

Sunder Lal and Another Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: Jan. 23, 1980

Acts Referred: Northern India Canal and Drainage Act, 1873 " Section 31, 32

Citation: AIR 1980 All 203 : (1980) AWC 211

Hon'ble Judges: K.M. Dayal, J

Bench: Single Bench

Advocate: K.D. Pandey and R.C. Verma, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Allowed

Judgement

K.M. Dayal, J.

The present second appeal had been filed by the plaintiffs for permanent injunction and restraining the defendants from

excluding their Chak from the scheme Osrabandi of outlet No. 10 of the Canal in dispute. The trial Court found that the plots of the plaintiff were

not included in the Scheme of the outlet No. 10 concerned and dismissed the suit. The lower Appellate Court gave a finding that the subsequent

papers filed by the State were not reliable and the Court below was of the opinion that the plots of the plaintiffs were being irrigated from the outlet

No. 10. It also gave a finding that the plaintiff had irrigated his plot for four Fasals from Rabi 1971 and onwards.

2. The learned counsel for the appellant relied upon Clause 4 of the Para 309 of the Manual of Orders of the Irrigation Department. It is quoted in

the order of the lower Appellate Court. It is as follows:

Provided that no area shall be excluded for the reasons given in the items above, if it has been irrigated by the outlet in at least 3 Fasals during five

years immediately proceeding.

3. The Court below in spite of the rule, relied upon Clause (f) of Section 32 of the Northern India Canal and Drainage Act which provides that "no

right can be acquired by user." Section 32 of the Northern India Canal and Drainage Act applies to contracts which are to be entered into between

the State and the cultivator and the contracts were to be framed in accordance with that Section. The Court below, however, though it noted yet

completely ignored Section 31 of the Act which reads as under:

In the absence of a written contract or so far as any such contract does not extend, every supply of canal water shall be deemed to be given at the

rates and subject to the conditions prescribed by the rules to be made by the State Government in respect thereof.

4. It is not disputed before me that the Manual of Orders of Irrigation Department in U. P. has been framed by the State Government in pursuance

of the Act aforesaid. It is found by the Court below that there is no contract in writing between the parties. Obviously Section 31 will apply and

Section 32 is not applicable to the instant case. The plaintiff, in the circumstances, had a right under Clause 4 of Para 309 of the Rules quoted

above to get his Chak irrigated from the outlet No. 10 in dispute.

5. In the circumstances, the appeal is allowed. The judgment and decree passed by both the Courts below are set aside and the suit of the plaintiffs

is decreed with costs throughout.