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Raja Ram and Ors Vs. State and Ors

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Court : Rajasthan Jodhpur

Decided On : Sep-21-2015

Appellant : Raja Ram and Ors

Respondent : State and Ors

Advocate for Pet/Ap. : Shri. Sudhir Sharma

Judgement :

1 IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR :

ORDER
: 1.

S.B.CIVIL WRIT PETITION NO.8316/2015 Sukhmandar Singh V/s State of Rajasthan & ORS.2.

S.B.CIVIL WRIT PETITION NO.5885/2015 Raja Ram & ORS.V/s State of Rajasthan & ORS.Date of Order :: 21.9.2015 PRESENT HON'BLE Mr.JUSTICE ARUN BHANSALI Mr.D.S.Rajvi, for the petitioner/s.

Mr.S.M.Toshniwal) for the respondent/s.

Mr.B.S.Sandhu) ----- BY THE COURT: These writ petitions have been filed by the petitioners seeking to question orders dated 18.12.2012 (Annex.4).order dated 3.5.2015 (Annex.6) and order dated 15.5.2015 (Annex.7) issued by the Special

Officer, Water Resources and Chief Engineer, Water Resources (North).Hanumangarh and further a prayer has been made that the respondents be restrained from altering and amending the outlets of Chak 1MD to 6Md.Tehsil Anoopgarh, District Sriganganagar.

The petitioners in the present writ petitions are agriculturists, most of them allottees of agriculture land from the State Government and are consumers of water facilities provided under the Irrigation and 2 Drainage Rules, 1955 ('the Rules').The petitioners are utilising the irrigation facility from the Momewali Distributary.

It is claimed that the authorities surveyed the area in the year 2001 and 2005 and two outlets situated in 1MD and 4MD were modified and rest of the outlets did not need any change as they were not taking any excess water.

It is submitted that since 2005 neither any area has been included in the chaks of the petitioners nor any area has been omitted from the chaks and the petitioners are getting water facilities on their turn.

It is alleged that in the Distributary there is large scale of silt in the canal and it requires repair as there are many cracks which results in obstacle in flow of water and leads to leakage.

It is alleged that without any reason, the order dated 18.12.2012 (Annex.4) was issued to modify the outlets and therefore, a civil suit was filed wherein initially interim order was granted.

However, the order was vacated, against which appeal was filed before the Additional District Judge, who granted stay order and whereafter by order dated 27.8.2013, the State Government stayed the order of the Chief Engineer dated 18.12.2012.

During the pendency of writ petition the appeal from the Court of Additional District Judge as well as suit was withdrawn.

It is alleged that the petitioners were not given any opportunity of hearing as required by the provisions of Rule 11 of the Rules and now vide order dated 3.5.2015 again the Chief Engineer has directed that all the outlets taking more than 25% excess water be rectified and further by order dated 15.5.2015 said direction has been reiterated and the reason indicated is that as the water is not reaching the tail, the repairing of the outlets was necessary.

It is alleged that 3 the respondents are bent upon reducing the outlets without any rhyme or reason, and therefore, the petitioners have been forced to file the present writ petition, ultimately, the relief as indicated herein-before has been prayed.

Reply to the writ petition has been filed on behalf of the State Government.

It is inter-alia claimed that the respondents were going to amend the mogha / outlet of individual chak in order to give smooth and better irrigation facilities to all the cultivators upto tail end.

It is objected that in the civil suit when the similarly situated plaintiffs could not get the interim protection, they approached the Appellate Court, wherein the interim order was granted on 1.6.2013 and during the pendency of the said appeal, the present writ petition was preferred and after the interim order was granted by this Court, the civil suit itself has been withdrawn, which aspect was not brought to the notice of this Court.

It is claimed that the petition involves disputed questions of fact and the issue of amending the outlets is a technical issue which can be assessed and decided by the technical hands and therefore, the jurisdiction under Article 226 of the Constitution of India cannot be invoked.

The allegations have been made that despite passing of the interim order passed by this Court, whereby it was directed to ensure that the available water reaches to the tail end useRs.though the petitioners are drawing excess water beyond their entitlement and notices have already been issued to them, the petitioners were not cooperating with the respondents.

Further the State Government has already granted permission to the respondents by order dated 1.4.2015 (Annex.R/4) for correction of outlets and therefore, the respondents are entitled to do the needful.

