
(2025) 01 RAJ CK 1671

In the Rajasthan High Court, Jodhpur Bench

Case No : Civil Writ Petition No. 19499 Of 2024

Kabir Singh

APPELLANT

Vs

Superintending Engineer

RESPONDENT

Date of Decision : 30-01-2025

Acts Referred:

Citation : (2025) 01 RAJ CK 1671

Hon'ble Judges : Arun Monga, J

Bench : Single Bench

Advocate : M.S. Purohit, Mahaveer Bishnoi, Harshwardhan Singh

Final Decision : Disposed of

Judgement

Rekha Borana, J

1. The present writ petition has been filed against the order dated 28.08.2024 passed by the Superintending Engineer, Water Resources, Circle Hanumangarh in Appeal No.70/2024 whereby the order dated 01.08.2024 as passed by the Executive Engineer has been set aside and the matter has been remanded back to the Executive Engineer for decision afresh.

However, while passing the said order, the Superintending Engineer directed to restore the current irrigation facilities in compliance of the order dated 01.08.2024 as passed by Executive Engineer.

2. Learned counsel for private respondent No.4 raised a preliminary objection regarding the maintainability of the present writ petition with a submission that the present petitioner had moved before the Civil Court also for the same relief wherein his prayer for temporary injunction was rejected and hence, the present writ petition for the same relief cannot be entertained.

3. Responding to the above preliminary objection, learned counsel for the petitioner submits that in the Civil suit the relief prayed for was to restrain the respondents from constructing any water course through his agricultural field. In

the said suit while rejecting the temporary injunction application as filed by the petitioner, the learned Civil Court observed that the action taken by the Executive Engineer was in compliance of the order dated 28.08.2024 passed by the Superintending Engineer and hence, the same was valid. In the said event, the petitioner was left with no other option except to challenge the order dated 28.08.2024 passed by Superintending Engineer. Hence, the present writ petition has been filed challenging the said order, which is very well maintainable before this Court.

4. On merits of the petition, learned counsel submits that once the Superintending Engineer remanded the matter to the Executive Engineer for decision afresh, it could not have directed for restoration of the same order which was under challenge.

5. Counsel further submits that even if the said direction was to be complied with, the Executive Engineer, in pursuance thereof, neither could have directed for re-construction of the water course nor could have directed the petitioner to remove his crop within a period of two days vide the notice dated 08.11.2024 (Annex.11).

6. Per contra counsel for the private respondent submits that till the matter been decided by the Executive Engineer, respondent too was entitled for the irrigation facilities and therefore, the action of the Executive Engineer was totally correct.

7. In rejoinder argument, counsel for the petitioner pointed out the site map (Annex.2) which was produced before the Executive Engineer wherein it is reflected that the private respondent is getting the irrigation facilities from the pakka nalla constructed by him.

8. Counsel for the State too pointed out the said site report dated 12.06.2024 (Annex.2) which reflects that the alleged kuccha water course had been constructed by the present petitioner for his internal use and the private respondent never used the water facility from the said kuccha water course. The said report also reflects that the third khatedar Harjinder Singh also stated that he is getting the irrigation facilities from the 'पुली' constructed between the lands of private respondent and the present petitioner.

9. In view of the above facts and in view of the report dated 12.06.2024 of the President of the 'Water Users Association', it prima facie seems that the private respondent is getting water facilities to irrigate his crops from the pakka nalla, as of date.

10. Therefore, in view of the above report and in view of the fact that the matter has been remanded back to the Executive Engineer to decide afresh, the present writ petition is disposed of with a direction to respondent No.2-Executive Engineer to decide the matter afresh within a period of two weeks from 10.02.2025.

11. Both the parties shall remain present before the Executive Engineer on

10.02.2025 and the Executive Engineer shall not be under an obligation to issue any fresh notices to the parties. The Executive Engineer shall be under an obligation to provide opportunity of hearing to both the concerned parties.

12. It is made clear that Executive Engineer shall not be affected by any of the observation made in the present order and shall decide the matter afresh on its own merit.

13. Stay petition and pending applications, if any, stand disposed of.