

the amount on which tax is to be levied. In substance the result comes to the same. So in the present case the civil Court had jurisdiction to try the claim of the applicants, if true, because the defendant municipality has not complied with the provisions of Punjab Act 3 of 1911 inasmuch as it has not given effect to section 3(1)(b)(ii) of the Act in regard to the assessment and levy of taxes on the property of the applicants. In this approach this revision application has to succeed.

Nothing said above has any bearing on any other defence taken by the respondent municipality in the suit. Apart from the question of jurisdiction, reference has also been made to two other defences of the respondent municipality. There may be other defences, including the defence of limitation. All those are questions on the merits of the controversy between the parties which will in due course be attended to by the trial Court according to law.

In the circumstances this revision application is accepted, the decrees of the Courts below are reversed and the case is remitted back to the trial Court for trial according to law on a finding that it has jurisdiction to try the claim of the applicants, because the respondent municipality has not complied with the provisions of Punjab Act 5 of 1911 in not giving effect to section 3(1)(b)(ii) in the case of assessment and levy of taxes on the property of the applicants. There is no order in regard to costs in this application. The parties, through their counsel, are directed to appear in the trial Court on June 6, 1967.

B. R. T.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

RAM CHANDER AND OTHERS,—*Petitioners*

versus

STATE OF HARYANA AND ANOTHER,—*Respondents*

Civil Writ No. 2661 of 1966.

May 15, 1967

Northern India Canal and Drainage Act (VIII of 1873)—Section 57—Government finding the case falling within the section—Whether bound to draw

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up the scheme for requisite work—"May"—Whether to be read as "shall"—Performance of the duty by the Government—Whether conditional on its own judgment—High Court—Whether can interfere.

Held, that once the Government finds that a particular case falls within four corners of section 57 of Northern India Canal and Drainage Act, it is bound to cause a scheme for requisite works to be drawn up and published and to take further action in that respect as envisaged in the Act. To that extent, "may" in section 57 must be read as "shall" inasmuch as the relevant provision enjoins the performance of a duty on the Canal authorities in the public interest. The stage for performing that duty, however, arises only if and after "it appears to the State Government" that any drainage works are necessary for any of the purposes mentioned in the section.

The performance of the duty by the State Government referred to in section 57 of the Act is made conditional on the judgment of the State Government as to the necessity of providing the drainage-works in question as envisaged in the opening line of the section. The High Court cannot substitute itself in the place of the State Government and hold that it appears necessary to make the drainage-works.

Petition under Article 226 of the Constitution of India, praying that a writ in the nature of certiorari, mandamus or any other appropriate writ, order or direction be issued quashing the scheme for the protection of the lands of the petitioners from the accumulation of the water in the Pai-Kirhauri-Pehladpur area, by draining out the accumulated water for the proper cultivation of the lands of the petitioners, and to implement the same before July, 1967 when the next rainy season starts.

R. S. MITTAL, ADVOCATE, for the Petitioners.

R. N. MITTAL, ADVOCATE, for the ADVOCATE-GENERAL (H), for the Respondents.

ORDER

NARULA, J.—This is a petition under Article 226 of the Constitution for the issue of a writ in the nature of mandamus to the State of Haryana and the Deputy Commissioner, Rohtak, for making a scheme for providing suitable drainage-works to protect the lands of the petitioners from floods or other accumulation of water under section 57 of the Northern Indian Canal and Drainage Act, 1873 (hereinafter referred to as the Act).

Ram Chander and 24 other petitioners in this case belong to three different villages, namely, Pai, Pehladpur and Kirhauri. On the west of the lands of the three villages is Pai-distributory which has been in existence for a long time. At R.D. 64,000 under the said distributory a syphon was provided as long ago as in 1958. On the South of the land of the petitioners, Jaunti Minor has been taken out of the Pai-distributory towards the east. During the monsoon, water accumulates over the land of the petitioners which is shown as flood area in the plan Annexure 'A' to the writ petition. Whereas there is Pai-distributory on the west and Jaunti Minor on the south, there is a sandy heap (known as Thali) on the east of the land in question which is said to be about 15 to 20 feet higher than the level of the petitioners. The banks and beds of the distributory and the Minor are higher than the petitioners' fields. The petitioners claim to have been making representations to the Canal authorities as well as to the Government since 1952 for making suitable arrangements to clear the petitioners' land from the menace of accumulating water. Not only was no relief granted to the petitioners but, as stated above, the syphon was installed at R.D. 64,000 which resulted in throwing out the water of the land on the west of the Pai-distributory into the petitioners' fields.

