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Court : Rajasthan

Decided On : Apr-15-1986

Reported in : 1986(2)WLN57

Judge : Milap Chand Jain, J.

Appeal No. : S.B. Civil Writ Petition No. 2396 of 1985

Appellant : ind Raj

Respondent : Executive Engineer

Disposition : Petition allowed

Judgement :

Milap Chand Jain, J.

1. This writ petition is directed against the order dated February 4, 1985 (Annx. 1) passed by the Executive Engineer Irrigation Pilibhanga Division and the order of the Superintending Engineer Bhakra Irrigation Circle, Hanumangarh, dated October 30, 1985 (Annx. 2).

2. Non-petitioner Nos. 3 and others submitted an application to the Executive Engineer for cancellation of the existing water course and for construction of a new water course. Their grievance was that their lands are not being irrigated from the existing sanctioned water course at Stone No. 474/445, 476/445 and 476/444.

They deposited necessary amount of fees. For the construction of a new water course, the application was allowed by the Executive Engineer and a new water course was ordered to be constructed and the existing water course was cancelled. The petitioners preferred an appeal before the Superintending Engineer but the appeal was dismissed and the order of the Executive Engineer was maintained.

3. The grievance of the petitioners is that the orders passed by the Executive Engineer and the orders passed by the Superintending Engineer are without jurisdiction in as much as the application of the non-petitioner No. 3 can only be considered to be an application under Section 2 of the Rajasthan Irrigation and Drainage Act, 1954 (here in after referred to as 'the Act') for the construction of a new water course. The procedure provided under Section 22, Section 24, Section 25 and Section 26 of the Act, is required to be followed. No such procedure has been followed and no order has been passed by the Collector. According to the petitioners, it is only the Collector who has got jurisdiction to deal with such applications and place the applicants in the occupation of the land marked out for the water course. Besides that the petitioners also contended that they were not personally served with any notice as contemplated under Sub-rule (2) of r. 4 of the Rajasthan Irrigation and Drainage Rules, 1955 (here in after to be referred as the rules). On this ground as well both the orders are liable to be quashed as set aside.

4. On behalf of the non-petitioner it is pointed out that a general notice was issued to all the land-holders of the Chak 18 M.S. and service of notice was effected on the land-holders of the Chak on the notice of the Daluram is the co-tenant of the petitioners who was served with a notice and he filed no objections. The Irrigation Authorities passed the order and as no objections were made by any one from Chak No. 18 M.S. In such a situation it was competent for the Executive Engineer to pass the order Annx. 1 in a case of the nature like the present one where objections have not at all been filed or submitted. The Irrigation Authorities would be acting within their jurisdiction to pass an order for permitting construction of a new water course and for cancelling the existing water course.

5. The first question which emerges for consideration is as to who is competent to pass an order when applications are presented under Section 21 and Section 23. Treating the present application to be an application for the construction of a new water course under Section 21 still Section 24 of the Act would be attracted. For consideration of the application under Section 24 of the Act notice is required to be published under Section 22 of the Act and within 30 days from the date of publication of notice persons interested in the land or in the water course have got a right to apply to the Collector by petition stating their objections to the construction of the new water course and Under Section 25, even when objections are not made it is only the Collector who is required to give notice to the Divisional Irrigation Officer and then the Collector shall proceed to place the applicant in occupation of the land marked out. Thus it would appear that under Section 25 of the Act, the final order requiring to place the applicant in occupation of the land is to be passed by the Collector and the applicant cannot be put into occupation of the land by the Irrigation Authorities and no construction of water course would be possible without placing the applicant in the occupation of the land. Thus for the construction of a new water course procedure as provided under Sections 22, 24 and 25 and subsequent provisions have to be followed. Even when the applicants are already in occupation of the land, still it is only by the order of the Collector the land has to be set apart for construction of the new water course. The new water course may be allowed to be constructed either solely within the land in occupation of the applicant or even beyond the land which is not in occupation of the applicant. In any case it is only the Collector who is the competent authority to deal with the application and pass final order thereon. Admittedly, these relevant provisions have not been followed and the application has not at all been dealt with by, the Collector at any stage. It may be mentioned that the land which is set apart for the water course can only be put to use for that purpose, that is, for the purpose of water course only and for no other purpose. The character of the land thus is changed. Its character is changed into a water course. The effect of the provision under Sections 24 and 25, appears to be that even when the land is in occupation of the applicant, still the character of the land gets changed by the order of the Collector and the applicant is permitted to construct a new water course on the land which is set apart for the construction of a new course is

sought, and by that construction if the rights of irrigation of other persons are affected, then they have got a right to submit their objections before the Collector and such objections can only be considered by the Collector under Section 24.

6. Sub-rule (2) of Rule 4 makes a provision for personal service of notice. If the form of the notice is looked into, then it would appear that it has to be addressed to an individual who is interested in the matter. The expression used in Sub-rule (2) is that notice has to be issued to all persons concerned. Sub-rule (2) does not envisage a general notice, Sections 22 and 23 do not provide for any individual notice. They make a provision for publication of notice in every village. Publication does not envisage or contemplate individual notice. I have not been referred to any provision in the Rules showing how notices under Sections 22 and 23 are to be published. When there is no provision for publication of notice as such in the Rules, then general procedure for publication can be adopted with the object that the villagers may come to know that applications either of the nature contemplated Under Sections 21 or 23 have been made and are being taken into consideration and objections have been invited against such applications within 30 days under Section 24. So far as the present case is concerned, it cannot be said that there has been any publication of notice. Even individual notice was not served on the petitioners. Thus it does not appear that compliance of Sections 23, 24 and 25 has been made in the present case. For want of compliance of these provisions, the order Anx. 1 and Anx. 2 deserve to be quashed.

7. Accordingly the writ petition is allowed. The orders Anx. 1 and 2 are quashed and set aside. However, it is directed that the application can be dealt with complying with the provisions of Sections 22, 24 and 25 and other relevant provisions. Parties shall bear their own costs of this petition.