
(1955) 10 KL CK 0001
In the High Court Of Kerala
Case No : A.S. No. 1021 of 1951

N. Narayanan Bhattathirippad

APPELLANT

Vs

Trav-Co. Govt.

RESPONDENT

Date of Decision : 11-10-1955

Acts Referred:

Peak Forest Canal Act, 1794 — Section 15

Citation : AIR 1955 Ker 225

Hon'ble Judges : K. Sankaran, J; Joseph Vithayathil, J

Bench : Division Bench

Advocate : N. Varadaraja Iyengar, for the Appellant; M.U. Isaac, Government Pleader, for the Respondent

Judgement

Sankaran, J.—This is an appeal by the Plaintiff whose claim, for compensation against the State in respect of certain alleged tortious acts, was negated by the lower Court. According to the Plaintiff the said acts caused damages to him to the extent of Rs. 5,600/-. He is the owner of extensive paddy lands at Chengamanad Pakuthy in Kunnathunad Taluk. There is a stream known by the name of Kaithakattu Chira comprised in Sy. Nos. 332/1 and 333/1 of this Pakuthy.

There are extensive paddy lands to the north, east and south of this Chira. Out of such paddy lands lying to the east of this Chira, an extent of 100 acres belongs to the Plaintiff. The Cochin-Shoranur Railway line passes through this property. The level of the Plaintiff's lands is very much higher than the bed level of the stream. The Chira used to serve as the only outlet for the excess water that may be collected in this paddy land.

The Plaintiff claims to have acquired a right of easement to use the Chira for the purpose of draining such water. Early in the year 1122, the State constructed a dam across the Chira at its lower level some distance to the west of the Plaintiff's paddy land, for the purpose of collecting water to be used for irrigating the adjoining lands to enable the owners thereof to raise a second crop of paddy every year.

In the month of Thulam of that year the rainfall was unusually heavy with the result that the whole of the excess water collected in the dam could not be easily let out through the sluice provided in the dam. The excess water spread over the paddy lands higher up the dam and the paddy crop in the Plaintiff's lands was kept submerged for a number of days. In spite of the complaints preferred by the Plaintiff, the authorities concerned are stated to have taken no steps to avert such a damage to the Plaintiff's crops. He has further alleged that the land remained wet and spongy for a longer period than usual and thus prevented him to raise gingely and Chama cultivations during that year.

On the basis of the average yield from this property the Plaintiff has calculated the loss sustained by him in the year 1122 to be 1000 paras of paddy, 50,000 bundles of straw, 200 paras of gingely seeds and 500 paras of chama. These items have been valued at Rs. 1500, 1750, 1600 and 750 respectively, making a total of Rs. 5,600/-. This loss is attributed to the act of the State in putting up the dam across the Kaithakattu Chira and thus infringing his time-honoured right to have the excess water from his paddy lands drained off through the chira.

2. In resisting the Plaintiff's claim for compensation the State denied the right of easement claimed by the Plaintiff as also the allegation that the Plaintiff had sustained damages under the different items mentioned above on account of any unlawful act on the part of the State. The State also maintained that the dam in question was constructed at the request of the lard owners of the locality, prominent among them being the Plaintiff himself to enable them to raise an additional crop of paddy from their lands at a time when there was an acute shortage of the staple commodity of paddy.

It was also stated that the Plaintiff had taken an active part in the construction of the dam and that himself and other landlords in that locality had actually been benefited by the dam. According to the State the lands in that locality would not have been flooded in the year 1122 had it not been for the unusually heavy rains of that year and that even the flood brought about by such natural causes had been relieved against in a short time by taking necessary steps to drain away the water from the paddy lands and thereby averting any loss to the cultivators. A plea of estoppel was also raised against the Plaintiff's claim for compensation.

3. The trial Court held that the Plaintiff's claim is unsustainable and accordingly dismissed the suit. Hence this appeal.

4. Regarding the facts that a dam had been constructed across the Kaithakattu Chira early in the year 1122 and that the Plaintiff's paddy crops remained submerged under water for a few days as a result of the unusually heavy rains during the months of Thulam and Vrischigom of that year, there is no dispute in this case.

