

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

RSA-5806-2015 (O&M)

Date of decision: 27.04.2016

Ram Singh (since deceased) through LRs

...Appellant(s)

Versus

Punjab State Electricity Board and another

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Ashwani Talwar, Advocate for the appellant(s).

Mr. Ashu Kaushik, Advocate for the respondent-
PSEB.

JITENDRA CHAUHAN, J.

Impugned in the present appeal are the judgments and decrees passed by the learned Courts below non-suiting the plaintiff-appellant.

It is the case of the plaintiff that he being an agriculturist, a tube-well connection bearing account No.AP-13/377 in Village Binjal, Tehsil and District Patiala, was released to him on 26.12.2005. Thereafter, under the voluntary disclosure scheme floated by the Board, the load was enhanced from 10

BHP to 20 BHP. The water derived from the said connection was used for irrigating the land owned by him as well as his family members. Thereafter, vide letter memo No.981 dated 10.04.2008, it was informed by the defendant-Board that the connection in question was installed at a wrong place and thus, deserved disconnection.

Upon notice, defendants contested the suit averring that the plaintiff was issued the connection on priority basis being ex-serviceman and no one, except him, was entitled to use the same. The plaintiff misrepresented by stating in the application that the connection would be got installed in Khasra No.171 (6-5), whereas, it was actually installed in Khasra No.449 (6-5), which land was owned by the wife of the plaintiff. As the plaintiff had applied for connection on priority basis, it was a precondition that he cannot transfer the connection or change the site of the connection for the period of five years from the date of issuance.

Learned trial Court, after hearing learned counsel for the parties and appreciating the evidence on record, dismissed the suit of the plaintiff-appellant vide judgment and decree dated 21.10.2013. Learned first appellate Court also dismissed the

appeal of the plaintiff-appellant vide judgment and decree dated 25.08.2013.

Hence the present regular second appeal on the following substantial questions of law:-

(a) Whether both the Courts below have totally misconstrued and misread the evidence brought on record and thus, the impugned judgments and decrees of both the Courts below are perverse and liable to be set aside?

(b) Whether the provision for release of connection on priority to Ex-Servicemen being a benevolent legislation and when such priority is available even to the widows of ex-servicemen, the present appellant could be discriminated against and his tubewell connection could be disconnected by the respondents only on the plea that the connection has been released on the land owned by wife of the appellant rather than the appellant himself?

(c) Whether in view of the fact that the electricity connection to the tubewell is

functional since 26.12.2005 and during the interregnum period even a fresh connection on non-priority basis would have been released, the electricity connection in favour of the appellant is liable to be continued?

I have heard learned counsel for the parties and gone through the case file.

The application for the release of tubewell connection was made by the plaintiff (since deceased) for installation in khasra No.171, owned by him, whereas, the connection so obtained was installed in khasra No.449, owned and possessed by his wife. Learned counsel states that there is no concealment of fact. The connection was applied under a bona fide belief that any of the particulars of the land held by the plaintiff could be given by the applicant. Subsequently, in the year 2003, another circular which entitles the widow also to avail the facility on priority basis. Learned counsel for the respondents does not dispute the fact that the land where the electric connection was actually installed belonged to the wife of the deceased-plaintiff. He further admits that vide Commercial Circular No.25 of 2003,

the benefit of priority connection has been extended to the widow of the ex-servicemen.

In view of the admitted position, there does not seem to be any intention on the part of the plaintiff-appellant to cheat the defendant-department and the appellant had been paying tariff regularly and there is nothing on record that the appellant had any intention to cause harm to the interest of the respondent and it appears to be a *bona fide* mistake on the part of the appellants. In the considered opinion of this Court, justice cannot be denied to a person on flimsy, weak and unconvincing grounds as are mentioned in the impugned judgments. The learned Courts below have misread and misconstrued the evidence on record.

From the above, it is evident that the entire approach of the defendant is to help the Ex-servicemen in settlement after being discharged from active service and even the land taken on lease has been brought within the ambit. In the case of the present appellant, the tubewell connection has been installed in the land which is owned by the wife of the plaintiff/appellant and once the benefit has been extended even to the widows of ex-servicemen, the electricity connection in the present case, installed on the land of the wife of the plaintiff should not have been held to be illegal.

Both the courts below failed to appreciate that as per the regulations, an ex-servicemen is entitled for release of only one tubewell connection on priority basis and the plaintiff has also not availed any other connection on priority. Thus, even if the said connection is installed in Khasra No. 449 which land is owned by the wife of the appellant, the same should not have been interfered with. The courts below did not appreciate that it is at the most an irregularity and not illegality. In similar circumstances, a Division Bench of this Court vide its orders dated 21.05.2015 passed in **CWP No. 2961 of 2014, titled Sarbati Devi Vs. Appellate Authority**, held that widows of an ex-servicemen was also eligible in the quota of allotment of dwelling Unit of Housing Board, Haryana where the eligibility as provided was for war widows, disabled servicemen, ex-servicemen, serving military personnel and their wives. Thus, the suit as filed by the plaintiff-appellant was liable to have been allowed.

Therefore, it may be safely said that the learned Courts below failed to comprehend the actual dispute between the parties and denied the plaintiff-appellants their rightful due. Learned Courts below fell into error while observing in the judgments

under challenge that Rule 13.5.2 of Sales Regulations categorically states that the land shall be in the name of person to whom the connection is being granted; the words 'dependents' or 'other family members' are not mentioned in the regulations; and that she is not entitled to any benefit.

In view of the above discussion, the findings of learned Courts below returned on the issues under adjudication are, hereby, reversed and the substantial questions of law are answered in favour of the appellants. The appeal is consequently accepted with costs and the impugned judgments and decrees are hereby set aside. Resultantly, the suit of the appellants for permanent injunction is decreed with costs throughout restraining the defendant-respondents from disconnecting the tubewell connection bearing account No.AP-13/377, running in the name of deceased, Ram Singh, at Village Binjal, Tehsil and District Patiala.

27.04.2016
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(JITENDRA CHAUHAN)
JUDGE