

(2004) 10 P&H CK 0067

In the Punjab And Haryana At Chandigarh

Case No : Regular Second Appeal No. 4994 of 2002

Kanshi Ram

APPELLANT

Vs

The Punjab State Tubewell Corp. and Others

RESPONDENT

Date of Decision : 04-10-2004

Acts Referred:

Northern India Canal and Drainage Rules, 1873 — Rule 79, 79C, 79D

Citation : (2004) 138 PLR 810 : (2005) 1 RCR(Civil) 182

Hon'ble Judges : Hemant Gupta, J

Bench : Single Bench

Advocate : P.N. Aggarwal, for the Appellant;

Final Decision : Dismissed

Judgement

Hemant Gupta, J.—The plaintiff is in second appeal aggrieved against the judgment and decree passed by the Courts below whereby suit for mandatory injunction to vacate and hand over the possession of land measuring 2 karams in width and 72 karams in length was dismissed.

2. It is the case of the plaintiff that he is the owner in possession of land measuring 30 Kanals 12 Marias. There is no kacha or pucca khal in the said land. The defendants at the instance of Dula Ram wanted to dig the Khal in the suit land and to make the same Pucca. It is the allegation of the plaintiff that no scheme regarding construction of Pucca Khal was created or published nor objections invited and, thus, the construction of Pucca Khal without payment of compensation and without acquisition of land is illegal.

3. The said suit was contested by the defendants, inter alia, on the ground that there was a World Bank Scheme to replace Katcha Khals by Pucca Khals. It was decided to construct Pucca Khal in place of running Kacha Khal for the benefit of all the shareholders of outlet No. 23191/L Daulatpura Minor. In pursuance of such decision, the scheme was notified and published. After hearing the shareholders, the scheme was sanctioned and in pursuance of the sanctioned scheme,

the Khal has been made Pucca.

4. Both the Courts below have dismissed the suit, inter alia on the ground that all the formalities such as the scheme was notified and published in the locality before the finalisation of the same as laid down under the Northern India Canal Drainage Act, 1873, were observed for construction of Pucca drain and, therefore, the suit for mandatory injunction is not maintainable.

5. Before this Court, learned counsel for the appellant has vehemently argued that no actual notice is purported to have been issued to the appellant who is owner of the land and, thus, by merely stating that the scheme has been notified and published in the locality is not a compliance of the provisions of Rule 79-D of the Northern India Canal & Drainage Rules, 1873 (hereinafter to be referred to "the Rules"), thus, violating the statutory provisions which vitiates the construction of Pucca Khal. The said argument raised by learned counsel for the appellant is not tenable in law. The scheme for construction, alteration, extension and alignment of any water course or re-alignment of any existing water-course; the lining of any water-course etc is required to be prepared u/s 30-A of the Northern India Canal & Drainage Act, 1873 (hereinafter to be referred as "the Act"). Such scheme is required to be published u/s 30-B of the Act. Section 30-B(I) of the Act contemplates that every scheme after preparation is to be published in such form and manner as may be prescribed by rules. Rules 79-A to 79-I of the Rules deal with the procedure for service of summons and notices. Rule 79-A of the Rules deals with the summons, notice, order, requisition and proclamation required to be served on or issued, delivered or communicated to any person or published under the subsequent Rules. Rule 79-C of the Rules deals with publication of a public notice or proclamation whereas Rule 79-D of the Rules deals with summons, notice, order or requisition which is required to be served on, delivered or communicated to any person. The relevant provisions of the statute read as under:-

Section 30-A Preparation of Draft Scheme:-

(1) Notwithstanding anything contained to the contrary in this Act and subject to the rules prescribed by the State Government in this behalf the Divisional Ganai Officer may on his own motion or on the application of a shareholder prepare a draft scheme to provide for all or any of the matters namely:-

(a) the construction, alteration, extension and alignment of any water-course or re-alignment of any existing water-course;

(b) re-allotment of areas served by one watercourse to another;

(c) the lining of any watercourse;

(cc) the occupation of land for the deposit of soil from watercourse clearances;

(d) any other matter which is necessary for the proper maintenance and distribution of supply of water from a watercourse.

Section 30-B. Publication of a Scheme.- (1) every scheme shall, as soon as may be after its preparation, be published in such form and manner as may be prescribed by rules made in this behalf inviting objections and suggestions with respect thereof within twenty-one days of the publication.

Rule 79-A.- Every summons, notice, order, requisition and proclamation which under the Northern India Canal and Drainage Act, 1873, or the rule thereunder is required to be served on or issued, delivered or communicated to any person or published for general information, shall be so served, issued, delivered, communicated or published (as the case may be) hereinafter provided.

Rule 79-B.- Every such summons, notice, order, requisition or proclamation shall be drawn up in writing and dated and signed by the officer having authority to issue or make the same.

Rule 79-C- Every Public Notice or proclamation shall be issued or made by posting certified copies thereof.

(a) at the office of the Officer giving or making the same in such manner that such notice shall be accessible to the public; (b) at convenient places in the locality or near the residence of the persons affected thereby, and by beat of drum or oral proclamation or other customary method.

Rule 79-D.- (1) Every summons, notice, order or requisition which is required to be served on or delivered or communicated to any person shall whenever possible, be so served, delivered or communicated;-

(a) personally on or to the person to whom it is addressed, or failing him,

(b) on or to his recognised agent, or failing such agent,

(c) on an adult male member of his family usually residing with him. 6. A perusal of the above statutory provisions would show that the scheme is required to be published and the Rules of publication in terms of Rules 79-A are contained in Rule 79-C i.e. by posting certified copies of public notice or proclamation at the office of the officer giving or making the same in such manner that such notice shall be accessible to the public and at the convenient place in the locality or near the residence of the persons affected thereby, and by beat of drum or oral proclamation or other customary method. It is, thus, apparent that actual personal service upon a land owner is not contemplated in cases of publication of a scheme u/s 30-B of the Act after its preparation u/s 30-A of the Act. It has come on the record that publication in the locality was made which satisfies the requirement of Rule 79-C of the Rules.

6. Learned counsel for the appellant has relied upon two judgments reported as Suraj Mal and Ors. v. The Superintending Canal Officer, Western Jumna Canal, West Circle, Rohtak and Anr. 1980 P.L.J. 469 and Boota Singh and Ors. v. Sahi Ramand others 1982 P.L.J. 23, to contend that in the absence of proof of actual service, sanction of the scheme is not sustainable in law. However, both these

judgments are clearly distinguishable. In Suraj Mal's case (supra), the source of irrigation in respect of the land of the petitioners and private respondents has been amalgamated which was subject matter of challenge on the ground that such outlet has been amalgamated without notice to the petitioners. The said case was not of publication of scheme and governed by Rule 79-D of the Rules. Boota Singh's case (supra), again pertains to the summons required to be served personally without recording satisfaction that the respondents cannot be served as their number is numerous. That was not a case of preparation and publication of scheme. The rule of serving of notice in case of preparation and publication of scheme is separate and distinct from the other disputes between the land-owners, co-owners regarding the sources of irrigation to their respective fields whereas notice in respect of publication of scheme are governed by Rule 79-C of the Rules as against the Rule 79-D of the Rules applicable in respect of individual disputes.

7. In view of the above, I do not find any patent illegality or material irregularity in the finding recorded by the Courts below holding that there is no procedural irregularity in publication of the scheme.

8. No substantial question of law arises in the present appeal for consideration of this court.

No merit. Dismissed in limine.