

IN THE HIGH COURT OF PATNA
FULL BENCH

Misc. Judicial Case No. 939 of 1956

Decided On: 08.04.1963

Appellants:**Braj Kishore Bahadur**

Vs.

Respondent:**State of Bihar and Ors.**

Issue in consideration : Petition regarding Calling upon order of the Sub-divisional Officer of Arrah -starting proceedings under Section 5A of the Bihar Private Irrigation Works Act - order of the Additional Sub-divisional Officer of Arrah, asking the petitioner to meet the cost of repairs of the ahar in village Babubandh, tauzi No. 3695, in Shahabad District, - under the provisions of the Bihar Private Irrigation Works Act, 1922, - should not be quashed by grant of a writ under Article 226 of the Constitution.

Has the requirement of Section 5A of the Act has been complied with by the Sub-divisional Officer of Arrah in the present case and the argument advanced on behalf of the petitioner that the order of the Sub-divisional Officer is illegal and without jurisdiction for non-compliance of the requirement of Section 5 A of the Act is acceptable

Held : It is held that in the present case the Sub-divisional Officer has given reasons for reaching the conclusion that the delay in the repair of the existing irrigation work which may be occasioned by proceedings commenced by notice under Section 3 would adversely

affect or is likely to adversely affect the lands which depended upon such irrigation work for the supply of water. It has been noticed that the Subdivisional Officer has stated in his order dated the 18th May, 1949, mentioned that "an emergency has arisen from the fact that there was an acute food shortage", that "the time left at his disposal is very limited", that "the ahar in the village was in a very bad state of repairs" and "in consequence of which the irrigation facilities have become worse and the produce is not up to the mark". For all these reasons the Subdivisional Officer of Arrah has reached the conclusion that if proceedings were commenced by regular notice under Section 3 of the Act, the delay would adversely affect lands which are dependent on such irrigation work for the supply of water. It was held that the requirement of Section 5A of the Act has been complied with by the Sub-divisional Officer of Arrah in the present case and the argument advanced on behalf of the petitioner that the order of the Sub-divisional Officer is illegal and without jurisdiction for non-compliance of the requirement of Section 5 A of the Act can't be accepted

Petitioner submitted that there was no material before the Sub-divisional Officer of Arrah to support his finding that there was acute food shortage

HELD : It is held that the question of absence of material is essentially a question of fact and can't be entertained at current stage of the proceedings , it is not permissible for the petitioner in a proceeding under Article 226 of the Constitution to challenge the adequacy of the reasons given by the Sub-divisional Officer in his order under Section 5A of the Act. It is of course open to the petitioner in such a case to argue that there was no material at all before the Sub-divisional Officer upon which the order under Section 5A of the Act could be based, In

the present case, however, no such point was taken on behalf of the petitioner when the appeal was filed before the Collector of Shahabad and also in the revision application filed before the Commissioner of Patna Division. There was also no affidavit on this point filed by the petitioner in the High Court.

**IN THE HIGH COURT OF PATNA
FULL BENCH**

Misc. Judicial Case No. 939 of 1956

Decided On: 08.04.1963

Appellants: **Braj Kishore Bahadur**
Vs.

Respondent: **State of Bihar and Ors.**

Hon'ble Judges/Coram:

Vaidynathier Ramaswami , C.J., Kamla Sahai and Kanhaiya Singh , JJ.

Counsels:

For Appellant/Petitioner/Plaintiff: Jagat Narain Prasad Sinha, Adv.

For Respondents/Defendant: Addl. Govt. Pleader

ORDER

1. In this case the petitioner has obtained a rule from the High Court, calling upon the respondents to show cause why the order of the Sub-divisional Officer of Arrah, dated the 18th May, 1959, starting proceedings under Section 5A of the Bihar Private Irrigation Works Act, and the order of the Additional Sub-divisional Officer of Arrah, dated the 25th October, 1954, asking the petitioner to meet the cost of repairs of the ahar in village Babubandh, tauzi No. 3695, in Shahabad District, to the extent of Rs. 1145/8;- under the provisions of the Bihar Private Irrigation Works Act, 1922, should not be quashed by grant of a writ under Article 226 of the Constitution.

2. Cause, has been shown by the learned Additional Government Pleader on behalf of the respondents to whom notice of the rule was ordered to be given.

3. On behalf of the petitioner learned Counsel put forward the argument that the order of the learned sub-divisional Officer of Arrah, dated the 18th May, 1949, under Section 5A of the Bihar Private Irrigation Works Act is ultra vires and without jurisdiction since the requirement of that Section has not been complied with. It was also submitted that subsequent proceedings initiated against the petitioner for the realisation of the cost of the repair work is also without jurisdiction and ultra vires. It was argued on behalf of the petitioner that the order of the Sub-divisional Officer of Arrah, dated the 18th May, 1949, is ultra vires since he has not given reasons for holding that the delay in the repair of the existing irrigation work which may be occasioned by proceedings commenced by a notice under Section 3 would lead or is likely to lead to consequences set out in the latter part of Sub-section (i) of Section 5A.

