

(2019) 02 RAJ CK 0125
In the Rajasthan High Court
Case No : Civil Writ No. 12672 Of 2012

Bhoop Ram

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 15-02-2019

Acts Referred:

Citation : (2019) 02 RAJ CK 0125

Hon'ble Judges : Inderjeet Singh, J

Bench : Single Bench

Advocate : B.S. Sandhu, R.S. Choudhary, N.R. Budania, Durga Ram, N.S. Rajpurohit

Final Decision : Allowed

Judgement

This writ petition was decided in the presence of counsel for the parties on 12.12.2018 by following order:

"This writ petition has been filed by the petitioner challenging the order dated 07.11.2012 passed by the Superintending Engineer, Water Resources Circle, Srivijaynagar whereby the appeal filed by the respondents No.4, 5 & 6 was allowed and the order passed by the Executing Engineer dated 19.11.2005 was set aside.

Counsel for the petitioner submitted that the appeal filed by the private respondents was considered and allowed by the appellate authority after a delay of 7 years. Counsel further submitted that the naka in question has been ordered to be constructed by the Executing Engineer vide order dated 19.11.2005 as per the sanction plan. Counsel prayed that order passed by the appellate authority may be quashed and set aside.

Counsel for the respondents have supported the order passed by the appellate authority dated 07.11.2012.

Heard counsel for the parties and perused the material available on record.

Admittedly, the respondents No.4, 5 & 6 have challenged the order passed by the Ex.En. after delay of 7 years, therefore, I am of the considered view that the learned appellate authority has committed illegality in allowing the appeal filed by the private respondents vide order dated 07.11.2012.

At this stage, counsel for the respondents submitted that the respondents may be given liberty to file an application before the Ex.En. concerned for sanctioning/change of naka in question.

In that view of the matter, the present writ petition stands allowed. The order passed by the Superintending Engineer, Water Resources Circle, Srivijaynagar dated 07.11.2012 is quashed and set aside. The respondents No.4, 5 & 6 are at liberty to file an application before Ex.En. concerned for sanctioning/change of naka in question. If any application is being submitted by the respondents No.4, 5 & 6, the concerned Ex.En. is directed to decide the same in accordance with law within a period of three months."

Thereafter, the legal representatives of respondent No.5 filed an application for recalling of the order dated 12.12.2018 on the ground of death of respondent No.5 and as they were not heard prior to passing of the order dated 12.12.2018.

This Court considering the application filed on behalf of the legal representatives of respondent No.5 on 11.02.2019 recalled the earlier order dated 12.12.2018 and passed the following order:

- "1. Heard on application for recalling of the order dated 12.12.2018.
2. For the reasons mentioned in the application, the same is allowed. The order dated 12.12.2018 passed by this Court is recalled.
3. Application stands disposed of.
4. Heard on main writ petition.
5. Counsel for the petitioner submitted that legal representatives of respondent No.5 be taken on record as per the list provided by counsel for the legal representatives of respondent No.5.
6. Counsel for the legal representatives opposed the oral application submitted by the petitioner and relied upon the judgment passed by a Co-ordinate Bench of this Court At Jaipur in the case of Ganpat & Ors. Vs. Mangla Ram & Ors. in S.B. Civil Writ Petition No.1216/1981 decided on 04.02.2009.
7. Heard counsel for the parties.
8. Since, for deciding the controversy involved in this writ petition and for giving opportunity of hearing to the legal representatives of respondent No.5, I deem it just and proper to allow the oral application submitted by the petitioner for taking on record the legal representatives of respondent No.5.
9. Counsel for the petitioner may file amended cause tittle.

10. List the writ petition on 14.02.2019."

While allowing the application for recalling of the order dated 12.12.2018 filed on behalf of legal representatives of respondent No.5, this Court taken on record the legal representatives of respondent No.5 and fixed the matter on 14.02.2019. On 14.02.2019, on the request of counsel for the respondents, the matter was fixed for 15.02.2019.

Heard counsel for the parties and perused the record. Admittedly, the respondent Nos. 4 and 5 have challenged the order passed by the Executive Engineer after delay of 07 years therefore, I am of the considered view that the Appellate Authority has committed illegality in allowing the appeal filed by the private respondents vide order dated 07.11.2012.

In that view of the matter, the present writ petition stands allowed. The order passed by the Superintending Engineer dated 07.11.2012 is quashed and set aside. The respondent No. 4 and 6 as well as legal representatives of respondent No.5 are at liberty to file fresh application before the concerned Executive Engineer for sanctioning/change of Nakka in question. If any application is being submitted by the respondents, the concerned Executive Engineer is directed to decide the said application in accordance with law within a period of three months.