

**(2024) 02 RAJ CK 0143**

**In the Rajasthan High Court**

**Case No : Civil Writ Petition No. 2317 Of 2024**

Vijay Singh And Others

APPELLANT

Vs

State Of Rajasthan And Others

RESPONDENT

**Date of Decision : 29-02-2024**

**Acts Referred:**

Code Of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2

Indian Penal Code, 1860 — Section 427, 430, 447

Public Properties Act, 1984 — Section 3

**Citation : (2024) 02 RAJ CK 0143**

**Hon'ble Judges : Dr. Nupur Bhati, J**

**Bench : Single Bench**

**Advocate : Moti Singh, Ramavatar Singh, Ramesh Kumar**

**Final Decision : Dismissed**

## Judgement

Dr. Nupur Bhati, J

1. The instant writ petition has been preferred by the petitioners challenging the validity of the order dated 19.02.2024 (Annex.19) passed by the Superintending Engineer, Water Resources Circle, Hanumangarh whereby appeal preferred by private respondents No.4 and 5 has been allowed and they have been provided water/irrigation facility from Kila No.5 according to 'vk<+' (Internal Field Channel).

2. Briefly stated, the facts of the case are that the petitioners are having their agriculture land in Chak 24 JRK situation in Murabba No.23, ad-measuring 2 Bigha in Kila No.10 and 11 and 5 Bigha in Kila No.22. According to petitioners, an inlet has been sanctioned by the Irrigation Department at Kila No.5 of Murabba No.23. The dispute between the parties arose, when private respondent No.4 Mahavir preferred an application for continuation of 'vk<+' (Internal Field Channel) as per Chief Engineer's arrangement of 'vk<+' within a square way back in the year 2019 (27.02.2019). In the said application, Mahavir (private respondent No.4) requested for shifting of water turn from Murabba No.23/248 to Murabba No.22/247, which according to petitioners, was related to one

Balram. On the said application, the water turn of Balram was shifted to Murabba No.22/247. On account of shifting of 'vk<+', which was situated from Kila No.125 in Murabba No.25/248, the same rendered redundant and while apprehending some untoward incident with the petitioners, inasmuch as they were having 2 Bigha of land in Murabba No.23/248, the petitioners submitted an application before the competent authority with a prayer to provide them water facility to their fields on 29.05.2019 (Annex.1).

3. The competent authority i.e. Chairman, Water User Association as well as Assistant Engineer and Superintending Engineer, on the application submitted by the petitioners, observed to implement the Internal Field Channels as per sanctioned plan approved by the competent authority. The Superintending Engineer thereafter vide order dated 04.07.2019 directed to provide Internal Field Channel to the petitioners while treating inlet at Kila No.5 on 04.07.2019. In pursuance of the order dated 04.07.2019, the Executive Engineer, the Assistant Engineer issued notice to private respondents No.4 and 5 on 13.11.2019. Thereafter, the Assistant Engineer after hearing the parties concerned, directed opening of the inlet situated at Kila No.5 and also ordered for closing the illegal inlet, created by private respondents vide order dated 22.11.2019 (Annex.4).

4. Pursuant to order dated 22.11.2019, the Patwari concerned and Zildar in the presence of Chairman, Water User Association restored the water facilities infavour of petitioners on 26.11.2019. Being appalled by the noting made by the Executive Engineer on the application preferred by the petitioners, the private respondents preferred an appeal (Appeal No.101/2019) before the Superintending Engineer and the Superintending Engineer on 26.11.2019 (Annex.6) proceeded to pass an interim order in the appeal preferred by private respondents while directing to maintain status quo and fixed the appeal on 13.12.2019.