In or about July, 1964 a decision is stated to have been taken by the Canal authorities to install a syphon under the Jaunti Minor at R.D. 3800 to allow the water accumulated inside the rectangular band (created by the distributory, the Minor and the Thali) to pass towards village Kulasi situated on the South of the Jaunti Minor. Before arrangements for draining out of the water through the proposed syphon were made a civil suit was brought by one Bhup Singh of village Kirhauri in August, 1964, for an injunction to restrain the Punjab Government from implementing the said decision. A temporary injunction is said to have been issued by the Civil Court during the pendency of the suit. According to the petitioners, the syphon had been obstructed by the persons owning lands to the south of the Jaunti Minor in connection with which a report dated October 12, 1964 (Annexure 'D'), had been made by the Executive Engineer, Delhi Division, Western Jamuna Canal, Delhi; to the Deputy Commissioner, Rohtak. During the pendency of the suit, affidavit of the Sub-Divisional Officer, Delhi Sub-Division, dated September 7, 1964 (Annexure 'B') was filed in the Civil Court wherein it was stated that the Government proposed to construct

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the above-mentioned syphon under the Jaunti Minor which would not damage the land of Bhup Singh as the rain water passing through the syphon would be drained off from the link drain connecting it with Kulasi drain. It has been deposed by the Sub-Divisional Officer in the said affidavit that the construction of the syphon in question had been sanctioned by the Chief Engineer, Irrigation, after looking into the matter carefully and that the syphon was intended to drain off the accumulated rain water of Pai. Kulasi and other adjoining villages. After the filing of the said affidavit, Bhup Singh applied to the Civil Court to withdraw his suit with permission to file a fresh one on the same cause of action. The permission prayed for was refused and the suit was dismissed by the order of the trial Court, dated October 30, 1964 (Annexure 'C').

Before the unauthorised *band* which had obstructed the working of the syphon installed under Jaunti Minor could be demolished. Civil Writ No. 2566, of 1964, was filed by Ram Singh, son of Bhim Singh and 149 others, including Bhup Singh, son of Jaimal (the plaintiff in the civil suit) in this Court to restrain the Punjab Government and the Canal authorities from excavating the intended drain to take off the water of the syphon. At the final hearing of the writ petition on April 27, 1966, it was stated on behalf of the Government that the scheme for excavating drain Kirhauili-Kulasi had been abandoned and that the position of the State regarding the second drain (Pai-Kirhauili) was that nothing had till then been done to excavate the same and that if and when necessity for excavating that drain would arise, it would be got excavated by "voluntary labour and free land" after following proper procedure. In view of the said statement of the counsel, the writ petition was dismissed by the order of Kaushal, J., (as he then was) dated April 27, 1966 (Annexure 'E'). In the meantime President's Rule was imposed in the erstwhile United State of Puniab with effect from 5th July, 1966. The petitioners, therefore, submitted their representation dated August 8, 1966 (Annexure 'F') to the Governor of Punjab requesting to institute an immediate enquiry to ascertain how and why the syphon installed under Jaunti Minor had been removed and for directing the re-fixation of the said syphon so as to allow the flow of the accumulated water from the fields of the petitioners. According to the allegations made by the petitioners in the present writ petition, the said syphon was removed *mala fide*. During the pendency of the writ petition (Civil

Writ No. 2566 of 1964) the petitioners in that writ approached the then Irrigation and Power Minister, Punjab, Ch. Rizk Ram. The allegation is that the said Minister got the whole scheme abandoned without any notice to the petitioners. The Governor is stated to have ordered the Deputy Commissioner, Rohtak, to do something in the matter on the written representation of the petitioners. The Deputy Commissioner visited the spot towards the end of August, 1966 and invited various suggestions from the public but is stated to have done nothing in the matter. The petitioners claim that they were left with no other alternative but to come to this Court in the above circumstances. This is how the present writ petition was filed. Very early hearing of the writ petition was directed by the Motion Bench on December 22, 1966. As the petitioners were afraid that delay in the disposal of the petition would cause them irreparable loss, they filed Civil Miscellaneous No. 1138 of 1967, dated April 20, 1967 in this Court for directing the respondents to submit their written statement within some fixed time and to fix the writ petition for hearing in the first week of May, 1967. P. D. Sharma, J. passed an order on that application on April 24, 1967 directing the main case to be set down for hearing at No. 1 on May 8, 1967. When the case came up before me on that day, a request was made by the learned counsel for the State to grant the respondents a few days' adjournment to enable them to file a return to the Rule. Though adjournment was refused by me, the case could not reach for hearing till today. In spite of this, no written statement has been filed by any of the respondents.

Mr. R. S. Mittal, learned counsel for the petitioners, has invoked the following provision contained in section 57 of the Act:—

“57. Whenever it appears to the State Government that any drainage-works are necessary for the improvement of any lands, or for the proper cultivation or irrigation thereof;

or that protection from floods or other accumulations of water, or from erosion by a river, is required for any lands, the State Government may cause a scheme for such drainage-works to be drawn up and published, together with an estimate of its cost and a statement of the proportion of such cost which the State Government proposes to defray, and a schedule of the lands which it is proposed to make chargeable in respect of the scheme.”