On the strength of these facts it is urged on behalf of the Appellant-Plaintiff that the Defendant is answerable for the consequential damage sustained by the Plaintiff irrespective of the question of any negligence on the part of the

Defendant in the construction and maintenance of the dam. This, claim is sought to be sustained on the basis of the Title of absolute or strict liability as enunciated by Blackburn J., in *Fletcher v. Rylands* (1866) Ex. 265 (279) (A) in the following words:

We think that the true rule of law is that the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, is *prima facie* answerable for all the damage which is the natural consequence of its escape.

While enunciating this rule Blackburn J., himself had envisaged the possible exceptions to it, and so he took care to indicate the scope of such exceptions by adding the following statement:

He can excuse himself by showing that the escape was owing to the Plaintiff's default, or perhaps that the escape was the consequence of vis major or the act of God; but as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient.

The Defendant, in that case had constructed a reservoir on their land and, on filling it up, the water had its escape through the shaft of an old coal-mine the existence of which had not been noticed at the time of the construction of the reservoir and thus flooded the Plaintiff's mine which was closeby. The consideration of the Plaintiff's claim for damages in that case led to the enunciation of the above rule of absolute liability.

In appeal this rule was affirmed by the House of Lords in *Rylands v. Fletcher* (1868) 3 HL 330 (B) and in doing so the scope of the application of the rule was considerably limited by Lord Cairns L.C. by adding a restrictive condition which was explained as follows:

The Defendants, treating them as the owners or occupiers of the close on which the reservoir was constructed, might lawfully have used that close for any purpose for which it might in the ordinary course of the enjoyment of the land be used; and if, in what I may term the natural user of that land, there had been any accumulation of water either on the surface or under ground, and if by the operation of the laws of nature that accumulation of water had passed off into the close occupied by the Plaintiff the Plaintiff could not have complained that that result had taken place. If he had desired to guard himself against it, it would have lain on him to have do so, by leaving or by interposing some barrier between, his close and the close of the Defendants in order to have prevented that operation of the laws of nature....

On the other hand, if the Defendants, not stop, ping at the natural use of their close, had desired to use it for any purpose which I may term a non-natural use, - for the purpose of introducing into the close that which, in its natural condition was not in or upon it, - for the purpose of introducing water either above or below ground in quantities, and in a manner not the result of any natural work or

operation on or under the land, and if, in consequence of their doing so, or in consequence of any imperfection in the mode of their doing so, the water came to escape and to pass off into the close of the Plaintiff, then it appears to me that that which the Defendants were doing they were doing at their own peril, and if, in the course of their doing, it the evil arose to which I have referred, - the evil, namely, of the escape of the water and its passing away to the close of the Plaintiff and injuring the Plaintiff, - then for the consequence of that, in my opinion, the Defendants would be liable.

5. The exceptions to the rule of absolute liability enunciated in *Rylands v. Fletcher* (B) had only been indicated in the judgment of Blackburn J. These exceptions have been crystallised and have been judicially recognised in later cases where the question of the applicability of the rule in *Rylands v. Fletcher* (B) had come up for consideration. These exceptions are (1) the act of God, (2) the act of a third party, (3) the Plaintiff's own fault, (4) the Plaintiff's consent, and (5) statutory authority. The rule of absolute liability will have no application to cases where the injury complained of could be traced and fixed to any one of these different causes.

In *Nichols v. Marsland* (1875) 10 Ex. 255 (C) the Court of Exchequer upheld the plea that the injury complained of was brought about by the act of God. The Defendant in that case had constructed three, artificial pools on her property and owing to an extra-ordinary and unprecedented rainfall, the artificial embankments gave away and the escaping water destroyed four bridges belonging to the Plaintiff. The Defendant was held to be not responsible for the consequences brought about by the extraordinary and unprecedented rainfall. In upholding that decision Mellish L.J. observed as follows:

A Defendant cannot, in our opinion, be properly said to have caused or allowed the water to escape, if the act of God or the Queen's enemies was the real cause of its escaping without any default on the part of the Defendant. (*Nichols v. Marsland* (1876) 2 Ext. D. 15 (D).)

