

RAJASTHAN HIGH COURT

Rajendra

Vs.

State of Rajasthan

C.W.P. No. 4328 of 2003

(Sunil Kumar Garg, J.)

13.04.2004

ORDER

Sunil Kumar Garg, J.

1. The petitioner has filed the present writ petition under Article 226/227 of the Constitution of India on 6-8-2003 against the respondents with a prayer that by an appropriate writ, order or direction the order dated 7-7-2003 (Annex. 6) passed by respondent No. 2 (Superintending Engineer, Irrigation Circle, *Hanumangarh Junction*) by which the Superintending Engineer (respondent No. 2) dismissed the appeal (Annex. 3) filed by the petitioner against respondent No. 4 (MadanLal) and upheld the order dated 3-1-2002 (Annex. 2) passed by the respondent No. 3 (executive Engineer, Irrigation Division-II, *Hanumangarh*) by which respondent No. 3 (Executive Engineer) allowed the application filed by respondent No. 4 (MadanLal) and sanctioned another Naka (drain) from the khasra No. 512/434 belonging to the petitioner for supplying water to his agricultural field situated in Khasra No. 513/434 be quashed and set aside.

2. The facts of the case as put forward by the petitioner are as under:

(i) That the petitioner and respondent No. 4 (MadanLal) both are neighbours having adjacent agricultural fields to each other and doing farming on their field. The land bearing khasra No. 512/434 belongs to the petitioner and the land bearing khasra No. 513/434 belongs to the respondent No. 4 (MadanLal).

(ii) Further case of the petitioner is that water to the field of respondent No. 4 (MadanLal) is supplied from Pakka Drain (Naka) made in the outskirts of petitioner's khasra No. 512/434 from north to south and respondent No. 4

(MadanLal) wanted a new drain (Naka) cutting across through the field of the petitioner from midway from west to east for irrigating his field, whereas he was already getting sufficient water to his field from old Naka (drain).

(iii) Further case of the petitioner is that the respondent No. 4 filed an application before the Executive Engineer, Irrigation Division II, *Hanumangarh* (respondent No. 3) praying for sanction and construction of new additional nake (drain) for supplying water to his agricultural field bearing khasra No. 513/434.

(iv) Further case of the petitioner is that the respondent No. 3 (Executive Engineer, Irrigation Division-II, *Hanumangarh*) did not issue notices to the petitioner and called technical report from the concerned Assistant Engineer, Irrigation and without complying with the provisions of Rajasthan Irrigation and Drainage Act, 1954 (hereinafter referred to as the Act of 1954) through impugned order dated 3-1-2002 (Annex. 2) allowed the application filed by respondent No. 4 (MadanLal) and sanctioned new Naka (drain) from the field of the petitioner bearing Khasra No. 512/434.

(v) Further case of the petitioner is that petitioner filed an appeal (Annex. 3) under Rule 11 of the Rajasthan Irrigation and Drainage Rules, 1955 (hereinafter referred to as the Rules of 1955) before the Superintending Engineer, Irrigation, *Hanumangarh* Junction (respondent No.1 2) against the impugned order dated 3-1-2002 (Annex. 2).

(vi) Further case of the petitioner is that before the appeal was decided, the respondent No. 4 (MadanLal) entered into compromise dated 11-6-2003 (Annex. 5) and the said compromise (Annex. 5) was duly executed on stamp paper and attested by a notary advocate and in that compromise dated 11-6-2003 (Annex. 5), the respondent No. 4 (MadanLal) withdraw his demand for additional Naka in Khasra No. 512/434.

(vii) Further case of the petitioner is that the respondent No. 4 (MadanLal) later on rejected the compromise (Annex. 5) and withdrew himself from the compromise (Annex. 5).

(viii) Further case of the petitioner is that respondent No. 2 (Superintending Engineer) without taking notice of the compromise (Annex. 5) through order dated 7-7-2003 (Annex. 6) rejected the appeal filed by the petitioner and upheld the order dated 3-1-2002 (Annex. 2) passed by the respondent No. 3 (Executive

Engineer).

(ix) After being aggrieved from the order dated 3-1-2002 (Annex. 2) passed by the respondent No. 3 (Executive Engineer) and order dated 7-7-2003 (Annex. 6) passed by respondent No. 2 (Superintending Engineer), this writ petition has been preferred by the petitioner.

3. In this writ petition, the following two contentions have been raised by the learned counsel for the petitioner:

(i) That the Executive Engineer (respondent No. 3) passed the impugned order dated 3-1-2002 (Annex. 2) without giving opportunity of hearing to the petitioner and hence the order dated 3-1-2002 (Annex. 2) passed by respondent No. 3 (Executive Engineer) is violative of principles of natural justice.

