

HIGH COURT OF SINDH,

CIRCUIT COURT, HYDERABAD

Before:

Mr. Justice Muhammad Iqbal Kalhoro

Mr. Justice Adnan-ul-Karim Memon

C.P.No.D-962 of 2010

[Khan Muhammad alias Papu & another vs. PoS & Ors]

C.P.No.D-1411 of 2015

[Akhtar Ali Jamali and others vs. Province of Sindh and others]

C.P.No.D-1727 of 2015

[Khawar Akbar Shaikh vs. Secretary Irrigation & Ors]

C.P.No.D-784 of 2016

[Gulzar Ahmed v. Muhammad Ishaque and others]

C.P.No.D-638 of 2017

[Dr. Nabi Bux and others v. Province of Sindh and others]

C.P.No.D-1264 of 2017

[Nasrullah v. Province of Sindh and others]

C.P.No.D-2045 of 2017

[Abdullah and others v. Province of Sindh and others]

C.P.No.D-2881 of 2017

[Muhammad Yousif and others v. Province of Sindh and others]

C.P.No.D-3449 of 2017

[Aijaz Ali and others v. Province of Sindh and others]

C.P.No.D-3619 of 2017

[Qurban Ali v. Province of Sindh and others]

C.P.No.D-3647 of 2017

[Syed Muneer Shah v. Province of Sindh and others]

C.P.No.D-311 of 2018

[Abdul Wahid and another v. Province of Sindh and others]

C.P.No.D-976 of 2018

[Ali Murad Rang v. Province of Sindh and others]

C.P.No.D-1062 of 2018

[Syed Fakhar Abbas Shah and others v. PoS & Ors]

C.P.No.D-2653 of 2018

[Mumtaz Ali v. Province of Sindh and others]

C.P.No.D-2675 of 2018

[Shabir Ahmed Khan Nizamani v. Province of Sindh and others]

C.P.No.D-3260 of 2018

[Dr. (Capt Rt) M. Usman Jokhio and another vs. PoS & Ors]

C.P.No.D-626 of 2019

[Muhammad Ayoub and another v. Province of Sindh and others]

C.P.No.D-1864 of 2019
[Muhammad Usman v. Province of Sindh and others]

C.P.No.D-2642 of 2019
[Muhammad Rafique and others v. Province of Sindh and others]

C.P.No.D-2688 of 2019
[Muhammad Moosa and others v. Province of Sindh and others]

C.P.No.D-535 of 2020
[Muhammad Azeem and others v. Province of Sindh and others]

C.P.No.D-576 of 2020
[Abdullah v. Province of Sindh and others]

C.P.No.D-593 of 2020
[Ghulam Ali v. Province of Sindh and others]

C.P.No.D-672 of 2020
[Muhammad Nawaz and others v. Province of Sindh and others]

C.P.No.D-753 of 2020
[Abbas Ali v. Province of Sindh and others]

C.P.No.D-937 of 2020
[Muhammad Usman Lakho v. Province of Sindh and others]

C.P.No.D-1224 of 2020
[Qurban Ali and others v. Province of Sindh and others]

C.P.No.D-1455 of 2021
[Siddique v. Province of Sindh and others]

C.P.No.D-1456 of 2021
[Khair Muhammad v. Province of Sindh and others]

C.P.No.D-1545 of 2021
[Umar Khan v. Province of Sindh and others]

C.P.No.D-2032 of 2021
[Muhammad Ibrahim and another v. PoS & Ors]

C.P.No.D-41 of 2022
[Ghulamullah and others v. Province of Sindh and others]

C.P.No.D-226 of 2022
[Khan Muhammad and others v. Province of Sindh and others]

C.P.No.D-276 of 2022
[Shafi Muhammad Dahri v. Province of Sindh and others]

C.P.No.D-344 of 2022
[Muhammad Anees v. Province of Sindh and others]

C.P.No.D-374 of 2022
[Pir Bux and others v. Province of Sindh and others]

C.P.No.D-438 of 2022
[Jameel Ahmed and others v. The Executive Engineer Irrigation & Ors]

C.P.No.D-475 of 2022
[Muhammad Akram and another v. Province of Sindh and others]

C.P.No.D-1040 of 2022
[Natho v. The Province of Sindh and others]

C.P.No.D-1047 of 2022
[Ghulam Muhammad v. Province of Sindh and others]

C.P.No.D-1090 of 2022
[Nasrullah and others v. Province of Sindh and others]

C.P.No.D-1729 of 2022
[Samiullah and others v. Province of Sindh and others]

C.P.No.D-1926 of 2022
[Qabool Mangrio and others v. The Province of Sindh and others]

Date of hearing: 22.09.2022.
Date of Decision: 22.09.2022.