This decision was cited with approval by the Privy Council in *Rickards v. Lothian* (1913) ACC 263 (E). The basis of the action in that case was the damages caused to the Plaintiff's property on the second floor of a building leased to the Defendant, through a continuous overflow of water from a lavatory basin on the top floor, caused by the water tap having turned on full and the waste pipe plugged. On the evidence it was found that these latter acts which caused the overflow of water were the malicious acts of a third party.

The Privy Council held that the Defendant having on his premises a proper and reasonable supply of water, was an ordinary and proper user of his house and that although he was bound to exercise all reasonable care, he was not responsible for damage due to his own default, whether caused by inevitable accident or the wrongful acts of third persons. *Greenock Corporation v. Caledonian Rly.* (1917) ACC 556 (F) is the next important case having a bearing

on the plea of vis major. In that case the municipal authority constructed a concrete paddling pond for children in the bed of a stream and thereby altered the course of the stream and obstructed the natural flow of water therefrom.

Owing to rainfall of extraordinary violence the stream overflowed at the pond and a great volume of water which would have been carried off by the stream in its natural course without mischief, poured down a public street into the town and damaged the property of the railway company. The company's claim for damages was upheld and in the course of the judgment It was observed that:

It is the duty of any one who interferes with the course of a stream to see that the works which he substitutes for the channel provided by nature are adequate to carry off the water brought down even by extraordinary rainfall, and if damage results from the deficiency of the Substitute which he has provided for the natural channel he will be liable.

The plea that extraordinary rainfall was an act of God was also negated. At the same time it is clear from a reading of the judgment in that case that it was not intended to lay down as a general proposition that extraordinary rain of any magnitude can, under no circumstances, be deemed to be an act of God. On the other hand, there are indications in that judgment to show that the question was viewed from the peculiar climatic conditions of Scotland wherefrom that case had arisen. This is evident from the statement of Lord Finlay L.C. that "an extraordinary fall of rain is a matter which, to our climate, cannot be called a *damnum fatale*."

It may also be pointed out that even though specific reference has been made in this case to *Nichols v. Marsland* (C) where extraordinary rainfall was accepted as an act of God, the decision in that case was only distinguished but not overruled. It is also significant to note that the *Greenock Corporation's* liability was fixed on the ground of negligence in not making adequate provision to guard against a possible danger, This is clear from the following statement in this judgment of Lord Finlay, L.C.:

A dam that gives way in a night's rain is not such as the maker was bound to erect. The fact that it gives way is a proof that his obligation was not fulfilled and that the protection was not afforded which he was bound to provide.

Thus it was not a case of absolute liability as per the rule, in *Rylands v. Fletcher* (B). *R. v. Southern Canada Power Co. Ltd.* (1937) 3 All ER 923 (G) which is the next case relied on by the Appellant's learned Counsel is also of no help for making out that the present case comes within the ambit of the rule of absolute liability enunciated in *Rylands v. Fletcher* (B).

Southern Canada Power Co. Ltd., constructed a dam across St. Francis river in Canada and on the occasion of the exceptional floods in the spring of 1928 vast quantities of water rushed over the dam and caused severe damage to a railway embankment nearby and brought about a serious accident to a passenger train,

in that case also the plea that the damages were brought, about by the act of God was turned down for the reason that the possibility of the floods in that river at that part of the year could have been easily foreseen. This position is made clear by the following observation in the judgment:

It was a matter of a general knowledge that the ice-jams on the river would break up in a few days, and that, when that happened, the river at the railway bridge would no doubt rise several feet. Floods on such occasions are not unusual on this part of the river. Before the dam was constructed, there were floods in 1887, 1913, 1915, and 1921; after the dam was made (in 1925), there was a very severe flood in 1927, which gave rise to several actions against the power company. It should be mentioned that the trial judge found that the three worst floods in that section of the river were those of 1927, 1928 and 1932.

Accordingly the power company was found to be negligent in not guarding against injuries resulting from such floods. The liability of the power company was fixed on the basis, of the special provision contained in the Water Course Act which authorised the construction of that dam. Section 12 of that Act provided that "the owner or lessee of such work shall be liable for all damages resulting therefrom to any person, whether by excessive elevation of the flood gates or otherwise."