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Relying on the judgment of the Supreme Court in *Sardar Govindrao and others v. The State of Madhya Pradesh* (1), it has been submitted that expression "may cause a scheme for such drainage-works to be drawn up * *" in the above-quoted provision should be read and interpreted as "shall cause a scheme for such drainage-works to be drawn up" as it could hardly have been intended that the operative part of the section requiring the making and publishing of the requisite scheme was to be rendered wholly illusory and nugatory in its purpose by vesting an absolute discretion in the authorities in that respect. It was argued that the statutory provision places an obligation on the Government in respect of its duty owed to the petitioners and since the conditions of the section are said to have been fulfilled, the Canal authorities have no discretion in the matter and they must proceed to act under section 57 of the Act and frame and publish a suitable scheme and make arrangements for draining out the accumulated rain water from the petitioners' fields for the protection of their lands from the floods. Counsel appears to be correct in stating that once the Government finds that a particular case falls within the four corners of section 57, it is bound to cause a scheme for requisite works to be drawn up and published and to take further action in that respect as envisaged in the Act. To that extent, "may" in section 57 must be read as "shall" inasmuch as the relevant provision enjoins the performance of a duty on the Canal authorities in the public interest. The stage for performing that duty, however, arises only if and after "it appears to the State Government" that any drainage-works are necessary for any of the purposes mentioned in the section. There is nothing to show that after August, 1966, when the representation of the petitioners was submitted, it ever appeared to the State Government that the requisite drainage-works were necessary. Mr. R. S. Mittal has vehemently argued that a mere look at the site plan (Annexure 'A' to the writ petition) read with letter dated October 12, 1964 (Annexure 'D') shows that the State Government did at some stage at least feel convinced about the necessity of providing the requisite drainage-works. It is not possible to conjecture as to what led the State Government to undo the previous scheme to instal the siphon at R.D. 3800 under Jaunti Minor. What is still worse for the petitioners is that they have not been able to place on the record of the case copy of any application or representation submitted to

(1) A.I.R. 1965 S.C. 1222.

the said authorities for taking necessary action under section 57 of the Act and of any order passed thereon. It has not even been shown as to what was the ultimate result of that representation. In any case, no claim for issue of a writ in the nature of mandamus can be entertained till the precise relief is asked for by a notice to the respondent before coming to this Court.

Mr. R. N. Mittal, the learned counsel for the State, has invited my attention to a Division Bench judgment of this Court in *Karnal Kaithal Co-operative Society v. The State* (2), wherein reference has been made to the four pre-requisites for the issue of such a writ, viz.—

- (1) that the petitioner has a clear and specific legal right to the relief demanded;
- (2) that there is a duty imposed by law on the respondent;
- (3) that such a duty is of imperative ministerial character involving no judgment or discretion on the part of the respondent; and
- (4) that the petitioner has no other equally efficacious remedy available to him for the enforcement of the right which has been denied to him.

Not only do the petitioners appear not to have asked for the specific relief by a written notice from the respondents before filing this petition, but it appears to me that the performance of the duty by the State Government referred to in section 57 of the Act is made conditional on the judgment of the State Government as to the necessity of providing the drainage-works in question envisaged in the opening line of the section. This Court cannot substitute itself in the place of the State Government and hold that it appears necessary to make the drainage-works.

Another obstacle in the way of the petitioners to obtain any relief in these proceedings is that, in fact, they are practically asking for the reopening of the syphon under Jaunti Minor which was, according to the petitioners themselves, closed at the instance of Bhup

(2) 1958 P.L.R. 425.

Maharajkumar-Gajbir Singh, etc. *v.* His Highness Maharaja Satbir Singh, etc. (Narula, J.)
 Singh and others. Though reference to the civil suit of Bhup Singh and the previous writ petition filed by the owner of the land to the South of the Jaunti Minor has been made in the petition, none of them has been impleaded in this case. It is impossible to give a direction in the writ petition which may directly affect prejudicially the persons who are not impleaded as respondents. So far as the syphon at R.D. 64000 in Pai distributory is concerned it was admittedly installed in 1958 and a petition for removing the same filed in 1966 cannot be entertained on account of laches. In these circumstances, it does not appear to be possible to grant any relief to the petitioners.

In spite of the fact that I feel compelled to dismiss this writ petition on legal grounds, it does appear that the justice of the cause may be on the side of the petitioners and that the Government must take adequate necessary steps as expeditiously as possible to perform the duty enjoined on them under section 57 of the Act by considering any fresh representation which the petitioners might now make in this behalf. I have no doubt that if the petitioners approach the State Government in a proper way, it would look into the matter and if it considers it necessary to make the requisite provision for some drainage-works, it would then proceed to act under section 57 of the Act to redress the long-standing grievance of the petitioners.

Subject to the above observations this writ petition is dismissed without any order as to costs.

K.S.K.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

MAHARAJKUMAR GAJBIR SINGH AND ANOTHER,—*Petitioners*

versus

HIS HIGHNESS MAHARAJA SATBIR SINGH AND OTHERS,—*Respondents*

Civil Misc No 23-M of 1967.

May 16, 1967

Code of Criminal Procedure (Act V of 1898)—S. 146—Civil Court of competent jurisdiction—Meaning of—Code of Civil Procedure (Act V of 1908)—S. 24 and Constitution of India (1950)—Article 227—Proceedings under S. 146 Cr. P. Code—Whether can be transferred from one civil court to another.