

(1978) 05 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Writ Petition No. 433 of 1977

Shri Ram and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 09-05-1978

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1978) WLN 164

Hon'ble Judges : D.P. Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.P. Gupta, J.—The case of the petitioners" is that they are the Khatedar tenants of Murabba No. 125/338 in Chak No. 22 NDR, in Tehsil Hanumangarh of District Sri Ganganagar and their grievance is that the non-petitioners Nos. 1 and 2 divided Chak No. 22 NDR into two and included the petitioners" land (square No. 125/338) in the newly formed Chak No. 3 AWSM (B) without any notice to the petitioners and without affording them an opportunity of being heard in the matter. The writ petition was initially filed by Shri. Ram petitioner No. 1 alone, but later on, on the objections of the respondents, other co-sharers of Murabba No. 125/338 were added as petitioners to the writ petition.

2. The respondents" case is that the petitioner Shri. Ram representing all the petitioners had consented to the transfer of the land comprised in Murabba No. 125/338 in the newly formed Chak No. 3 AWSM (B) and as such they cannot now object to the division of Chak No. 22 MDR into two and the transfer of their land in field No. 125/338 to the newly formed Chak No. 3 AWSM (B). The petitioner Shri. Ram in his rejoinders, while admitting his signatures on the Razinama statement, submitted that his signatures were obtained by mis-representation of facts, as he was told that permanent water channels were being constructed and his signatures were being obtained in the respect. The original record from the office of the Superintending Irrigation Officer, Hanumangarh was called for and

from a perusal thereof it appears that a Razinama statement was prepared for transfer of some lands from Chak No. 22 NDR to the newly formed Chak No. 3 AWSM (B) and all persons, who had consented to the transfers had signed after writing the word (**jkth**). Entry No. 13 of the aforesaid Razinama statement shows that Shri. Ram had put his signature after writing the word (**jkth**), while another petitioner Prem has put his thumb impression in token of consent. It, there fore, appears that the Superintending Irrigation Officer was justified in observing in his order Ex. 3 dated May 2, 1977, that all the concerned cultivators had agreed to the transfer of their lands from Chak No. 22 NDR to the newly formed Chak No. 3 AWSM (B) except one Sajan. The petitioner having already consented to the transfer of their land to the newly formed Chak No. 3 AWSM (B), the question of lack of notice has lost all its importance and it cannot be said that the transfer of the petitioners' fields of Murabba No 125/328 to Chak No. 3 AWSM. Be was brought about without the knowledge and consent of the petitioners. As a matter of fact, there is an express consent of the petitioners Shri. Ram & Prem in the Razinama statement and their explanation in the rejoinder does not appear worthy of any credence.

3. The arguments of the learned Counsel for the petitioner is that as no order was passed by the original authority namely; the Divisional Irrigation Officer in the matter, the proceedings before the Superintending Irrigation Officer, who was the appellate authority, were without jurisdiction. Learned Counsel relied upon a decision of their Lordships of the Supreme Court in State of Punjab and Another Vs. Hari Krishan Sharma, . In my view, the aforesaid case, which relates to the provisions of the Punjab Cinemas (Regulation) Act, 1952, is not applicable to the facts of the present case, because the provisions with which I am concerned in the present writ petition are entirely different. With regard to proceedings Under Rule 11 of the Rajas-than Irrigation and Drainage Rules, 1955, as amended by the Notification dated September 10, 1973 the Superintending Irrigation Officer is no doubt the Appellate Authority but he enjoys the same powers and jurisdiction as the original authority. There is no question of total lack of jurisdiction in the matter. Moreover, no such objection was raised by the petitioners before the Superintending Irrigation Officer.

4. Even if the submission of the learned Counsel is accepted that the proceedings Under Rule 11 should have been taken before the Divisional Irrigation Officer, then also the impugned order does not suffer from total lack of jurisdiction. The procedure adopted in the present case was that a report was submitted by the Divisional Irrigation Officer to the Superintending Irrigation Officer, in respect of the proposal to change the existing system of canal irrigation by transferring certain fields, including that of the petitioners, to the newly formed Chak No. 3 AWSM (B) and there after the Superintending Irrigation Officer heard the matter and he also inspected the site on April 14, 1977. According to his order dated May 2, 1977, all the persons present had agreed to the proposed transfer except Sajan. Thus, it might be an irregularity that the Divisional Irrigation Officer did not pass an order against which an appeal could be preferred by either party

before the Superintending Irrigation Officer, but h submitted a report to the Superintending Irrigation Officer, who made enquiry and concurred with the view expressed by the Divisional Irrigation Officer.