On the strength of this provision it was ruled that the statute imposed an absolute liability on the power company, and contributory negligence could not be pleaded except as foolish and irrational acts of the claimants. This case also cannot be taken to be an authority for the position that excessive rains cannot, under any circumstances be brought within the exception of act of God. All that could be gathered from the cases cited above is that such a plea will be of no avail in localities where excessive rains and consequent floods are matters of common occurrence and that in other localities unusually heavy rains might be so exceptional as to be regarded as an act of God.

This position has been made clear by Viscount, Maugham in *Sedleigh-Denfield v. O'Callaghan* (1940) ACC 880 (H) where, after making specific reference to (1917) ACC 556 (F) and other cases, it was stated that "it would be defence to prove that the overflow was due to a rainfall or a storm so exceptional that it should be regarded as an act of God." In *Makins Ltd. v. London and North Eastern Rly. Co.* (1943) 1 KB 467 (I), also the violent storm which was the cause of the injury complained of in that case, was held to amount to an act, of God.

The embankment of a canal which the Defendants in that case had constructed collapsed as the result of a violent storm and the water which escaped from the canal caused damages to the Plaintiff's Mill lower down. The canal was constructed under the authority conferred by Peak Forest Canal Act 1794. Provision for absolute liability was made by Section 15 of that Act which was in the following terms:

If an injury or damage shall happen to be done to the owner or occupier of any

mill, edifice, lands or hereditaments by the breach of any reservoir to be made for the purpose of the said intended canal or cut, or any of the locks or works of the said navigation, or by the water flowing from the said canal or cut, or any such reservoir, or from any other accident, then, and in every such mo, full compensation shall be made to the owner and occupier of, and all other persons interested in, any such mill, edifice, land or hereditaments by the said company of proprietors for all such injury and damage.

It was held that this section imposed an absolute obligation on the proprietors who were therefore bound to compensate the Plaintiffs for damage caused by the overflow of water when an embankment collapsed owing to a violent storm, even though the storm was such as to amount to an act of God. In dealing with this question, Goddard L.J., observed as follows:

If a person were injured by an unprecedented storm he could fairly and properly be said to have met with an accident in the storm. Every act of God which causes injury may be called an accident although not every accident is an act of God.

What is significant to note in these cases is that the award of compensation for damages was not made on the basis of the rule of absolute liability as envisaged in *Rylands v. Fletcher* (B), but only on the strength of the absolute liability imposed by special statutory provisions. The rule laid down in *Rylands v. Fletcher* (B) was exhaustively reviewed by the House of Lords in *Read v. J. Lyons and Co. Ltd.* (1947) ACC 156 (J). In dealing with the scope of the rule in *Rylands v. Fletcher* (B), Viscount Simon observed in this case as follows:

It has not always been sufficiently observed that in the House of Lords, when the appeal from" (1866) 1 Ex. 265 (279) (A) was dismissed and Blackburn J.'s pronouncement was expressly approved, Lord Cairns L.C, emphasized the condition which must be satisfied before liability attaches without proof of negligence. This is that the use to which the Defendant is putting his land is a non-natural use".

Later on, in the same judgment, the learned Law Lord stated as follows:

Now, the strict liability recognised by this House to exist in (1868) 3 HL 330 (B) is conditioned by two elements which I may call the condition of "escape" from the land of something likely to do mischief if it escapes, and the condition of non-natural use of the land. This second condition has in some later cases, which did not reach this House, been otherwise expressed, e.g., as "exceptional" user, when such user is not regarded as "natural" and at the same time is likely to produce mischief if there is an "escape".

On the question as to what would amount to "non-natural use" of land, Lord Moulton's analysis in (1913) ACC 263 (H) was stated to be of great importance. In the course of such analysis Lord Moulton has explained the expression "non-natural use" as follows:

It must be some special use bringing with it increased danger to Ors. , and must not merely be the ordinary use of the land or such a use as is proper for the general benefit of the community.

