

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

CWP No.15874 of 2021 (O&M)

**Reserved on: 05.07.2022.
Date of Decision: 09.08.2022**

Charat Singh and another

.....Petitioners

Vs

Punjab State Power Corporation Ltd. And others

.....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Saksham Mahajan, Advocate
for the petitioners.

Mr. Sehajbir Singh, Advocate
for the respondents/PSPCL.

RAJ MOHAN SINGH, J.

[1]. Petitioners have prayed in this writ petition for the issuance of an appropriate direction to the respondents to release connection of agriculture power supply tubewell connection of 10 HP to the petitioners for irrigation of their land as they fall in the priority category clause 13.2(n) (i.e. Priority under Family Partition) of the Electricity Supply Instructions Manual updated till the year 2018 and in the light of judgment and decree dated 03.02.2020 passed by the Hon'ble Apex Court in Civil Appeal No.3171 of 2020 titled '*Saudagar Singh and*

others vs. Bakshish Singh (dead) and others'.

[2]. Petitioners have claimed that they are successors-in-interest of Bakshish Singh and Gurbax Singh, who filed a civil suit No.101 dated 11.03.1980 for declaration being sons of Harbans Singh. Declaration was sought in respect of 114 bighas 11 biswas of land in the revenue estate of village Aluan Tehsil Rajpura claiming the same to be coparcenary property of plaintiffs in suit and defendant No.1 along with defendants No.3, 4 and 5 and the decree suffered by defendant No.1 in favour of defendant No.2 (Sarjit Kaur w/o Harbans Singh) in respect of agricultural land measuring 37 bighas 15 biswas described in part 'B' out of the said land being collusive and void in nature against the coparcenary rights of the plaintiffs. A decree for joint possession was also sought.

[3]. The trial Court after full-fledged trial decreed the suit against defendants for declaration to the effect that the disputed land described in headnote of the plaint was the coparcenary property of the plaintiffs, defendant No.1 along with defendants No.3 to 5 and the plaintiffs were entitled to joint possession of the same vide judgment and decree dated 23.09.1982. The decree suffered by defendant No.1 in favour of defendant No.2 was also held to be void and ineffective against the coparcenary rights of the plaintiffs.

[4]. Defendants filed an appeal against the aforesaid judgment and decree dated 23.09.1982 before the lower Appellate Court. The judgment and decree passed by the trial Court was reversed by the Addl. District Judge, Patiala vide judgment and decree dated 18.11.1985. RSA No.551 of 1986 was filed by the plaintiffs Bakshish Singh and Gurbax Singh in the High Court. The RSA No.551 of 1986 was allowed on 24.09.2008 by the Single Bench of this Court by holding in the following manner:-

“In view of the aforesaid, it is manifest that the impugned judgment and decree of learned lower Appellate Court cannot be sustained, being illegal. Learned lower Appellate Court non-suited the plaintiffs on the ground that the parties are governed by custom and in view of amendment made by Amendment Act, 1973 in the Punjab Custom (Power to Contest) Act, 1920, alienation on the ground of custom could not be challenged. However this approach of the learned lower Appellate Court is illegal and untenable in view of discussion made herein above. Moreover, the plaintiffs have challenged the alienation under Hindu law and not under custom. Consequently, the substantial question of law arising in the instant second appeal “Whether the finding of the lower Appellate Court that parties are governed by custom and therefore, alienation cannot be challenged by the plaintiffs, is illegal and untenable”, is answered accordingly in favour of plaintiffs-appellants.

For the reasons recorded herein above, the instant appeal is allowed. Impugned judgment and decree dated 18.11.1985 of the learned Additional District Judge, Patiala are set aside and judgment and decree dated 23.09.1982 of the learned Sub Judge 1st Class Rajpura are restored and the suit filed by the appellants accordingly stands decreed, leaving, however, the parties to suffer their respective costs throughout.”

[5]. Feeling aggrieved against the judgment and decree passed by the High Court in RSA No.551 of 1986, successor defendants-in-interest filed Civil Appeal No.3171 of 2010 in which following order was passed:-

“Learned counsel appearing for the respondents states that he has obtained instructions from respondent No.5 also who is present in Court and he also agrees to abide by the suggestion for division of the land. His affidavit will be filed during the course of the day.

