
(2000) 07 PAT CK 0056

In the Patna High Court

Case No : Appeal from Appellate Decree No. 544 of 1985

Jano Yadav and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 06-07-2000

Acts Referred:

Citation : (2000) 3 BLJR 1724

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gurusharan Sharma, J.—Plaintiffs are appellants. They filed Title Suit No. 16 of 1981 in representative capacity for permanent injunction restraining the defendants from realising any water rate from them.

2. According to them, defendants launched a scheme of village canal in plaintiffs village, Nongarh for irrigating agricultural lands. Under the scheme, a canal in the said village was to be constructed to connect it from the main canal at village Manjhwai. Land Acquisition Proceeding for the said purpose was still pending. Neither lands were acquired nor any canal was constructed. No canal or distributory emanated from the main canal at village Manjhwai up to village Nongarh, where irrigation of the lands depended upon rain water. There was no facility of irrigation through canal in the Lower Kuel Valley scheme, but defendant's subordinate staff forcibly and under threat realised water rate from the plaintiffs without any provision of irrigational facilities.

3. Defendant No. 1 in his written statement stated, inter alia, that village Nongarh was within the command area of Lower Kuel Valley Canal, which was constructed prior to 1959-60. Under the Provisions of Bengal Irrigation Act, satts were taken from the cultivators and, accordingly, water was supplied to them since 1959-60 and water rate was being realised from them. However, for non-payment of water rate certificate proceedings were also started against

cultivators of village Nongarh.

4. trial Court decreed the suit holding that there was no canal in village Nongarh for irrigating the lands of the village and defendants did not supply water to the plaintiffs, but water rate was collected forcibly under threat. Defendants were not entitled to realise any water rate from the plaintiffs and other cultivators of village Nongarh. Hence, defendants were permanently restrained from realising any water rate from plaintiffs and other cultivators of village Nongarh.

5. Defendants preferred Munsif Title Appeal No. 35 of 1983, which was allowed by impugned judgment and decree dated 12.9.1985. trial Court's decree was set aside and it was held that distributories of Lower Kuel Valley have gone to village Nongarh and lands of the said village were irrigated from those distributories. From distributory No. 1 water was filled in Manjhway Ahar and from there water was flown in Nongarh Pyne. A pacca culvert connected Nongarh Pyne and Sharma Pyne, which was to the south of pacca road.

6. A map, Ext. C was produced to show Sharma Pyne connected with Nongarh Pyne. Ext. D series were Khesra registers of 1967-68, Ext. E series were Tirij register of 1979-80, Ext. F series were Shudkar registers and Ext. I series were sattas. Tirij register contained name of 182 cultivators of village Nongarh. Ext. A series were counter-foils of water rate receipts and Ext. B series were carbon copies thereof. These documents proved that Irrigation Department was maintaining registers and accounts and cultivators of village Nongarh were getting water from the said canal system.

7. In respect of reports, Exts. 1 and 1/A of Advocate Commissioners, Sri Rameshwr Prasad and Sri R.B. Choudhary, the Court of appeal below observed that those reports were of no avail to decide the factum of nonexistence of canal system in village Nongarh, as seen presence of the distributors of Manjhway canal were also excluded therein.

8. Plaintiffs' own documents, namely, Exts. 7 series, the water rate receipts for the year 1965-66 and 1967-68 and Exts. 8 series, Parchas issued to the cultivators of the village, go to show that they were paying water rate from 1965-66. P.Ws. 1, 2, 3, 4 and 5 also admitted to have been paying water rate for long. In this respect, no objection was ever raised before the authorities of Irrigation Department as per the provisions of Bengal Irrigation Act.

9. This Second Appeal is concluded by findings of fact recorded by the Court appeal below. It is, accordingly, dismissed, but without costs.