It is obvious that the expression "non-natural use" cannot have the same significance at all ages and in all countries.

What was considered to be a non-natural use of the land a few centuries back, may not be so under modern conditions and in an industrial age. The march of time and the inevitable progress of society in relation to industrial and scientific activities must necessarily have an important bearing on the determination of the question whether a particular user of land is natural or non-natural.

Cases where this important test of "non-natural user" of land is satisfied so as to attract the rule in *Rylands v. Fletcher* (B) would be few and far between under modern conditions; and that appearing to be the reason for the stand taken by the English Courts against any extension of the application of the rule of absolute liability as laid down in *Rylands v. Fletcher* (B). The warning against such an extended application of the rule was given by Lindley L.J. in *Green v. Chelsea Waterworks Co.* (1894) 70 LT 547 (549) (K) in the following words:

That case is not to be extended beyond to legitimate principle on which the House of Lords decided it. If it were extended as far strict logic might require, it would be a very oppressive decision.

In (1947) ACC 156 (J) this warning given by Lindley L.J. was quoted with approval by Viscount Simon who added:

It seems better, therefore, when a Plaintiff relies on (1868) 3 HL 330 (B) to take the conditions declared by this House to be essential for liability In that case and, to ascertain whether this conditions exist in the-actual case.

As already stated, the rule in *Rylands v. Fletcher* (B) is also subject to a number of important exceptions. Excluding the cases coming under one or Anr. of these exceptions, the chances are that there could only be very few cases which could satisfy the two essential conditions necessary for the application of the rule. This position appears to have been recognised in *St. Anne's Well Brewery Co. v. Roberts* (1928) 140 LT 1 (6) (L) where Scrutton L.J., pointed out that the rule in *Rylands v. Fletcher* (B) is a "rule of absolute liability, but there are so many exceptions to it that it is doubtful whether there is much of the rule left."

6. Examining the facts admitted or proved in this case, in the light of the principles discussed above, it is clear that, even apart from the Defendants plea that this case comes within the exceptions of vis, major as also of the Plaintiff's consent, as recognised in *Rylands v. Fletcher* (B), the two essential conditions necessary to attract the rule of absolute liability are not satisfied in, this case.

It is common ground that the dam in question was erected for the purpose, of storing water to be used for irrigating the paddy lands in the neighbourhood, to

enable the Plaintiff and the other agriculturists of the locality to raise a second crop of paddy. This cannot be said to be a non-natural or exceptional use of the canal.

Even otherwise, there is no case that the injury complained of by the Plaintiff was caused by the escape of water which had been stored tip or collected in the dam. On the other hand, the complaint is that the dam stood in the way of a speedy escape of the, excess water that had been collected in the Plaintiff's paddy lands as a result¹ of the unusually heavy rains.

7. Indian law has all along recognised the use of a property as a reservoir of water for irrigation purposes as a natural use essential to the welfare of the community. This position has been judicially recognised in a series of cases. In *The Madras Railway Co. v. The Zemindar of Carvatenagarum* 1 Ind App 364 (M) the basis of the railway company's claim for compensation was that the sides of certain irrigation tanks with, in the Zemandari gave way during a rainy season and that the large quantities of water escaped from these tanks destroyed certain railway bridges and also washed away a portion of" railway line.

The Judicial Committee of the Privy Council negatived the claim of the Railway company and held that the rule of absolute liability laid down in *Rylands v. Fletcher* (B) was not applicable to the facts of the particular case which related to irrigation works. In dealing with that question the privy Council observed as follows:

The tanks are ancient, and formed part of what may be termed a national system of irrigation, recognised by Hindu and Mahomedan law, by regulations of the East India Company, and by experience older than history, as essential to the welfare, and, indeed, to the existence of a large portion of the population of India.

The public duty of maintaining existing tanks, and of constructing new ones in many places, was originally undertaken by the Government of India, and upon the settlement of the country has, in many instances, developed on zemindars of whom the Defendant is one. The zemindars have no power to do away with these tanks in the maintenance of which large numbers of people are interested, but are charged under Indian law by reason of their tenure, with the duty of preserving and repairing them.