5. More over, it is not necessary for me in the present case to consider the effect of the aforesaid irregularity because I am convinced for the reasons mentioned hereinafter that the petitioner have disentitled themselves by their own conduct from seeking any relief from this Court under Article 226 of the Constitution. The petitioners came to this Court with the case that they had no notice or knowledge of the proceedings for transfer of their lands to newly formed Chak No. 3 AWSM (B) & that they were not afforded nay opportunity of heading in this matter. This was the main grievance of the petitioners in the present writ petition. But they failed to disclose and rather suppressed the most important fact i.e., a Razinama statement was prepared and that two of the petitioners, Shri Ram and Prem, had put their signatures and thumb impression respectively, in token of consent to the proposed transfer of their lands bearing Murabba No. 125/338 from Chak No. 22 NDR to the newly formed Chak No. 3 AWSM (B). Even when the respondents in their reply to the show-cause notice stated that the petitioner Shri Ram had himself agreed to the proposed change along with other and had signed to Razinama statement, the petitioner Shri Ram still falsely contended in his rejoinder that his signatures were obtained on the Razinama statement by mis-representation, alleging that the same were required in respect of making pacca water channeis. It was for this reason that the original record was summoned & from a perusal of the same, I am satisfied that both Shri Ram and Prem had consented to the proposed change of bringing their lands bearing No. 125/338 to the newly formed Chak No. 3 ASWM (B) and they had put their signatures and thumb impression in token of their consent in respect of the proposed change. On account of this part of the petitioner, that they had expressly consented to the proposed change, it does not now lie in their mouth to say that they had no notice or that they were not afforded any opportunity of hearing. Once, the petitioners had given their consent of the proposed change, no further notice or opportunity of hearing was required

6. Learned counsel submitted that in the case of total lack of jurisdiction, the conduct of the party should not be taken into consideration for refusing him the relief prayed for in the writ petition and reliance was placed on the decision of this Court in Chhaila Vs. Board of Revenue and Others, In that case, the D.B. itself observed that the conduct of the petitioner in that case in submitting to the jurisdiction of the concerned authorities, was fully explained and that the failure on his part to raise the objection relating to jurisdiction was "apparently due to want of knowledge". Their Lordships have further observed in para 11 of the judgment of the aforesaid case that they had no reason to disbelieve the explanation of the learned Counsel for the petitioner in that case. In the present case, however, the petitioners not only submitted to the jurisdiction of the Superintending Irrigation Officer and did not object to his taking proceeding in the matter. But the further conduct on the part of the petitioners, which

according to me, disentitles them from seeking any relief from this Court, is that they recorded express consent in the matter by putting their signatures & thumb impression on the Razinama statement. After giving their express consent to the proposed change, which is the subject matter of the entire litigation, it would now be absolutely futile to remand the case to the Divisional Irrigation officer for a fresh enquiry as prayed for by the petitioners.

7. The learned Counsel for the petitioners lastly submitted that if at also consent was given by Shri Ram and Prem, yet the other petitioners who were also co sharers and who had not given their consent were not bound by the same and they could object to the jurisdiction of the Superintending irrigation Officer in the matter as they had not been given any notice of the proceedings and also they had not been afforded my opportunity of hearing. I am also unable to agree with this contention of the learned Counsel. The petitioner Shri Ram in his affidavit dated 12-10-1977 had stated that "the prach Barabanndi and the receipts of irrigation charges have been issued in my name by the Irrigation Authorities. The rent receipts are also issued in my name the petitioners have also produced the receipts of irrigation charges & Parcha barabandi", which are all in the name of the petitioner Shri. Ram alone Shri Ram has filed several affidavits in this writ petition on behalf of all the petitioners. It also appears from a perusal of the Razinama statement that the petitioners Shriram & Prem had consented & put their signatures & thumb impression on the same as representatives of all the co-sharers of land bearing No. 125/338. As a matter of fact, it was Shri. Ram alone who had initially filed the writ petition on behalf of and for the benefit of all the petitioner with the allegation that he had no notice of the proceedings nor he was afforded any opportunity of hearing. This case has been found to be false. The other petitioners were later on added as petitioners only on the objection of the respondents. The conduct of the petitioners in the proceeding discloses that Shri. Ram petitioner represented all the co-sharers, who were the Khatedar tenants of Murabba No. 125/338. In these circumstances, it cannot be held that the others co-sharers have any conflicting interests nor it is their case that Shri. Ram petitioner did not represent them in the proceedings before the Irrigation Authorities.

8. In view of the aforesaid circumstances, I hold that the petitioners have disentitled themselves from seeking any relief from this Court on account of their conduct. The writ petition is, consequently, dismissed.