In support of this argument learned Counsel relied upon a recent decision of the Supreme Court in Collector of Monghyr v. Keshav Prasad MANU/SC/0008/1962 : AIR 1962 SC 1694 in which the question of interpretation of Section 5A came for consideration before the Supreme Court. In our opinion the present case does not come within the principle enunciated by the Supreme Court in MANU/SC/0008/1962 :

AIR 1962 SC 1694, because the terms of the order of the Sub-divisional Officer under Section 5A which was the subject-matter of consideration in that case are markedly different from the terms of the order of the Sub-divisional Officer of Arrah, dated the 18th May, 1949, the validity of which is challenged before us in the present case.

The order of the Sub-divisional Officer under Section 5A in the Supreme Court case reads as follows :

"Whereas it appears to me that the repair of an existing irrigation work, viz..... situated in village..... Thana..... District Monghyr is necessary for the benefit of the aforesaid village and the failure of repair of such irrigation work adversely affects and is likely to affect adversely the lands which are dependent thereon for supply of water, and

"Whereas I am satisfied that my intervention is necessary because, in my opinion, delay in the repair of the existing irrigation work which may be occasioned by the proceedings commenced by a notice under Section 3 adversely affects or is likely to affect adversely the land which depends on such irrigation work for supply of water it is deemed expedient to proceed under Section 5A of the BPIW Act. I therefore hereby order that the said work be forthwith put to execution under Section 5A of the said Act. A public notice under Section 5A (i) be given at a convenient place at the aforesaid village that the work mentioned therein has already begun."

The order of the Sub-divisional Officer, Arrah, dated the 18th May, 1949, with which we are concerned in this case, runs as follows :

"An emergency has arisen from the fact that there is acute food shortage and that to improve it repairs of Ahar have become necessary. The time left at our disposal is very limited and that delay in the repairs will be caused if proceedings are commenced by a notice under Section 3 of the P. I. Act 1923. The delay will also affect adversely lands which are dependent on such irrigation work for supply of water. I am satisfied that the Ahar in the village is in very bad state of repairs and as a consequence of which the irrigation facilities have been worsened and the produce is not up to the mark.

It is therefore imperatively necessary that the repair of the ahar be taken up and completed at once to arrange irrigation facilities.

I, therefore, under Section 5A of the P. I. Act 1922 order the issue of the notice as envisaged in the section."

It is manifest that in the present case the Sub-divisional Officer has given reasons for reaching the conclusion that the delay in the repair of the existing irrigation work which may be occasioned by proceedings commenced by notice under Section 3 would adversely affect or is likely to adversely affect the lands which depended upon such irrigation work for the supply of water. It should be noticed that the Sub-divisional Officer has stated in his order dated the 18th May, 1949, that "an emergency has arisen from the fact that there was an acute food shortage", that "the time left at his disposal is very limited", that "the ahar in the village was in a very bad state of repairs" and "in consequence of which the irrigation facilities have become worse and the produce is not up to the mark". For all these reasons the Sub-divisional Officer of Arrah has reached the conclusion that if proceedings were commenced by regular notice under Section 3 of the Act, the delay would adversely

affect lands which are dependent on such irrigation work for the supply of water. In our opinion the requirement of Section 5A of the Act has been complied with by the Sub-divisional Officer of Arrah in the present case and we are unable to accept the argument advanced on behalf of the petitioner that the order of the Sub-divisional Officer is illegal and without jurisdiction for non-compliance of the requirement of Section 5 A of the Act.

4. It was also submitted on behalf of the petitioner that there was no material before the Sub-divisional Officer of Arrah to support his finding that there was acute food shortage. We do not accept this argument as correct because it is not permissible for the petitioner in a proceeding under Article 226 of the Constitution to challenge the adequacy of the reasons given by the Sub-divisional Officer in his order under Section 5A of the Act. It is of course open to the petitioner in such a case to argue that there was no material at all before the Sub-divisional Officer upon which the order under Section 5A of the Act could be based, In the present case, however, no such point was taken on behalf of the petitioner when the appeal was filed before the Collector of Shahabad and also in the revision application filed before the Commissioner of Patna Division. There was also no affidavit on this point filed by the petitioner in the High Court. It is manifest that the question of absence of material is essentially a question of fact and it is not open to us to go into this question at this stage of the proceedings,

5. For the reasons we have given we hold that there is no case made out on behalf of the petitioner for grant of a writ under Article 226 of the Constitution in this case. We accordingly dismiss the application. There will be no order as to costs.