From this statement of facts referred to in the judgment of the High Court, and vouched by history and common knowledge, it becomes apparent that the Defendant in this case is in a very different position from the Defendants in (1868) 3 HL 330 (B).

This decision was followed in *Ram Lall Singh v. Lall Dhary Muhton* 3 Cal 770 (N). In that case it was ruled that:

Where a Defendant shows a prescriptive right to maintain a bund, and uses all reasonable and proper precautions for its safety, he cannot be made liable for

damage caused by the escape or overflow of water on to the lands of Ors. and the consequent injury of the crops thereon, if the escape or overflow be caused by the net of God, and vis major.

In *Gajapathy Krishna Chandra Deo v. Rajah of Vizianagaram* 60 Mad LJ 662 (O) also it was held that the rule in (1868) 3 HL 330 (B) that "a person who stores water on his land is prima facie answerable for the damage consequential on its escape" is inapplicable to irrigation tanks in India which have been in existence for several years and that the storing of water in an agricultural tank is a natural and lawful user, and is not actionable for damages unless negligence is proved.

The same view was taken by the Nagpur High Court in *Kaosal Mohan v. Kodu Dajiba* AIR 1946 Nag 75 (V 33) (P). When such is the position, under normal circumstances, greater immunity must attach itself to similar works undertaken to tide over the extraordinary situation brought about by the acute shortage of the staple commodity of paddy as in the present instance.

The evidence in this case is to the effect that the dam in question was constructed at a time when the State was faced with the difficulty of satisfying the needs of its inhabitants by making available the required quantity of paddy for their consumption. The "grow more food" campaign was one of the activities initiated for achieving this end. It was in pursuance of this campaign that the dam in question was constructed in the Kaithakattu chira for storing water to be used for lift irrigation, purposes so as to enable the agriculturists of the locality to raise a second crop in their paddy lands.

The evidence on record is clear that the desired Object was achieved by this undertaking. The Plaintiff himself has admitted that by making use of the lift irrigation facility afforded by the construction of this dam in the Kaithakkattu chira, he was able to raise a second crop in a portion of his paddy land. He has further admitted that several of his lessees were also similarly enabled to raise an additional crop in the same manner.

The Executive Engineer under whose direction and supervision the dam had been constructed has been examined as D.W. 2, and his evidence shows that all the necessary care and caution had been taken in the construction of the dam. He has stated that sluice 6 feet wide had been provided in the dam at a height of 4 feet from the bed-level of the canal, so that excess water that might be collected in the dam could have its outlet through this sluice. The Width of the canal at this place was only 60 feet. It was in a dam having a length of 60 feet that sluice 6 feet wide was provided.

It is not disputed that any excess water that may be collected in the dam under normal conditions could escape through this sluice. It was only because of the unusually heavy rains in the months of Thulam and Vrischigom of the year 1122 that the sluice proved to be inadequate for the speedy outlet of the whole of the excess rain water. For meeting such a situation an extra opening was made in the dam and thus water was drained off.

All these facts are also sworn to by D.W. 2 and we see no reason to doubt the truth of his evidence. The facts sworn to by him are sufficient to support the conclusion that no charge of negligence could be sustained against the authorities responsible for the construction of the dam. The stagnation of water in the Plaintiffs land was the direct result of the unusually heavy rains and even if no dam had been constructed in the canal, such excess rain water could have been drained off only within the course of a few days.

It has also to be remembered that the Plaintiff has no case that the stagnation of water in his paddy land brought about the total destruction of the crops. All that is alleged is that there was a partial loss in the yield of paddy and straw. The Plaintiff has been able to make only a rough estimate of the loss of straw. As for the loss of paddy, he has made an estimate on the basis of the average of the yield of paddy for the previous years as entered in his account book Ex. E.

It is seen from the entries in Ex. E that there had been considerable variations in the paddy yield from year to year. It will not therefore be safe to conclude that the shortage in the yield in the 1122 was entirely due to the flooding of the paddy land for a few days prior to the time of the harvest. It is quite possible that such shortage might have been due to other causes also.