5. According to petitioners, the private respondents with a view to overreach the process of law proceeded to demolish the Internal Field Channel created by the Patwari concerned and, therefore, petitioners lodged an FIR No.23/2020 at Police Station Goluwala, against the private respondent Rajendra and other accused persons for offences under Sections 427, 430 and 447 of IPC and Section 3 of the Public Properties Act, 1984. After registration of the FIR, the SHO sought report from the Assistant Engineer, Water Resources with regard to breaking out of the Internal Field Channel and inlet. The Assistant Engineer submitted its report on 03.01.2020 (Annex.10) apprising therein that in pursuance of earlier directions issued by the Executive Engineer, the internal field channel was restored and illegal inlet situated at Kila No.6 was closed and originally sanctioned inlet situated at Kila No.5 was restored, which was however demolished and closed by the private respondents.

6. The Superintending Engineer while considering the appeal preferred by private respondents (Appeal No.101/2019) remanded the matter back to the Executive

Engineer vide order dated 11.11.2020 (Annex.11) with a direction to take statements of the agriculturists of the Chak, who are likely to be affected by internal field channel and inlet situated at Kila No.5.

7. The private respondent No.4 feeling aggrieved by order dated 11.11.2020 preferred a writ petition before this Court being SBCWP No.1264/2021, which writ petition however came to be dismissed as having become infructuous on account of order being passed by the Executive Engineer dated 22.01.2021 (Annex.13), whereby the Executive Engineer after recording statements of the concerned and after conducting site inspection accepted the prayer of the petitioners and the Assistant Engineer was directed to close the illegal Internal Field Channel situated at Kila No.6 and restore the Internal Field Channel at Kila No.5.

8. The private respondents feeling aggrieved by order dated 22.01.2021 preferred two separate appeals before the Superintending Engineer. The appellate authority thereafter issued notices to the petitioners and clubbed both the appeals (Appeal No.6/2021 and 11/2021). The aforesaid appeals came to be disposed of by the Superintending Engineer vide order dated 07.04.2021 (Annex.16) whereby it has remanded the matter back. Against the said order dated 07.04.2021 (Annex.16), the petitioners preferred a writ petition before this Court being SBCWP No.6646/2021, wherein initially an interim order was granted in favour of petitioners on 28.04.2021 staying the operation of the order dated 07.04.2021 and thereafter the said writ petition was disposed of by this Court vide order dated 09.10.2023 (Annex.17) while remanding the matter back to the Executive Engineer to decide the matter afresh. Against the order dated 09.10.2023 (Annex.17), the petitioners preferred an intra-court appeal, however, the said intra court appeal (DBSAW No.964/2023 : Vijay Singh & Anr. vs. State of Rajasthan & Ors.) came to be dismissed by Division Bench of this Court vide order dated 21.11.2023. Subsequently, the Executive Engineer, Water Resources Division-I, Hanumangarh issued an order dated 30.01.2023 (Annex.18) stating therein that it has been determined that there is no need for any alteration in the existing water course, as the existing water course has been in operation since 1996 and both the parties i.e. petitioners and the private respondents shall continue to receive regular water facility through the established water courses.

9. The private respondents thereafter preferred an appeal challenging the order passed by the Executive Engineer, which was registered as Appeal No.108/2023. The Superintending Engineer thereafter vide its order dated 09.02.2024 (Annex.19) proceeded to allow the appeal preferred by the private respondents and thereby directed modification of the Chak Plan.

10. The petitioners thus have preferred this writ petition challenging the order dated 09.02.2024 (Annex.19) passed by the Superintending Engineer, Water Resource Circle, Hanumangarh.

11. Mr. Moti Singh, learned counsel appearing for the petitioners vehemently

contended that the appellate authority has in fact failed to deal with the situation and erroneously observed that the Executive Engineer has not considered the fact of pendency of civil suit with regard to controversy, which fact has been considered by the Executive Engineer in its order dated 22.01.2021. Learned counsel for the petitioners submitted that the Superintending Engineer has no authority to disown the directions issued by the Executive Engineer, however, arbitrarily the Superintending Engineer without application of mind passed the order impugned. Learned counsel for the petitioners further submitted that the sanctioned inlet is situated at Kila No.5 of Murabba No.23, from which the petitioners were getting the irrigation facility and thus they are entitled to get the same, however, it were the private respondents, who bear ill intention and they are intending to purchase two Kila(s) of the land covered by Murabba No.23 so as to have superintendence over entire land. Counsel for the petitioners reiterated his submissions that irrigation facility is being provided to the petitioners as per Chak Plan, however, the Superintending Engineer has committed serious error while directing the concerned to modify the Chak Plan, devised by the State Government.