4 Parawise reply has also been filed disputing the averments made in the writ petition and it is prayed that the allegations and submissions made are baseless.

The petitioners are drawing excess water and therefore, the outlets need to be modified so as to ensure equal water supply to all concerned.

A rejoinder has been filed by the petitioners to the reply inter- alia claiming that the petitioners were not parties before the civil court and they have disclosed filing of the suit.

It is further claimed that the survey conducted indicated that only in few chaks there are excess outlets and the respondents, though had conducted survey vide Annex.-14 dated 8.5.2014, they have chosen not to produce the same, which clearly indicates that there is no excess water discharge.

The respondents No.6 to 8, who were impleaded as party respondent and claimed themselves to be the agriculturists at the tail end, have also filed reply to the writ petition alleging concealment of material facts and that the petitioners have not approached this Court with clean hands.

It is alleged that the petitioners are drawing excess water despite the orders of Executive Engineer.

The facts relating to filing of the suit by other agriculturists have also been indicated.

It is alleged that at the demand of the answering respondents, a hydraulic survey was done wherein it was found that the petitioneRs.chaks were drawing upto 50% excess water and which led to the State Government issuing order dated 18.12.2012 (Annex.4) to initiate the process and notices were issued by the Executive Engineer to the agriculturists for the purpose of amending their outlets and therefore, the submissions regarding non-issuance of notice is ex-facie

incorrect.

It is further submitted that based on the hydraulic survey and relevant 5 record after giving opportunity of hearing to the agriculturists, the order dated 6.5.2013 (Annex.R/6/4) was passed by the Executive Engineer, whereby it was ordered that the outlets of various chaks required modification.

Pursuant thereto, outlets of Chak 14Md.18MD(A).20MD(B) & 23MD(B) were amended, but due to agitation and political intervention, the outlets of Chak No.1MD to 6MD could not be changed, resulting in the answering respondents not getting their share of sanctioned water.

It is alleged that the petitioners are in receipt of excess water to the tune of 25% to 50% and therefore, the writ petition filed by them does not require any consideration.

The petitioners have filed rejoinder to the reply filed by the private respondents also and disputed the averments made therein.

It is submitted by learned counsel for the petitioneRs.with reference to the order dated 18.12.2012 (Annex.4) that it was stipulated therein that the concerned agriculturist must be heard, interests of none of the agriculturist are affected and the responsibility for delay and defective work is determined for the purpose of amending the outlets.

The action in pursuance to the direction dated 18.12.2012 was suspended and now, by order dated 3.5.2015, it is clearly stipulated that those outlets drawing 25% excess water be modified and vide order dated 15.5.2015 (Annex.7).it has been directed that those outlets drawing more than 25% to 50% be modified.

With reference to Annex.-14, it was submitted that a look at the report reveals that only Chak 4MD and 6MD(A) were drawing 28.78% and 31.35% excess water whereas all other chaks were getting water within the limit as indicated in the order dated 3.5.2015 and therefore, 6 there was no question of modifying the outlets.

It was further submitted that the water from the outlets is not only consumed by the petitioneRs.but the same goes to Johad and school, which water has not been deducted by the respondents while calculating the excess supply.

It is further submitted that the entire problem has arisen regarding the water not reaching the tail end only on account of state of the distributary, which is full of silt, which needs to be repaired by the respondents, however, the same was not being done and the petitioners were being subjected to reduction of water supply.

It was prayed that the writ petitions be allowed, the respondents be restrained from changing the outlets and in the alternative, it was suggested that an independent survey be got conducted regarding the supply of water from various outlets and if on such a survey any excess supply is found then the action may be taken.

Vehemently opposing the submissions, learned counsel appearing for the respondent-State and private respondents submitted that the petitioners were drawing excess water and the claim made by the petitioners with respect to Annex.-6 and Annex.-7 that they were entitled to continue to draw upto 25% excess water is ex-facie distortion of facts, the petitioners are not entitled to draw any water in excess of their entitlement.

It is submitted that the orders dated 18.12.2012 were passed and whereafter notices were issued to the petitioners based on survey wherein the petitioners were found to be drawing water in excess of their entitlement and opportunity of hearing was granted to him.

It is submitted that the action based on order dated 18.12.2012 (Annex.4) was stopped on account of the interim order passed by the civil court.

It is submitted that the survey 7 conducted by the respondents is scientific and the same is based on APA machines installed at the outlets and cannot be questioned by the petitioneRs.The conduct of the petitioners was also questioned based on filing of the writ petition during the pendency of the suit and its withdrawal after the interim order passed by this Court.