(ii) That since compromise (Annex. 5) dated 11-6-2003 was executed between the petitioner and respondent No. 4 (MadanLal), therefore, in view of that fact, the respondent No. 2 (Superintending Engineer) should have allowed the appeal (Annex. 3) and hence the judgment dated 7-7-2003 (Annex. 6) passed by respondent No. 2 (Superintending Engineer) is bad in law and deserves to be set aside.

4. Reply was filed by respondents No. 1 to 3 and their case is that father of the petitioner Shri Ram Rakh and other farmers including respondent No. 4 (MadanLal) entered into a compromise (Annex. R/1) and in view of that fact, the impugned order dated 3-1-2002 (Annex. 2) was passed by the respondent No. 3 (Executive Engineer) and not only this, thereafter opinion of the expert was also obtained and after receiving expert's opinion and after giving an opportunity of hearing to all the concerned parties and after taking into consideration the compromise (Annex. R/1), the impugned order dated 3-1-2002 (Annex. 2) was passed by the Executive Engineer (respondent No. 3) and hence to say that no notice was issued to the petitioner is wrong. It has also been submitted by the learned counsel for the respondents that Khasra No. 512/434 is in the name of father of the petitioner in the Revenue Record and he did not raise any objection and further more all the concerned persons gave their consent (Annex. R/4) for the purpose of construction of additional Naka (drain). So far as point that respondent No. 4 was getting sufficient water is concerned, it has further been submitted by the learned counsel for the respondents that there is technical report (Annex. R/5) of the Junior Engineer wherein it was recommended that new Naka be sanctioned in Khasra No. 512/434 and hence no case is made and writ petition be

dismissed.

5. So far as first objection is concerned, in the impugned order dated 3-1- 2002 (Annex. 2) passed by the Executive Engineer (respondent No. 3), there is clear mention of the fact that notices were issued to all the concerned persons on 28-7-2001 and all the concerned persons were informed on 2-8-2001 and nobody raised by objection. Apart from this, from the reply of the respondents, it is also clear that notice Annex. R/3 was issued to all the concerned persons and further more the compromise (Annex. R/1) and consent letter (Annex. R/4) reveal that the concerned persons did not have any objection on the point that new Naka be opened in the field on Ram Rakh (father of the petitioner) in Khasra No. 512/434 and therefore, the first argument that the impugned order dated 3-1-2002 (Annex. 2) was passed by the Executive Engineer (respondent No. 3) without giving opportunity of hearing to the petitioner stands rejected.

6. So far as second point is concerned, no doubt that the respondent No. 4 (MadanLal) entered into compromise dated 11-6-2003 (Annex. 5), but the petitioner himself has stated in the writ petition that before passing the impugned order dated 7-7-2003 (Annex. 6) by the respondent No. 2 (Superintending Engineer), the respondent No. 4 (MadanLal) withdrew himself from that compromise (Annex. 5) and this fact was found mentioned in the judgment dated 7-7-2003 (Annex. 6) in which the respondent No. 2 (Superintending Engineer) has observed that the consent which was given by the respondent No. 4 through compromise dated 11-6-2003 (Annex. 5) was withdrawn by respondent No. 4 (MadanLal) through application dated 3-7-2003 and therefore, to say that there was compromise between the parties cannot be accepted. Since the respondent No. 4 (MadanLal) withdrew himself from the compromise dated 11-6-2003 (Annex. 5) before passing the judgment dated 7-7- 2003 (Annex. 6), therefore, that compromise dated 11-6-2003 (Annex. 5) would not be helpful to the learned counsel for the petitioner and thus, the second argument raised by the learned counsel for the petitioner stands rejected.

7. The discretion exercised by the respondent No. 2 (Superintending Engineer) in rejecting the appeal (Annex. 3) filed by petitioner is just and proper and does not require any interference by this Court under Article 226/227 of the Constitution of India.

8. Under Article 227 of the Constitution of India, the High Court cannot interfere with the exercise of a discretionary power vested in the inferior Authority, Court or

Tribunal, unless its finding or order is clearly perverse or patently unreasonable.

9. It may be stated that High Court's power under Article 226/227 of the Constitution of India should be exercised only when there is dereliction of duty and flagrant violation of law and should be exercised most sparingly in a case where grave injustice would be done unless the Court interferes. It cannot be used as appellate or revisional forum. Apart from this power under Article 226 is exercised by the Court in its discretion and cannot be claimed as of right by any party.

10. Thus, the impugned order dated 3-1-2002 (Annex. 2) passed by the respondent No. 3 (Executive Engineer) and judgment dated 7-7-2003 (Annex. 6) passed by the respondent No. 2 (Superintending Engineer) cannot be said to have been suffered from the basic infirmity and illegality and the same does not require any interference by this Court under Article 226/227 of the Constitution of India and this writ petition deserves to be dismissed.

For the reasons mentioned above, the present writ petition is dismissed.

Petition dismissed.