
(2008) 01 RAJ CK 0145
In the Rajasthan High Court
Case No : Civil Writ Petition No. 4077 of 2002

Shanti (Smt.)

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 29-01-2008

Acts Referred:

Citation : (2008) 3 WLN 52

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Judgement

Vineet Kothari, J.—Heard the learned Counsel for the parties.

2. This writ petition has been filed by the petitioner challenging the order of the Superintending Engineer dt. 26.08.2002 (Annex.4) in an appeal filed by the respondent No. 4, against the order of the Executive Engineer, Anupgarh, Sector II, Gharsana, who by his order dt. 29.12.2000 directed that the land of the petitioner Smt. Shanti Devi measuring 11 Bighas, which was earlier included in the Chak No. 16 KYD situated in 136/6 in Killa No. 6 to 8/3, 13 to 8/6, and 24, 25/2 was to be included in Chak No. 17 KYD, as the petitioner had represented to the Executive Engineer Irrigation that she was not getting sufficient quantity of water in the said Chak No. 16 KYD and therefore, her fields could be better irrigated, if the land in question was included in Chak No. 17 KYD.

3. After taking the report of the Assistant Engineer, the concerned Executive Engineer passed the aforesaid order on 29.12.2000 shifting her Rakba of 11 Bighas from Chak No. 16 KYD to Chak No. 17 KYD.

4. The respondent No. 4 Sohan Lal filed an appeal against that order on 16.08.2001 after about eight months of the passing of the said order before the Superintending Engineer, who by his impugned order dt. 26.08.2002 (Annex. 4) set aside the order of the Executive Engineer. Being aggrieved by the said order of Superintending Engineer as that is final under the Act, the petitioner is approached this Court by way of present writ petition.

5. The said writ petition has been contested by the private respondent as well as the State, who have filed their respective replies to the writ petition.
6. I have heard the learned Counsel for both the parties and perused the record.
7. When the concerned Executive Engineer had passed the order dt. 29.12.2000 (Annex.2) after taking into account the report of the concerned Assistant Engineer and holding that shifting of the Rakba of the petitioner measuring 11 Bighas from Chak 16 KYD to Chak 17 KYD, which is mere allocation of Chak to be included in Chak 17 KYD, he passed the said order on the ground that the land of the petitioner could be better irrigated, if her field is included in 17 KYD. The learned Superintending Engineer, prima facie, without assigning any cogent reason, set aside the order of the learned Executive Engineer and restored the earlier position.
8. This Court has held in number of cases time and again that it is for the concerned authorities of the department to decide the location of the outlets in irrigation as well as the determination of Chak area therefore, it is not appreciated how at the instance of a particular cultivator, who was having his field in Chak 17 KYD, the said reasoned order for shifting of Rakba of the petitioner from 16 KYD to 17 KYD could be reversed by the higher authority without different reasons or holding that the reasons assigned by the Executive Engineer were perverse and not available.
9. This Court therefore, finds no ground to sustain the impugned order of Superintending Engineer dt. 26.08.2002 (Annex.4). This Court is also of the opinion that shifting of land of the petitioner from Chak No. 16 KYD to Chak No. 17 KYD can hardly affect adversely the interest of the private respondent Sohan Lal, whose land is otherwise irrigated in the said Chak No. 17 KYD.
10. Therefore, the present writ petition is deserve to be accepted and accordingly, the same is allowed. The impugned order of the Superintending Engineer dt. 26.08.2002 (Annex. 4) is quashed and set aside. No order as to costs.