It was submitted that the writ petition filed by the petitioners was essentially not maintainable as it is well within the jurisdiction of the respondents in checking and regulating the supply of water from various outlets based on the entitlement of various persons and the same does not call for any interference in the circumstances of the case.

Reliance was placed on Division Bench judgment in DBSAW No.273/2007 : Avtar Singh & ORS.versus State of Rajasthan & ORS.decided on 23.4.2007 and DBSAW No.969/2014 : Jagraj Singh & ORS.versus State of Rajasthan & ORS.decided on 18.7.2014.

I have considered the submissions made by learned counsel for the parties and have perused the material available on record.

The entire grievance sought to be raised by the petitioners pertains to the directions issued by the respondents, whereby in order dated 18.12.2012 (Annex.4).it is clearly indicated that permission was granted for alteration in the outlets drawing excess water subject to opportunity of hearing to the agriculturists, foundation of the order being the drawing of excess water by various outlets and by Annex.6, a direction was issued to correct the outlets taking more than 25% excess water and whereafter vide order dated 15.5.2015 again it was indicated that the outlets drawing more than 25% to 50% excess water be corrected.

The emphasis laid by learned counsel for the 8 petitioners that as most of the outlets were though drawing excess water, were drawing excess water upto the extent of 25% and therefore, they did not require any alteration, does not appear to be a sound submissions on behalf of the petitioneRs.None of the petitioners/agriculturists are entitled to draw any water in excess of their entitlement based on the CCA as approved by the authorities.

The various submissions made by the petitioners regarding conflicting reports about excess drawing of water, does not have much substance, inasmuch as, the report Annexure-14 relied on by the petitioners themselves indicates drawing of excess water by all the chaks from 1MD to 6 Md.The provisions of Rule 11 of the Rules, have been interpreted by this Court in Avtar Singh & ORS.versus State of

Rajasthan & ORS.: SBCWP No.6625/2005 decided on 21.3.2007, wherein it has been held as under :- The other important aspect of the matter is, that a look at sub-rule (1) of rule 11 does show, that it casts a duty on the Divisional Irrigation Officer, not to authorise outlets on any canal, exceeding the authorised, or actual canal capacity, whichever is less, so that on release, water may run in the canal from head to tail, and that no irrigation from canal will be drawn from outlets other than those authorised by the Divisional Irrigation Officer, and the outlets so not authorised, may be removed, and no claims against this, in this respect, shall lie against the Government, and that persons violating this rule shall be liable to punishment under Section 55(9) of the Act.

It is in this sequence, that sub-rule (2) contemplates that no material change shall be made in an established system of canal distribution except under the orders of the Divisional Irrigation Officer, and the meaning of Established Irrigation System is to be gathered from the provisions of Section 3(ii).which defines Irrigation Works.

to mean a work or system of works, natural or artificial, not being a minor irrigation work, and includes the various works as detailed in subclauses (a)(b)(c) and (d).Thus, a proper reading of the various clauses of Rule 11 would show, that the notice contemplated by sub-rule (3) is, where a reduction or removal of outlet is contemplated, by way of material change in an established system of canal distribution, and obviously, 9 the other requirements of the following subrules have to be fulfilled in that event.

In the present case it is nobody's case, that any change is going to be made, or even contemplated, in an established system of canal distribution.

Therefore, the provisions of Sub-rule (2).(3) and (4) etc.have no bearing whatever, rather the minutes of the meeting dt.

12.3.2005, and the consequent orders are in the light of the letter and spirit of the provisions of rule 11(1).In view of the above, and positive prohibition enacted in Rule 11(1).the petitioner cannot claim any protection from this Court, to authorise them to irrigate from the canal, or from the outlets, water exceeding the authorised

capacity or quantity, so as to negate the provisions of Rule 11(1) and Section 55(9) of the Act.

This is second aspect of the matter.

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The said judgment has been upheld by the Division Bench in D.B.Special Appeal (W) No.273/2007 (supra) wherein the issue pertaining to opportunity of hearing was also determined and it was held as under :- We do not find any substance in the contention so raised, as Rule 11(3) of the Rules of 1955 nowhere contemplates to give notice to individual cultivator but provides for adequate publicity through Panchayats for proposed removal and reduction of water outlets.