Learned counsel for the appellants at this stage submits that there are two other issues (before the matter is finally decided) - first issue is with regard to the passage to the plot of the appellants marked in yellow as it is stated that their land area which they are entitled to, may not become land locked. In view of the aforesaid, suggestion/proposal is made by the respondents to prevent such an eventuality and the plan suggested/proposed by them is also placed on record and accepted by the appellants.

In view of the aforesaid, two plans are marked as Exhibits 'X' and 'Y' respectively.

The second aspect sought to be raised by the learned counsel for the appellants is the absence of any tubewell in the area which would vest with them. For the said purpose, they may approach the Punjab State Power Corporation Limited for grant of tubewell connection which would be considered in accordance with the Rules and needful be done in furthererence of the settlement which the parties have been persuaded to accept. On the application being filed regarding tubewell connection, the needful be done within four weeks.

A decree sheet be drawn up in terms of the aforesaid settlement, in terms of our order dated 6th November, 2019 read with order dated 10th January, 2020 and the order passed today. The plans would form part of the decree sheet.

The possession be handed over by the respondents on or before 7th May, 2020 as there is stated to be crops grown in the area of the appellants by them.

The appeal is disposed of as compromised in terms aforesaid.

We appreciate the constructive role played by the learned counsels to bring this long drawn out dispute to an end and compliment the parties who have adopted a constructive approach, belatedly as it may be.”

[6]. Perusal of aforesaid order would show that two plans were marked as Exhibits 'X' and 'Y' respectively. The first issue was in respect of passage to the plot of the appellants in the SLP marked in yellow as it was stated that their land may not become land locked. In view of proposal, it was accepted to provide the passage. The second aspect which was raised by the appellants was in respect of providing tubewell connection

for the operation of land falling to the share of the petitioners by virtue of amicable settlement. It was ordered that on the application being filed regarding tubewell connection, the needful be done within a specified period in accordance with the rules. The grant of tubewell connection was required to be considered by the respondent-Corporation in accordance with the rules in furtherance of the settlement for which the parties were persuaded to accept the same. The Hon'ble Apex Court vide judgment dated 03.02.2020 disposed of the appeal in terms of the compromise and also drew decree.

[7]. In pursuance of the decree granted by the Hon'ble Apex Court, the petitioners filed an application for installing tubewell connection as per order of the Hon'ble Apex Court on 25.02.2020. Owing to the inaction on the said application, the present petition came to be filed.

[8]. Learned counsel for the petitioners submitted that the litigation started between the parties in March,1980 and thereafter the litigation was contested at different levels and during the intervening period there was no occasion for the petitioners to apply for tubewell connection as cut off date came to be known during the intervening period. The present case has to be treated as a special case for grant of tubewell connection in view of compromise decree passed by the Hon'ble

Apex Court, wherein an arrangement was made to approach the Punjab State Power Corporation Limited for grant of tubewell connection and the same was ordered to be considered in accordance with rules and the needful was required to be done within a specified period in view of settlement arrived at between the parties.

[9]. On the other hand, learned counsel for the respondents/PSPCL on the strength of written statement opposed the prayer on the ground that in view of commercial circular No.20 of 2018 cut off date in the category of priority under family partition was 01.11.2016 and the said commercial circular was issued in aid of the Electricity Supply Code and related matters Regulations 2014.

[10]. Having heard learned counsel for the parties, I am of the view that cut off date as provided under commercial circular No.20 of 2018 in the category of priority under family partition as 01.11.2016 is on the basis of the family partition entered into between the parties in normal consequences. In the instant case, there was a long contested litigation since March 1980. The trial Court decreed the claim of the predecessor-in-interest of the petitioners whereas the same was reversed by the lower Appellate Court and the High Court further set it right in RSA No.551 of 1986 thereby restoring the judgment and decree of

the trial Court. It was only in the Hon'ble Apex Court both the parties entered into amicable settlement so as to put an end to a long litigation in the interest of all concerned.