M/s Omparkash H. Karmani, Saeed Ahmed Wagan, Faqeer Rehmatullah Hisbani, Muhammad Asif Shaikh, Mian Taj Muhammad Keerio, Bilawal Bajeer, Wishandas Kolhi, Ayatullah Khwaja, Qambar Ali Jamali, Muhammad Ali Rind, Ayaz Hussain Tunio, Parvez Tarique Tagar, Zulfiqar Ali Rajper, Hameedullah Dahri, Waheed Ahmed Awan, Abdul Qadir Khoso, Muneer Ahmed Turk, Muhammad Amir Qureshi, Kanji Mal Meghwar, Sajjad Ali Gopang, Muhammad Arshad S. Pathan, Mrs. Razia Ali Zaman Khan, Mrs. Rehana Nazir Gujjar, Pir Bux Bhurgri, Muhammad Arshad S. Pathan, Muhammad Aslam Bhatti, Qadir Bux Ghirano, Ahsan Gul Dahri, Riazat Ali Sahar, Muhammad Nawaz B. Jamali, Muhammad Sulleman Dahri, Ghulam Sarwar Qureshi, Abdul Razzak Dasti, Abdullah K. Leghari & Rahat Bashir Siddiqui, advocates for petitioners.

Mr. Muhammad Ismail Bhutto, Additional A.G alongwith Tanveer Ahmed Rajper, Assistant Engineer Provincial Highways Sub-Division, Tando Adam, Manzoor Ali Shahani, AXEN Jalalani Sub-Division, Tando Muhammad Khan, Ameer Bux Jamali, Canal Assistant Jalalani Sub-Division, Tando Muhammad Khan, Atta Muhammad Chajro, XEN Nusrat Division, Shaheed Benazirabad, Zulfiqar Ali Khoso, AXEN Shahpur, Imtiaz Haider Memon, XEN Upper Pinyari Division, Hyderabad on behalf of Secretary Irrigation.

Mr. Muhammad Ali Rind, Advocate for intervener in C.P.No.D-753/2020.

ORDER

ADNAN-UL-KARIM MEMON, J: The instant Constitution Petitions, under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, have been filed by the petitioners seeking a declaration to the effect that the petitioners are khatedars and are entitled to water share to irrigate and mature their crops and that the respondents have no jurisdiction/authority to stop water supply, petitioners also seek ancillary relief on the subject issues.

2. We have heard learned Counsel for the parties and perused the material available on record.

3. In our view, Article 9 of the Constitution provides the right to life, if a person is deprived of the fundamental right, he can always approach this Court by invoking Constitutional jurisdiction with a rider that such right is not hampered by any law. A right to irrigate Agricultural land is subject to irrigation law and the rules, this right however if infringed could be examined by this Court, we, therefore, hold that the instant petitions are maintainable. The issue as raised in the present proceedings has already been settled by Honorable Supreme Court in its judgment dated 03.12.2013 passed in Constitution Petition No. 59 of 2013 reported in (2014 SCMR 353). The order passed by the Honorable Supreme court resolves the issue, which is also the subject matter of these petitions.

4. We have noticed that Section 16 of the Sindh Irrigation Act requires that any person with the permission of a duly empowered Canal Officer may construct a watercourse on land after obtaining the consent of the owners of the land. Under section 17 of the Act, land may even be acquired to enable a person to construct the watercourse to irrigate his land and it may also cause to be constructed by the Canal Officer; but all expenses have to be borne by the person applying for construction of the watercourse. Any person desirous of obtaining the benefit of such watercourse may also apply for joint ownership thereof and upon paying his share in construction can be benefited. Section 21 of the Act, however, deals with the rights and obligations of owners of watercourses and, apart from requiring them to maintain them, confers upon such owners a right to have a supply of water on such terms as prescribed in the relevant Rules.

5. A reading of the above provisions shows that though receiving water in terms of Section 21 is the right of petitioners, it is subject to water sharing policy as discussed in the preceding paragraphs. Such right, however, would not be translated to mean depriving other khatedars at the tail end of their due share in the water. The water sharing policy has to be made on equitable distribution of water for the benefit of all khatedars including those at the tail end of the water source.

6. A perusal of record and consideration of contention of petitioners raised before us has persuaded us to believe that the issue involved in the present proceedings is the distribution of water to the lands of genuine Khatedars of the concerned area under the Sindh Irrigation Act.

Distribution of water according to its availability in an equitable manner without discrimination to sanctioned channels under Sindh Irrigation Act is the responsibility of the Irrigation Department, Government of Sindh. We expect that the official respondents perform their duty in conformity with the policy of equitable distribution of water and under the said cover, regular vigilance shall be made by them.

7. In view of the decision of the Honorable Supreme Court, we direct the competent authority i.e. Respondent Department that the issue of supply of water to the lands of Petitioners shall be made as per their sanctioned share list(s). Besides their other ancillary issues must be resolved by the competent authority of respondents, through appropriate proceedings after hearing all concerned within a reasonable time.

8. These petitions are disposed of in the above terms along with pending application(s).

JUDGE

JUDGE

22/11/2022