12. Counsel for the petitioners further submitted that provisions of the Rajasthan Irrigation and Drainage Act, 1954 (for brevity, hereinafter referred to as 'the Act') have not been adhered/considered by the Superintending Engineer in true letter and spirit while passing the order impugned dated 09.02.2024 (Annex.19). He further submitted that while passing the order impugned, the Superintending Engineer has not at all considered the order passed by this Court, inasmuch as the matter has been decided without considering the law applicable and the same has been passed in defiance of the order passed by this Court.

13. In the instant writ petition, on behalf of private respondents No.4 and 5 Caveat was entered and a reply to the writ petition has been filed by the private respondents.

14. In the reply, the private respondents have raised preliminary submissions and have inter-alia submitted that private respondent No.4 is having 6 Bigha of land in Chak 24 JRK Stone No.23/248 Kila Nos.4, 5, 6,7 14, 15 and the private respondent No.5 is having six Bigha of land in the same stone Kila Nos.2, 38, 9, 12 and 13. The petitioner No.1 is having 5 Bigha land in the adjoining Stone No.22/248 and 0.1770 hectare (less than 1 Bigha) in Stone No.23/248 and the petitioner No.2 is having six Bigha land in adjoining Stone No.22/248 and 1 Bigha in Stone No.23/248 at Kila No.11. According to respondents No.4 and 5, the irrigation facility is being provided through permanent iDdk vk<+ (Internal Field Channel) and temporary Internal Field Channel (dPpk vk<+). In the reply, it has been stated that the petitioners have big portion of land i.e. 5 Bigha each in adjoining Murabba/Square of Stone No.22/248, however, with oblique motive they intend to divide the land of the respondents into two pieces, which in turn will deprive them from their water turn. It is also stated in the reply to writ petition that the Superintending Engineer has considered the aspect that length

of Internal Field Channel will remain the same five Bigha and the water facility will not be disturbed in any manner. The respondents, in their reply, have also brought the fact before this Court that petitioner No.1 had filed a civil suit seeking permanent injunction against the private respondent No.5, however, the application seeking temporary injunction under Order 39 Rule 1 & 2 CPC was rejected by the learned Civil Judge, Pilibanga, District Hanumangarh, vide order dated 06.12.2019 while observing that land of petitioner No.1 Vijay Kumar is situated in Kila No.10 is already having irrigation facility from Inlet at Murabba No.23.8/249, which has no relation with Kila Nos.2, 3, 8, 9, 12, 13 of Murabba No.23/248 and thus no irreparable loss would be caused to applicant Vijay Kumar (petitioner herein). Against the said order dated 06.12.2019, petitioner No.1 had preferred an appeal, and the same after having been admitted is pending adjudication. In the said proceedings, Court Commissioner has also been appointed to submit status report and the parties have been directed to maintain status quo.

15. The private respondents have levelled allegations that it were the petitioners, who destroyed their standing crop on 26.11.2019 despite an interim order of maintaining status quo and the respondent No.2 had filed an FIR No.347/2019 on 26.11.2019 (Annex.R/3) against the petitioners, wherein after investigation charge sheet has also been filed against the petitioners. Thus, by filing the reply, the respondents prayed for dismissal of the writ petition.