In the case of Jarnel Singh (supra) the Court while considering the issue of not giving notice to the co-sharer of the adjacent land to the land of the effected co-sharer held that it is the only cosharers of the chak whose existing system of irrigation is sought to be changed, who are required to be given notice before such change as effected and that having been done, there is no breach of any rule or principles of natural justice in giving effect to the proposed alteration.In the case aforesaid the controveRs.was pertaining to shifting of water outlet from one chak to another chak, therefore, the notice was given to the individual cultivator, whereas in the present case a campaign was made for correction of water outlets in three major canal area irrigation systems as a consequent to a policy decision of the government, as such the wide publicity for proposed alteration through Panchayat Samitis and Gram Panchayats is sufficient compliance of Rule 11(3) of the Rules of 1955.

A vague effort was also made by counsel for the appellants to get examined by us the need of the proposed changes in established irrigation system, however, suffice it to say that this Court do not possess the specialised knowledge about functioning of that and in absence of any allegation of malafide, the opinion of the experts under whom advise policy decision is taken has to be considered as in the best interest of irrigation.

Relevant to note that the policy decision of the Government is available on record as Anx.1 (SBCivil Writ Petition No.6424/05).from perusal of that it reveals that 10 the policy decision for alteration in water outlets was prepared by the Government under advise of the engineers of the Department of Irrigation.

We also do not find any merit in the contention of Shri Sudhir Sharma, learned counsel for the appellants that after confirmation of the interim order earlier passed, the Court erred in deciding the stay matter afresh.

We are of the view that no error could be pointed out on that count, as a matter of fact learned Single Judge just with a view to maintain parity in orders in various cases rightly consolidated all similar matters and passed a common order.

Lastly, it is worthwhile to note that by the order impugned rights of the appellants are adequately protected by making an order by directing the respondents not to take any such step, that may effect or reduce the water supply even in micro level, below the one originally sanctioned to each of the cultivators and further by directing that in any case, where the existing Rabi Crop is standing unharvested and is in need of the water for its proper ripening, then in those cases the cultivators shall be continued to be provided the water as was being provided hitherto-fore.

In view of whatever discussed above, we do not find any merit in these appeals.

Accordingly, the same are dismissed.

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Whereafter also, when similar issues were raised regarding the alleged reduction of water supply while regulating the water supply, this Court in the case of Jagraj Singh & ORS.(supra) held as under:- In brief, the facts of the case are that the Superintending Engineer, Water Resources, Circle Hanumangarh by the order Annex.2 dated 10.06.2011 directed the Executive Engineer, Water Resources, Division-I, Hanumangarh to make necessary repairing with the existing water couRs.to stop excess discharge of the water.

The direction was also given to effect necessary design bed as per the existing FSL.

The order aforesaid was challenged with the assertion that the respondents by the order aforesaid desire to make change in the established water supply system.

The learned Single Bench dismissed the writ petition on the count that no adveRs.order has yet been passed, therefore, no cause exists.

In the appeal, the submission of the learned counsel for the appellants is that the respondents by their administrative fiat, without having any jurisdiction, desire to change the established water system.

We do not find any merit in the argument advanced.

The Superintending Engineer has simply instructed the Executive Engineer to ensure that no one gets excessive discharge of water and for that purpose a direction is given to make necessary repairing with the Moghas.

Such an administrative direction nowhere requires any interference by this court in writ jurisdiction, 11 therefore, the learned Single Judge has rightly dismissed the writ petition.

The appeal too is dismissed with a direction to the Executive Engineer, Water Resources, Division-I, Hanumangarh to ensure that any change, if made shall not either reduce or enhance the sanctioned water discharge to the appellants.

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In view of the settled legal position regarding the right of the agriculturists to receive water, only in accordance with what has been sanctioned to them and as the provisions of the Act and the Rules does not arm the petitioners to determine as to how the supply of water should be regulated by the respondents despite admittedly petitioners drawing excess water, the writ petitions filed by the petitioners have apparently no substance.

So far as the plea raised by the petitioners regarding conducting of independent survey regarding discharge of excess water from the outlets is concerned, the petitioners have failed to make out any case in the writ petition for such independent survey as under the provisions it is for the respondent authorities to determine the said aspect and the outside agency apparently cannot be involved for the said purposes.

In view of the above discussion, there is no substance in the writ petitions, the same are, therefore, dismissed.

No costs.

(ARUN BHANSALI).J.

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