The actual yield of paddy in the year 1122 stated to be 2803 paras. This is not very much below the yield of 2962 paras obtained in the year 1118, as seen from Ex. K. Under these circumstances it cannot be said that as a result of the stagnation of water in the paddy lands of the Plaintiff in the year 1122 he had sustained any substantial damage. The little damage that he had sustained could be attributed to natural causes and in this view of the matter also the claim against the State for compensation must fail.

8. The plea of *volente non fit injuria* raised by the Defendant in answer to the Plaintiff's claim for compensation, is also fully supported by the evidence on record. This plea is based on the allegation that the dam in the Kaithakkattu chira was constructed with the consent of the Plaintiff also.

If it is proved that the Plaintiff has either expressly or impliedly agreed to the construction of the dam, he cannot later on turn round and complain that the presence of the dam has been a source of injury to his property, unless it is established that he happened to give his consent for the construction of the dam on account of irresistible fraud or force.

The evidence in this case is to the effect that the Plaintiff and the other agriculturists of the locality where the Plaintiff's property is situated, not only consented to the construction of the dam, but had also pressed for its construction so as to ensure an adequate supply of water for the usual Mundakan crop in their paddy lands and also to enable them to raise a second crop by taking advantage of the lift irrigation facility.

D.W. 2 the Executive Engineer under whose supervision and direction the dam

was constructed, has stated that the dam was constructed on account of the incessant demands made by the agriculturists of the locality inclusive of the present Plaintiff and that they were keen on getting such a dam constructed so that the water could be utilised for properly irrigating their lands for raising the usual Mandakan crop and also for raising an additional crop. These agriculturists have formed a co-operative society and Ex. I is the minutes book of the society for the period from 1118 to 1123. This document was produced and proved by D.W. 1 who is the Secretary of the Society.

It is clear from the minutes recorded at page 34 of Ex. I that at the meeting held on 22-12-1120 the present Plaintiff was elected as President of the society and his son was elected as Vice President. The Plaintiff is seen to have presided over the committee meeting held on 16-7-1121 and to have signed at the foot of the minutes of that meeting. His signature is seen at several pages of Ex. I. From the minutes of the meeting held on 16-7-1121 it is seen that the fourth resolution passed at that meeting was in respect of the construction of dam in the Kaithakkattu chira.

At the meeting held on 6-11-1122 a committee was appointed to take active steps in this matter, and thus to obtain the desired lift irrigation facilities. This meeting was presided over by the Plaintiff's son. Copies of the resolutions passed by the Society emphasising the need for the construction of a dam in the Kaithakkattu chira were forwarded to the State Chief Engineer and also to the Executive Engineer at Alwaye.

On 3-2-1122 the Society sent the letter Ex. VIII to the Executive Engineer (D.W. 2) requesting him to take up the work of constructing the dam at Kaithakkattu chira at once. This letter was signed by the Plaintiff's son as the Vice-President of the Society. A few months prior to this, the agriculturists of that locality called together a conference for passing the necessary resolutions to impress on the Government the urgent need to provide lift irrigation facilities by constructing the dam in the Kaithakattu Chira and also by other means.

Exhibit VII is one of the invitation letters issued for convening this conference. It is seen from Ex. VII that the present Plaintiff had figured as the patron of this conference. There is also the evidence of P.Ws. 2, 3 and 6 to the effect that the Plaintiff's son and the other members of the co-operative society had taken active part in speeding up the construction of the bund.

D.Ws. 1 and 2 have stated that the leading agriculturists of the locality had extended full cooperation in the construction of this bund. The major portion of the paddy lands served by irrigation from this dam belongs to the Plaintiff and it is clear from the evidence and circumstances already adverted to that the Plaintiff was the leading figure among those who were moving the authorities concerned for the construction of the dam. The lower Court was therefore right in its conclusion that this dam was constructed With the consent and also at the request of the Plaintiff.

There is also evidence to show that along with other agriculturists, he too was benefited by the dam. He cannot therefore complain that the dam has been injurious to his own interests. Thus in any view of the case the lower Court's decision that the Plaintiff's, claim in this suit is unsustainable, has only to be affirmed as correct.

9. In the result, this appeal is dismissed with costs.