16. Learned counsel for the respondents No.4 and 5 submitted that the inlet at Kila No.5, which though was sanctioned by the Irrigation Department, but the same was not in use for last three decades and the petitioners tried to interrupt the irrigation facility at Murabba No.23.8/249. Learned counsel for the respondents further submitted that shifting of water turn will not going to affect any of the farmer and the timing and turn remains unchangeable to the petitioners, inasmuch as they are already using water facility alongwith their adjacent land in Murabba No.22. Counsel for the respondents further submitted that the petitioners although lodged FIR No.23/2020 against the private respondents and other persons, however, after thorough investigation a negative final report was filed in the said FIR and also submitted that to his best knowledge no protest petition has been filed by the petitioners. The prayer made before the departmental authorities has already been denied by the civil court and, therefore, the petitioners have no right to have irrigation facility from Kila No.5 and the petitioners were already in receipt of irrigation/water facility to their fields in Kila Nos.10 and

11. While refuting the contention of the petitioners that there is a proposal of National Highway and 75 meters land will be acquired by NHAI, learned counsel for the private respondents contended that in such eventuality, permanent Internal Field Channel will be shifted towards Kila No.10 of the petitioners and they would not even require temporary Internal Field Channel as per plan.

17. Counsel for the respondents further submits that in pursuance of the order

dated 09.02.2024, the Chairman, Water User Association had submitted its report on 15.02.2024 (Annex.R/4), according to which irrigation/water facility to Kila No.10 and 11 of petitioners is open without any hindrance.

18. I have heard learned counsel for the parties and have perused the material available on record.

19. As there was no representation on behalf of the State, the Court was inclined to adjourn the matter, but learned counsels for the petitioners and private respondents jointly submitted that since upon the complaint filed by the private respondents the controversy has arisen, thus State is not required and insisted for hearing of the matter at this stage.

20. This Court finds that the petitioners and the private respondents are contesting for their claim with respect to having water/irrigation facility viz. 'vk<+' (Internal Field Channel). The petitioners had submitted application on 29.05.2019 (Annex.1) for providing them irrigation facility from the inlet situated at Kila No.5 before the departmental authorities and simultaneously also availed the remedy of filing a suit before the court of Civil Judge, Pilibanga, District Hanumangarh. Alongwith the said suit, an application under Order 39 Rule 1 & 2 CPC filed by the petitioners for temporary injunction against the private respondents, has been rejected by the civil court vide order dated 06.12.2019 and in an appeal filed against the said order, status quo order is in currency.

21. This Court also finds that petitioners as also the private respondents have also filed FIR(s) against each other and in the FIR No.23/2020 lodged by petitioners against the private respondents, after through investigation, the investigating agency had filed a negative final report, against which any protest petition has been filed or not, nothing has been uttered by counsel for the petitioners. On the contrary, in the FIR No. 347/2019 lodged by private respondent No.2 against the petitioners, charge sheet has been filed against the petitioners before the competent criminal court.

22. The Superintending Engineer in the order impugned dated 09.02.2024 (Annex.19) has observed that on account of providing irrigation facility to the petitioners from inlet of Kila No.5, the land of private respondents, Rajendra and Mahavir Prasad would be divided into two parts and for conversion of the land for commercial use, said Rajendra had applied before the Revenue Department. The Superintending Engineer also observed that Vijay Singh has failed to lead evidence that if they are provided irrigation facility adjoining to stone line, any disturbance or hindrance would be caused to them and on the contrary, according to 'vk<+ Plan' if irrigation facility is provided, the land of the private respondents would be divided into two parts, which will not be beneficial and the land conversion would also affected.

23. The order impugned dated 09.02.2024 (Annex.19) passed by Superintending Engineer calls for no interference, inasmuch as the this Court in exercise of its extraordinary writ jurisdiction is not inclined look into the technical aspects of the

matter and it is the authorities of the Irrigation Department, who have to consider the technical aspect as also the feasibility of the inlet/s providing irrigation facilities to the agriculturists. The Superintending Engineer has considered all the technical aspects and has rightly found and observed that no prejudice would be caused to the petitioners.

24. In view of above discussion, this Court finds no force in the petition, the same is therefore, dismissed. No costs.

25. Stay Petition and misc. application(s), if any, shall also stand dismissed.