

# RAJASTHAN HIGH COURT

Jeet Ram

Vs.

State, (Rajasthan)

S.B. C.W.P. No. 6971 of 2006

(Mr. Dinesh Maheshwari, J.)

08.09.2008

## JUDGMENT

**Dinesh Maheshwari, J.**

1. This writ petition has been preferred against the order dated 12.10.2006 (Annex.3) whereby the Executive Engineer, Gangnahar South Division, *Sriganganagar* directed stoppage of irrigation water supply on the agricultural land comprised in Murabba Nos. 51 and 23 in Chak-29 RB; and against the order dated 15.11.2006 (Annex.6) whereby the Superintending Engineer, Water Resources, Circle Sriganganagar dismissed the appeal filed by the petitioners against the aforesaid order dated 12.10.2006.

2. Put in a nutshell, the relevant aspects of the matter are that the aforesaid agricultural land seems to have been allotted to Baishakha Singh, father of petitioner No. 1; and came to be attached in recovery of the loan amount due to the *Punjab National Bank, Raisinghnagar*. The Executive Engineer, Gangnahar South Division, Sriganganagar, pursuant to a communication dated 16.07.2006 as received from the Tehsildar (Revenue), *Raisinghnagar* issued instructions under the impugned order dated 12.10.2006 (Annex.3) to the Assistant Engineer, Irrigation Sub-Division, *Raisinghnagar* to discontinue the water supply of the land under attachment. It appears that the said *Tehsildar* addressed yet another communication to the Executive Engineer on 18.10.2006 for enforcing the distress order whereto the Executive Engineer stated a reply on 03.11.2006 (Annex.4) and, while taking exception to the nature of language employed by the *Tehsildar*, pointed out that necessary orders had already been issued but the water turn could not be discontinued in the mid crop season. The learned Executive Engineer also pointed out that for the purpose of

recovery of the loan amount of the Bank or any other Institution, there was no provision in the Irrigation Rules to discontinue with the water supply and such proceedings were adopted only by way of departmental co-operation but when the matters were taken up in litigation, the department was unnecessarily required to defend the same and, therefore, opined that the attached land be given on contract basis by way of temporary auction. The Executive Engineer stated to the *Tehsildar* thus:

3. It is, however, borne out from the record that pursuant to the impugned order dated 12.10.2006, the Patwari concerned proceeded to discontinue with the water supply of the said land on 06.11.2006 and informed the Assistant Engineer accordingly (vide Annex.5).

4. The present petitioners preferred an appeal before the Superintending Engineer, Water Resources, Circle *Sriganganagar* and submitted that no receiver was appointed on the land and, merely on the basis of a communication of the *Tehsildar* that the land was not being auctioned; water turn could not have been discontinued. The petitioners also submitted that they were in possession of the land in question and had cultivated the same and ought to have, at least, been heard before passing and implementing the adverse orders.

5. The learned Superintending Engineer proceeded to dismiss the appeal so filed by the petitioners by the impugned order dated 15.11.2006 (Annex.6) on the notions and with the observations that after attachment, no right remains in the owner; that it was the sweet will of the attaching officer whether to apply for water turn or not; and that the Executive Engineer had rightly acted on the request of the *Tehsildar*. According to the learned Superintending Engineer,-

6. The orders and action aforesaid are challenged in this writ petition precisely on the submission that even when the land came under attachment, the Rajasthan Irrigation and Drainage Act, 1954 and the Rules there under do not authorize the irrigation authorities to discontinue with the water supply on such land and the entire action being fundamentally unauthorized, deserves to be annulled. It has been stated in opposition to the writ petition in the reply filed by the respondents that since the land in question had been attached by the *Tehsildar* in recovery proceedings, the petitioners have no right, title or interest over the same until it is auctioned. It is also stated that the land was attached in the recovery proceedings and thereafter the same was put to auction several times for effecting recovery of the Bank loan but nobody turned up in

the auction proceedings and when the *Tehsildar*, who had attached the land and was having right over the same directed so, the Executive Engineer stopped the irrigation facility. It is submitted that the orders impugned do not suffer from any infirmity and call for no interference.

7. Having given a thoughtful consideration to the entire matter, this Court is clearly of opinion that the impugned action remains wholly unauthorized and cannot be sustained.

