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Jagmal Ram Vs. Assistant Engineer, I.G.N.P. and ors.

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Court : Rajasthan

Decided On : May-07-2002

Reported in : AIR2003Raj304; RLW2004(1)Raj595; 2003(3)WLC301; 2003(2)WLN538

Judge : B.S. Chauhan, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 39, Rules 1 and 2; [Rajasthan Irrigation and Drainage Act, 1954](#) - Sections 60; Rajasthan Irrigation and Drainage Rules, 1957 - Rule 31

Appeal No. : Civil Revn. Petn. No. 839 of 1998

Appellant : Jagmal Ram

Respondent : Assistant Engineer, I.G.N.P. and ors.

Advocate for Def. : B.C. Mehta, Adv.

Advocate for Pet/Ap. : R.K. Singhal, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

B.S. Chauhan, J.

1. This revision has been filed against the order dated 27-8-98 passed by the first Appellate Court rejecting the appeal of the petitioner against the order dated 2-9-97 passed by the trial Court rejecting the application for temporary injunction under Order 39, Rules 1 and 2 of the Code of Civil Procedure, 1908 (for short, 'the Code').

2. The facts and circumstances giving rise to this case are that petitioner had been served with a show cause notice dated 7-3-97 that on 25-1-97 he was found irrigating his field surreptitiously by fitting the pipe in the canal and thereby committed the theft and, thus, why he should not be proceeded in accordance with law. Petitioner filed a suit restraining the respondents to pass any order against him under the law and in the said suit, the application for temporary injunction was filed, which was rejected by the trial Court vide order dated 2-9-97, against which he preferred a miscellaneous appeal which was dismissed on 27-8-98. Hence this revision.

3. Mr. R.K. Singhal, learned counsel for the petitioner, has submitted that petitioner cannot be deprived of his legitimate right of getting the water even if he was found indulged in illegal activities/theft and the Courts below have wrongly rejected his application for temporary injunction.

4. On the other hand, Mr. B.C. Mehta, learned counsel for the non-petitioner/defendants Department, has submitted that a criminal case has been registered against the petitioner for committing theft and he is not entitled to seek any relief whatsoever in contravention of the statutory provisions, thus, the revision is liable to be dismissed.

5. I have considered the rival submissions made by the learned counsel for the parties.

6. Admittedly, it is evident from the record/reply and the documents filed by the non-petitioners that petitioner had committed the theft of water and irrigated his land surreptitiously fitting the pipe in the canal and an FIR was lodged against him on 30-1-97. The show cause notice was issued to him in accordance with the provisions of the Rajasthan Irrigation and Drainage Act, 1955 and the Rules

framed thereunder. Rule 31 of the said Rules provides for penal consequences which also include debarring the farmer for further water for irrigation from the canal for one year, if found committing the theft of water.

7. Therefore, the question does arise whether a suit can be filed and relief can be asked from the Civil Court restraining the statutory authorities to enforce the law or act in accordance with law.

8. The Court has no competence to issue a direction contrary to law. (vide *Union of India v. Kirloskar Pneumatic Co. Ltd.* (1996) 4 SCC 453 : (AIR 1996 SC 3285); *State of U.P. v. Harish Chandra* (1996) 9 SCC 309 : (AIR 1996 SC 2173); and *Vice-Chancellor, University of Allahabad v. Dr. Anand Prakash Mishra* (1997) 10 SCC 264).

9. In *State of Punjab v. Renuka Singla* (1994) 1 SCC 175 : (AIR 1994 SC 595), dealing with a similar situation, the Hon'ble Apex Court observed as under :--

'We fail to appreciate as to how the High Court or this Court can be generous or liberal in issuing such directions which in substance amount to directing the authorities concerned to violate their own statutory rules and regulations.'

10. Similarly, in *Karnataka State Road Transport Corporation v. Ashrafulla Khan* (2002) 1 JT (SC) 113 : (AIR 2002 SC 629), the Hon'ble Apex Court has held as under :--

'The High Court under Article 226 of the Constitution is required to enforce rule of law and not pass order or direction which is contrary to what has been injected by law.'

11. In view of the above, I am of the considered opinion that as the Courts are meant to enforce the law and do not have the power to restrain the authority to perform its statutory functions/duties, such a relief cannot be granted. I am very much doubtful regarding maintainability of such a suit also.

12. Moreso, temporary injunction can be granted only on being satisfied that the ingredients of Order 39, Rules 1 and 2 of the Code of Civil Procedure, 1908, e.g.

prima facie case in favour of the plaintiff, balance of convenience in his favour and in case the interim relief is not granted, he will suffer irreparable loss. In the instant case, none of the aforesaid ingredients can be held to be existing in favour of the petitioner. Therefore, I find no material irregularity in the exercise of jurisdiction by the trial Courts. The application for temporary Injunction has rightly been rejected and the miscellaneous appeal has also rightly been dismissed.

13. In such a case, it could have been advisable to the petitioner that he should have filed reply to the show cause and if he was aggrieved of the order passed therein, he could have preferred an appeal before the Appellate Authority, but it is not a matter where such a relief can be asked from the Civil Court in a suit, as the Courts have no power to restrain the Statutory Authorities to perform their functions/duties.

14. In view of the above, the petition is devoid of any merit and accordingly dismissed with the cost of Rs. 5000/- (Rs. Five thousand), which the learned trial Court is requested to recover, treating it a decree of the said Court and pay it to the non-petitioners within a period of six weeks from today.

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