

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR.O R D E R

Sardul Singh & Anr. v. State of Rajasthan & Ors.

S.B.CIVIL WRIT PETITION NO.1981/1997
under Article 226 of the Constitution of
India.

Date of order : 23rd November, 2005P R E S E N THON'BLE MR.JUSTICE GOVIND MATHUR

Mr. B.S.Sandhu, for the petitioners.
Mr. B.L.Tiwari, Dy.Govt.Advocate.
Mr. C.L.Jain, for the respondents.

BY THE COURT :

According to the facts averred in the petition for writ a water course runs through the stone line of Murrabba No.31 Chak 52-F and then crosses diagonally to Murrabba No.48. It again meets to stone line of Murrabba No.49 wherefrom Murrabba No.49 got itself irrigated. According to the petitioner his agricultural land i.e. in Murrabba No.,49 was getting water for the purpose of irrigation through the water course referred above and the said water course was sanctioned in the revenue records but the same was not shown in blue print of the Irrigation Department pertaining to the water courses, therefore, he preferred an application before the Executive Engineer, Gang Nahar, Northern Division, Sriganganagar

for making necessary corrections in blue print related to the water course mentioned above. The petitioner on basis of available revenue record claimed for correction in blue print in consonance to the revenue record according to which the water course is passing through from Murrabba No.48 kila No.1,9,13,17 and 25.

The Executive Engineer by the order Anx.3 dated 17.11.1995 accepted the application and ordered for making necessary corrections in record of the irrigation department. Being aggrieved by the order passed by the Executive Engineer Shri Bhagwandas and Gianchand, tenants in Murrabba No.48 preferred an appeal before the Superintending Engineer, Irrigation Circle, Sriganganagar. The Superintending Engineer by an order dated 24.6.1996 while accepting the fact that in revenue record a khala is passing through in Murrabba No.48 at kila No.1,9,13,17 and 25, remanded the matter to Executive Engineer for its fresh disposal for seeking consent of the petitioner for changing position of the sanctioned water course from kila No.1,9,13,17 and 25 of Murrabba No.48 to stone line adjacent to Murrabba No.48.

After remission of the matter to the Executive Engineer Shri Bhagwandas and Gianchand preferred an application before the Collector, Sriganganagar stating therein that a new water course is sanctioned by the Executive Engineer in Murrabba

No.48 at kila No.1,9,13,17 and 25 in violation of provisions of Section 24 of the Irrigation and Drainage Act, 1954 (hereinafter referred to as "the Act of 1954"). The Collector, Sriganganagar by his order dated 27.1.1997 accepted the application and set aside the order dated 17.11.1995 passed by the Executive Engineer, Gang Nahar, North Division.

By the instant writ petition a challenge is given by the petitioner to the order passed by the Collector dated 27.1.1997 setting aside the order dated 17.11.1995.

while giving challenge to the order dated 27.1.1997 it is contended by counsel for the petitioner that powers under Section 24 of the Act of 1954 can be exercised only in event of sanction of new water course and not in the case of amendment in blue print of existing water course. According to counsel for the petitioner in present case by the order dated 17.11.1995 and by order dated 24.6.1996 the authorities of the Irrigation Department reached at the conclusion that a water course was already existing in Murrabba No.48 at kila No.1,9,13,17 and 25, as such there was no occasion for the Collector, Sriganganagar to exercise powers under Section 24 of the Act of 1954. According to counsel for the petitioner by order dated 17.11.1995 the Executive Engineer made an order to make necessary corrections

in record of Irrigation Department and the appellate authority i.e. the Superintending Engineer by order dated 24.6.1996 remanded the matter to the Executive Engineer to consider little change in location of existing water course afresh but in any event there was no case of sanction of new water course.

Per contra, it is contended by counsel for the respondents that the Executive Engineer, Irrigation, Gang Nahar, North Division, Sriganganagar by order dated 17.11.1995 sanctioned a diagonal water course in square No.48 in kila No.1,9,13,17 and 25 for providing irrigation facilities to the agricultural land of the petitioner situated in Murrabba No.49. It is also stated that though the land over which the said water course is running is Gair Mumkin to the extent of 14 biswas but it was sanctioned by an authority who is not competent to do so. According to the respondents it is the Collector only who can sanction a new water course.

Heard counsel for the parties.

In the present case the Executive Engineer as well as the Superintending Engineer on basis of available record reached at a specific conclusion that there is already existing water course in Murrabba No.48 running through kila No.1,9,13,17 and 25. The authorities of the Irrigation Department also on

basis of revenue record reached at the conclusion that land of the petitioner is getting water for irrigation through the water course referred above. The authorities of the Irrigation Department in fact nowhere sanctioned new water course but ordered for making necessary entries in their record with regard to existing water course.

It is true that the Superintending Engineer remanded the matter to the Executive Engineer to see viability for changing position of existing water course from kila No.1,9,13,17 and 25 to the stone line of Murrabba No.48 but it does not amount to sanction of new water course and, therefore, I am of considered opinion that the provisions of Section 24 of the Act of 1954 are having no application in present controversy. The Collector, therefore, erroneously interfered with the matter and set aside the order dated 17.11.1995.

In view of above discussion the writ petition is allowed. The order passed by the Collector dated 27.1.1997 is hereby quashed.

No order as to costs.

(GOVIND MATHUR),J.

kkm/ps.