8. It may be pointed out that the land in question is said to be in the allotment of father of the petitioner No. 1; and the petitioner No. 2 is said to be cultivating the same. Though direct rights of the petitioners in the land in question are not borne out on record but then, they cannot be said to be busy bodies either. In fact, the Appeal (No. 163/2006) against the order dated 12.10.2006 was filed before the Superintending Engineer by the petitioners only; and the right of the petitioners to seek remedy against the impugned action has not been questioned as such.

9. So far merits of the case are concerned, this Court is rather aghast with the propositions as suggested and as taken up by the authorities concerned that upon attachment of a property, all the rights, title and interest of the owner of the property are lost or exterminated. Even the reply submissions before this Court contain the plea that when the land has been attached by the *Tehsildar*, no right, title or interest remains until it is auctioned in favor of any person. The submissions and assumptions are not correct.

10. Though it has not been specified as to under which provision of law the attachment was brought about but assuming that such attachment order had validly been issued and enforced, the authorities have failed to consider that the attachment by itself does not create a title nor operates to confer any title in the attaching creditor or the attaching authority. With its issuance, the attachment basically prevents a private alienation of the property attached and the property cannot be dealt with to the prejudice of the claims enforceable under the attachment. Essentially, an attaching creditor obtains by way of attachment to have the attached property kept *custodia legis* for the satisfaction of his debt.

11. Even when the attachment is of the effect of putting the property in the control of the attaching authority, it is rather extravagant to say that upon attachment, the owner or occupier loses all the rights and interest in the property. To say the very least, the above quoted blanket propositions as stated by the Superintending Engineer in the

impugned order dated 15.11.2006 that right, title or interest in the property are lost and that sweet will of the attaching officer prevails, are unknown to the rule of law. The observations of the Superintending Engineer, apart from being not supported by law on the effect of an attachment order, rather smack of arbitrariness to the maximum.

12. The claim in question is said to be the money due to the Bank. In whatever manner the attached agricultural land would otherwise be dealt with for recovery of debt, neither the standing crops could be left to die out nor the said land could be denuded of the facilities or rights associated thereto, like in the present case the right of receiving irrigation water, at the whims and fancies of the attaching authority or the irrigation department. The suggestions that it would be the sweet will of the attaching authority whether to seek water turn or not, are not only incorrect but are seriously questionable when are stated by the Superintending Engineer who is supposed to deal with the matter in accordance with law and not on whims.

13. Noteworthy it is that the Irrigation Department itself was conscious of the position that the propositions as suggested by the *Tehsildar* and carried into implementation by the Department were not countenanced by law. The portion of the letter dated 03.11.2006 as reproduced hereinbefore makes it absolutely clear that it was very much known to the Department that the rules do not invest it with any such right or authority that the water turn on the attached land be discontinued for enforcing recovery and such kind of action was undertaken only by way of so-called departmental co8 operation! The two Departments of the Government, in the name of their so-called co-operation, could not have ignored the requirements of law. The petitioners had been crying hard and loud that at the time when water turn was discontinued, they had already cultivated the land in question. The action of discontinuing with the water turn was taken even without hearing the cultivators. When the complaint regarding denial of opportunity of hearing was placed before the Superintending Engineer, the same was simply ignored, as if of no relevance.

14. The impugned orders dated 12.10.2006 and 15.11.2006 being squarely contrary to law cannot be sustained and deserve to be set aside and this writ petition deserves to be allowed with costs. However, looking to the other circumstances, this Court is of opinion that such amount of costs, instead of being paid to the petitioners, ought to be deposited by the respondents of Irrigation Department with the Bank in the loan account concerned (said to be Loan Account No. 2/38 with *Punjab National Bank, Raisinghnagar* in the name of *Baishakha Singh*). It shall, of course, be permissible for the respondents to recover, in accordance with law, such amount of costs from the

persons responsible for bringing about this position.

15. Consequently, this writ petition is allowed with costs quantified at Rs. 10,000/- (ten thousand). The impugned orders dated 12.10.2006 and 15.11.2006 are quashed. The amount of costs shall be deposited by the respondents in the aforesaid loan account within 30 days from today.