[11]. The Hon'ble Apex Court has granted permission to approach the Punjab State Power Corporation Limited for grant of tubewell connection. The indulgence granted by the Hon'ble Apex Court is the differentia which makes the present case distinct from the priority list on the basis of family partition as depicted in the policy guidelines/commercial circular No.20 of 2018 showing cut off date to be 01.11.2016.

[12]. Evidently, on the basis of long contested litigation, the petitioners had no opportunity in the past to apply for tubewell connection. The judgment and decree of the Hon'ble Apex Court came to be passed only on 03.02.2020 i.e. after the cut off date of 01.11.2016. The present case is distinct and differentia is the indulgence granted by the Hon'ble Apex Court to put an end to the ongoing controversy on the basis of settlement and granting permission to approach the Punjab State Power Corporation Limited for the grant of tubewell connection and in such eventuality the Corporation was also obligated to act in accordance with rules within the prescribed period. The Electricity Supply Instructions Manual does not specify any such cut off date of 01.11.2016 as shown in the commercial circular.

Though the commercial circular has been issued in aid of regulations, but in the context of fixing cut off date as 01.11.2016, the same cannot be said to be part of rules particularly in the light of indulgence granted by the Hon'ble Apex Court. The indulgence granted by the Hon'ble Apex Court is the sole criteria which makes the present case distinct and differentia is the indulgence in order to put an end to a long contested litigation between the parties.

[13]. As per clause 13.2(n) of the Electricity Supply Instructions Manual, the priority under family partition falls under clause 13.2(n). Connections are to be released on priority as per specified cut off dates. There is no specified cut off date as mentioned in the aforesaid instructions manual. It was only in the commercial circular No.20 of 2018, a cut off date i.e. 01.11.2016 was fixed. Since 01.11.2016 no further cut off date has been fixed so far. It appears that the seniority prepared at the relevant stage could not be exhausted. The present case is special and distinct case in view of indulgence granted by the Hon'ble Apex Court and the differentia is the indulgence in putting an end to a long contested litigation between the parties on the basis of compromise. The consideration of the application in accordance with the rules cannot be denied on the basis of cut off date which was fixed as 01.11.2016. No other

sale circular after 13.04.2018 has come in existence in order to meet the requirement of the judgment and decree granted by the Hon'ble Apex Court.

[14]. The typographical error in the order dated 03.02.2020 passed by the Hon'ble Apex Court was corrected vide subsequent order dated 13.02.2020 to the extent that instead of 'respondents' wherever it occurs it shall be read as 'appellants' and instead of 'respondent No.5', the same shall be read as 'appellant No.5'. The arguments in this case were heard on 05.07.2022 and the order was kept reserved. At the time of dictation of the order, this Court sought some clarification with regard to the obligation to be discharged by which of the parties. On being contacted, learned counsel for the petitioner, requested the Court to pronounce the order only after passing of any order in the misc. application to be filed in the Hon'ble Apex Court. Thereafter, on 06.08.2022, learned counsel for the petitioner has placed on record true copy of order dated 01.08.2022 passed by the Hon'ble Apex Court in CM No.1307 of 2022 in Civil Appeal No.3171 of 2010 titled '*Saudagar Singh vs. Bakshish Singh (Dead) through LRs*' whereby the application filed by the petitioner has been allowed. Misc. application has been disposed of in the very nature of the application filed by the petitioner. Orders dated 03.02.2020 and 13.02.2020 passed

by the Hon'ble Apex Court stand explained.. The order dated 01.08.2022 passed by the Hon'ble Apex Court is taken on record.

[15]. In view of aforesaid facts and circumstances of the case, I deem it appropriate to consider the present case as a special case arising out of the compromise effected before the Hon'ble Apex Court and direct respondent No.1 to pass necessary order in the context of granting tubewell connection to the petitioners subject to necessary payments to be made by the petitioners in accordance with rules and guidelines. Since the present directions are being issued on the basis of indulgence granted by the Hon'ble Apex Court for effecting compromise between the parties, therefore, this case shall not be cited as a precedent for any other case in the category of priority under family partition.

[16]. For the reasons hereinabove, this writ petition is allowed. Normal consequences to follow.

August 09, 2022

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No