugned orders, it is not clear from which point the writ petitioner Jagdish has to draw water. There is no decision as such by the authorities in what manner and from what point the petitioner is to draw water to irrigate his fields as the same is not clear from the reading of the orders passed by respondents 1 to 3. Admittedly, prior to 1992 the entire land of Phusa Ram, Nand

Lai and Jagdish was under joint cultivation and during the year 1992-93 there was a partition between the father and his sons i.e. Phusa Ram, Nand Ram and Jagdish. After partition, warabandi has to be provided to the lands separately.

3. On a consideration of facts and circumstances, I am of the opinion that it is a fit case for remanding the matter to the Superintending Canal Officer for fixing the point from where the petitioner and others have to take water for the purpose of irrigating their fields. The Superintending Canal Officer shall prepare a sketch of the fields and specify the points from where the respective owners of the land have to take water for the purpose of irrigating their fields.

4. Accordingly, the writ petition is allowed and the matter is remitted to Superintending Canal Officer to prepare a sketch of the fields and specify the points from where the respective land owners have to take water to irrigate their fields and he is further directed to dispose of the matter within four months from the receipt of a copy of this judgment.