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Court : Rajasthan

Decided On : Mar-21-1996

Reported in : 1996(3)WLC128; 1996(1)WLN81

Judge : N.K. Jain, J.

Appeal No. : S.B. C.W. Petition No. 5926 of 1993

Appellant : Laxman and ors.

Respondent : State

Disposition : Petition dismissed

Judgement :

N.K. Jain, J.

1. By this writ petition, the petitioners seek to quash the impugned orders Anx. 1 dt. 19.6.1993 passed by the Superintending Engineer, Sri Vijaynagar and Anx. 2 dt. 23.11.1993 passed by the Chief Engineer, Irrigation, Hanumangarh.

2. Briefly stated the facts of the case as alleged by the petitioners are that the respondent No. 5 Mahavir Prasad and some other persons got allotted uncommand land in Chak 26-A of Tehsil Anupgarh and made a demand from Executive Engineer for water supply for irrigation purpose who referred the matter to the Superintending Engineer. Vide order dt. 19.6.1993 (Anx. 1), the

Superintending Engineer ordered to create a new Chak 6 MSR-A. Thereafter an appeal was filed before the Chief Engineer who vide order dt. 23.11.1993 transferred the whole of the area of Chak 26A to MSR Minor. Being dissatisfied with the orders Anx. 1 and 2, the petitioners have filed this writ petition.

3. This Court while admitting the writ petition on 16.12.1993 stayed the operation of the orders Anex. 1 dt. 19.6.93 and Anex. 2 dt. 23.11.93, for 3 weeks while fixing responsibility on the petitioners to get the notices served.

In pursuance to the notice, respondents Nos. 1 to 4 filed reply stating that the new Chak 6 MSR/A was proposed considering all aspects and interest of the petitioner is not affected. It has been stated that the cultivators demanded fresh outlet for irrigation under Section 16 of the Rajasthan Irrigation and Drainage Act, 1955.

4. Respondent No. 5 has also filed reply stating that on the application moved by him alongwith other cultivators, the Divisional Irrigation Officer gave notice to all the effected persons and after recording their statements proposed new outlet of Chak No. 6. MSR/A. The Divisional Irrigation Officer made his recommendation under Section 16 of the Act which was accepted by the Suerintending Engineer vide order dt. 19.6.93 (Annex. 1). It has also been stated that the water turn of the petitioners is not shortened nor the size of Chak Nos. 5-6 MSR has been reduced.

5. Learned counsel for the petitioners has mainly contended that the mandatory provisions contained in Section 20 of the Act were not complied with before passing the impugned order. He has relied on *Jatmal Ram v. State* 1977 WLN (UC)-275.

6. On the contrary, learned counsel for the respondents submits that this writ petition is not maintainable for the reason that the petitioners are not con-shares and having their land in separate Chak. It has been submitted that the petitioners have concealed material facts as earlier a civil suit was filed by them which was ultimately withdrawn and thereafter this writ petition has been filed which deserves to be dismissed on this count alone. It has also been submitted that the application was made by the cultivator for supply of water for irrigation after creating a new outlet which falls within Section 16 of the Act and not under Section 20 of the Act

which applies in the cases where supply of water is ordered to be made from the existing water course. Therefore, the writ petition may kindly be dismissed. Reliance has been placed on *Jornel Singh and Anr. v. State of Raj.* 1992 (1) RLR 264 and *J.S. Rawat v. National Air Port Authority and Ors.* 1991 (1) RLR 210.

7. I have heard learned counsel for the parties and perused the material on record so also the relevant rules and the case law cited at Bar.

8. Admittedly, the cultivators of Chak No. 26-A made an application to the Divisional Irrigation Officer for supply of water to their 25 Murabas of uncommand land after creating a new outlet, who called a report from the Asstt. Engineer and after hearing all concerned recommended the case of the applicants to the Superintending Engineer for his technical assent as provided under Section 16 of the Act vide letter dt. 11.6.1993 which was accepted by the Superintending Engineer vide Anx. 1 dt. 19.6.1993 The Superintending Engineer while accepting the recommendation, ordered to create the new Chak 6 MSR-A. Thereafter the Chief Engineer also affirmed the same in the appeal. The petitioners have not specifically stated in which Chak their land is situated but as alleged by the respondents their land pertains to chak Nos. 5 & 6, this facts has not been disputed by the petitioners. Under the circumstances, the petitioners have not been able to satisfy that by creating a new Chak 6MSR-A and allowing the applicants to take water supply for irrigation, the water course from which the petitioners are being given supply of water for irrigation is reduced. As stated above, the land in dispute was not irrigated through out let of Chak Nos. 2 6-A/A or any other chak including the chaks of the petitioners but by a fresh out let in which case obviously Section 16 will apply and the question of completing formalities Under Section 20 of the Act does not arise. Apart from that, it is settled that opinion of expert in field is to be ordinarily accepted to be correct in the absence of there being any allegation of malafide and the authorities having specialised knowledge about the functioning of irrigation system are free to ensure proper, equitable distribution of flow of water in the interest of all concerned. Under these circumstances, I am not inclined to interfere with the impugned orders passed by the competent authorities. So far as the decision relied upon by Mr. Sharma rendered in *Jaimal Ram's case* (Supra) is concerned, the same is not applicable to

the facts of the present case. The petitioners were granted time vide order dt. 4.2.94 granted time to file an affidavit to the effect that on which date respondents were served. Today, during the course of arguments, counsel for the petitioner filed the affidavit dt. 15.2.94 in the Court without specifying the necessary particulars. Be that so, as it may be since the petitioners cannot be granted any relief in this writ petition,, I need not to go into this question as well as preliminary objection raised by the respondents regarding maintainability of writ petition. Accordingly, the writ petition has no force and the0020same is hereby dismissed.

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