

SUPREME COURT OF INDIA

Executive Engineer LVP Division, Wardha

Vs.

Maroti Bapurao Achat

C.A.No.7222-7223 of 2012

(K.S. Radhakrishnan and Dipak Misra, JJ.)

04.10.2012

JUDGMENT

K.S. Radhakrishnan, J.

1. Leave granted.

2. The first respondent herein filed Regular Civil Suit No.109 of 1995 praying for the grant of permanent injunction against the appellant - Executive Engineer, Lower Vanna Project Division No.1, Wardha and also for a direction to restore the land to him. It was alleged that the defendants had undertaken the construction of the canal of Lower Vanna Project through the middle portion of the plaintiff's field, consequently a mandatory injunction was sought for to restore the land prior to the commencement of constructing the canal. The plaintiff alleged that the same was done to favour a nearby land owner so that his land could be saved. The suit was decreed and the defendants took up the matter in appeal which was dismissed and the matter was carried to the High Court. The High Court also dismissed the appeal on merits. The High Court in his order stated as follows:

“I have carefully perused the documents produced by the appellant before the first appellate court. The submission made on behalf of the respondent No.1 that these documents do not disclose that the Government proposed to construct the canal through the middle portion of the field of respondent No.1 is acceptable and correct. Both the Courts have considered the original plan/map which was received from the custody of the appellants before the trial court to hold that the appellants had not proceeded with the construction work of the canal as per the original map. The Courts have further considered the other voluminous evidence on record to hold that the plaintiff was entitled to the grant of permanent and mandatory injunction as sought for. As already mentioned hereinabove, the documents placed by the appellants before the first appellate court merely relate to the acquisition of 0.7R of land belonging to the plaintiff/respondent No.1 but, none of the documents show the location through which the canal was to be constructed as per the original

map.”

3. The High Court also found no substantial question of law arose for consideration, in our view rightly. The matter came up for hearing before this Court. This Court passed an order on 9.10.2009 which reads as follows:

“Petitioner’s counsel seeks four weeks’ time to produce:

- 1) The plan showing the original sanctioned alignment;
- 2) The plan showing the actual alignment;
- 3) The plan superimposing the actual alignment over the sanctioned alignment to highlight the difference;
- 4) The photographs of the land;
- 5) The extent of bifurcated land on either side of canal in survey No.174;
- 6) The protective measures proposed by petitioner to ensure that the unacquired portion of the land can be made cultivable by avoiding seepage. It is open to the petitioner to directly make an offer of Rs.5 lakhs as compensation in lieu of dismantling and fresh construction of canal without prejudice.”

4. When the matter came up for final hearing, learned counsel appearing for the appellant brought before us a communication dated 01.08.2012 from the office of the Executive Engineer, Lower Vanna Canal Division, Wardha, the operative portion of which reads as follows:

“With reference to above cited subject under caption, it is to inform you that if the Umra Distributory of Lower Vanna Project is made close for irrigation @ Survey No. 174 of Shri Maroti Awachat as per order of the High Court then the 1019.34 Hq. of land and 635 No. of farmers will be deprived from benefits of irrigation. Also length of distributory ahead from Survey No. 174 will not be useful for irrigation purpose.”

5. We notice if the alignment is now changed and Umra Distributory of Lower Vanna Project stands closed for irrigation, it would affect 1019.34 Hr of land and 635 numbers of farmers would be deprived of the benefits of irrigation. But all the same, the respondents have to be adequately compensated. The amount of Rs.7.5 lakhs, in our view, would be an adequate compensation for the illegality committed by the appellant. Consequently, we direct the appellant to pay Rs.7.5 lakhs to the respondents within the period of two months from today which will settle all the disputes pending between the parties. The appeals are disposed of as above. The Judgment and decree is modified accordingly. The appeals are

disposed of with the above directions with no order as to costs.