
(2019) 05 RAJ CK 0150
In the Rajasthan High Court
Case No : Civil Writ Petition No. 7949 Of 2015

Rajendra Singh And Anr

APPELLANT

Vs

State And Ors

RESPONDENT

Date of Decision : 16-05-2019

Acts Referred:

Citation : (2019) 05 RAJ CK 0150

Hon'ble Judges : Dr. Pushpendra Singh Bhati, J

Bench : Single Bench

Advocate : BS Sandhu, Abhilasha Bora, HS Sidhu

Final Decision : Disposed Off

Judgement

1. By way of the instant writ petition, the petitioners have approached this court with the following prayers :-

"It is, therefore, respectfully prayed that this petition for writ may kindly be allowed and by an appropriate writ order or direction the order dated 14.07.2015 (Annex.7) passed by the Superintending Engineer in Appeal No.40/2014 may kindly be declared illegal and the same may kindly be quashed and set aside."

2. Brief facts of the case as noticed by this Court are that the petitioners want the Naka already sanctioned at Killa No.25 to be shifted to Killa Nos.20 & 21.

3. Learned counsel for the petitioners makes a categorical statement that the petitioners neither want the volume of water to be increased nor want to derive other benefits therefrom but simply seek shifting of Naka from Killa No.25 to Killa Nos.20 & 21 instead. Learned counsel for the petitioners in this regard submits that a favourable order was passed by the Executive Engineer on 5.11.2014 which was quashed by Superintending Engineer vide order dated 14.7.2015. Learned counsel for the petitioners submit that the only reason given by the Superintending Engineer in his order to set aside the order dated 5.11.2014 was that the petitioners had earlier given consent that if there is any objection then

the petitioners' prayer to shift the naka may not be acceded to. Learned counsel for the petitioners submits that technically, the shifting of Naka from Killa No.25 to Killa Nos.20 & 21 is feasible and thus deserves to be shifted.

4. Learned Government counsel Ms.Abhilasha Bora submits that it is an admitted position that the petitioners are having Naka at killa no.25 and if at all, the shifting of Naka from Killa No.25 to Killa Nos.20 & 21 is to be done, then it has to be made only after seeing technical feasibility.

5. Learned counsel for the private respondent no.4 submits that the respondent no.4 submitted objections and the petitioners have filed affidavit that if there will be any objection, then such shifting may not be done. Learned counsel for the private respondent further submits that technically also, the shifting may result into lowering of water to the existing land holders.

6. After hearing the learned counsel for the parties on the aforementioned limited submission and after going through the material available on record, this Court finds that the appellate order dated 14.7.2015 has been passed on the count of the petitioners' affidavit that if there would be any objection, the shifting would not be considered and so also, on the count that the technical feasibility has not been adjudged. This Court agrees with the finding of the Superintending Engineer to the extent that technical feasibility has to be examined before permitting any shifting of naka. Further, the parties are agreeable that the matter be remanded to the Executive Engineer for examining the technical feasibility of shifting of naka.

7. In view of the above discussion, this writ petition is allowed. The impugned order dated 14.7.2015 is quashed and set aside and the matter is remanded back to the Executive Engineer for examining the technical feasibility of the shifting of Naka from Killa No.25 to Killa Nos.20 & 21 and if the Executive Engineer finds that the same is feasible without prejudicing the rights of the farmers on the same canal, the same shall be done strictly in accordance with law. The entire exercise may be carried out within a period of three months from today. Till then, the status quo as it exists today shall be maintained.

8. Stay petition no.7121/2015 also stands disposed of accordingly.