

*ORDER SHEET*

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**

C.P. No.D-1349 of 2017.

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DATE

ORDER WITH SIGNATURE OF JUDGE

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30.08.2017.

Syed Tarique Ahmed Shah, Advocate for petitioners.

Chaudhry Bashir Ahmed, A.A.G. alongwith Fayaz Ali Qambrani, SDO Irrigation Sub-Division Tando Bago at Talhar.

Mr. Abid Ali Thebo, Advocate for respondents No.4 and 5 alongwith Nizar Ali Admin: Officer, Bawani Sugar Mills Talhar.

Dr. Abdul Ghafoor, presently posted as Associate Professor at Liaquat University Hospital, Hyderabad is also present.

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Learned AAG files comments of respondents No.2 and 3, taken on record, copy thereof provided to other side.

At the outset, counsel for petitioners contends that in all, petitioners are owners of about 100 acres agricultural land and source to irrigate the said lands, as approved by the Irrigation Authorities, is watercourse No.7R, which has been stopped by respondents No.4 and 5; whereas, the SDO Irrigation present contends that water is flowing in that watercourse but since the lands of the petitioners are situated in opposite direction, therefore, it is not feasible that petitioners may get water from said watercourse.

Perusal of comments, filed by respondents No.2 and 3, shows that Secretary Irrigation has approved the subject matter watercourse in order to cultivate the lands of the area, which is adjacent to Bawani Sugar Mills. At the place of RD No.290, leading from ex-Phuleli Canal, all khatedars of same watercourse but within range of 7R are getting water without any disturbance while the petitioners, being *tail-end* khatedars, have come with complaint of stoppage of same water course but for *their* lands only. Receiving of water by other khatedars from same watercourse is sufficient to negate the *plea* of the SDO that it is not feasible to provide water to petitioners from watercourse in question. Even otherwise, there is no *denial* to fact that lands of petitioners is settled on this water course which is *duly* sanctioned and approved by *irrigation* authority itself hence *instant* plea is entirely misconceived which, if is

allowed to hold, shall bring whole the process of approval and sanction of the watercourse, in question.

The lands of petitioners, *undisputedly* are situated at the tail of such watercourse, which is also passing just adjacent to the boundary of Bawani Sugar Mills. SDO Irrigation present while parting from earlier *justification* further contended that the said watercourse is stopped by the Administration of Bawani Sugar Mills, as the last portion of that watercourse is passing just adjacent to boundary wall of Bawani Sugar Mills. To this, the counsel for respondents No.4 and 5 (Bawani Sugar Mills) contends that in fact the lands, claiming by the petitioners, are under dispute and such case is pending before civil Court however does not deny that petitioners have title over the subject matter lands; are also in possession of the same and the watercourse 7R is passing adjacent to the boundary wall of the Mills. However, when asked to confine to posed question regarding closing of watercourse by Mill Administration or *otherwise*, he contended that claim of the Bawani Sugar Mills is that because of flowing of water just adjacent to their boundary wall it is causing seepage as well damage to their wall. We are surprised to have such a *plea* for closing of watercourse which *otherwise* is undeniably *sanctioned* source of irrigating the lands of petitioners. No law permits depriving other person of his right merely on apprehension of *loss* or *damage*. The *rights* and *obligations* are two foundation (s) which hold every relation, transaction etc hence balance is always required. To deal with all *affairs* of the *source* (watercourse) is responsibility of Irrigation authorities and a *failure* or *negligence* in proper discharge thereof cannot be an *excuse* or *justification* for an *incompetent* person to dress himself up as **competent authority**. On this plea, petitioners cannot be deprived from getting water for irrigating their lands when admittedly people of rest of the areas are enjoying this facility from same watercourse. Though it is disputed by the official respondents that temporarily said watercourse is allowed as well application, filed by the Khatedars of the area, for regularizing the same is pending before the concerned authorities, yet since no order has been passed on that application and the watercourse has not been regularized till proper regularization or mechanism to satisfy the right of petitioners to have due share of water, there appears no *legal* justification to keep them deprived by letting the watercourse closed.

It is pertinent to mention here that Sugar Mill is a huge industry and administration of such industry is required to work for the welfare of the locality and in that regard certain provisions are also provided in the law. Nizar Ali Admin: Officer, Bawani Sugar Mills present contends that at present only one school is functional and as per Admin: Officer, said school is situated within the boundary wall of residential colony of Bawani Sugar Mills; however, he contends that villagers' kids are also availing this facility and they are getting education in that school. Every positive act is always worth appreciating however, it be added *safely* that since the *Mill Administration* has no match in the area and has been deriving *benefits* by operating such *huge* industry in the area, therefore, the *Administration* was / is always under an *obligation* rather a *duty* to take initiatives for welfare of the people of the area which should not be limited to a *mere* access to villagers' kids in school constructed within boundary wall of Mill but should include free *education* and *health* too. The Admin: Officer further contends that they have also established one dispensary, which is under the control of Mills administration, though, villagers of adjoining areas of that Mills are not getting any benefit from that dispensary; however, in case of any emergency ambulance of administration is provided to them; whereas petitioners present negate this version. At this juncture, counsel for respondents No.4 and 5 contends that one Dr. Abdul Ghafoor, who is brother of the petitioners and resident of the same area, is also present in Court. Said Dr. Abdul Ghafoor appeared at rostrum and contends that he is Associate Professor in Liaquat University Hospital, Hyderabad and also running a clinic in Badin city free of cost. There can be no denial to a fact that it is always the *first* right of the one to receive *least* test the fruit of the very tree which he *himself* grows. In short, since the Dr. Abdul Ghafoor has *roots* in this area where *admittedly* there is no health-facility while Badin is a District Headquarter and *does* provide options. This, when *posed* to Dr. Abdul Ghafoor, he voluntarily offered to start / establish a clinic in his Otaq to serve the villagers of his native area as well the residents of adjoining areas free of cost and will use to sit in that clinic on every Sunday; he will also install a signboard of "Free Clinic" on the main door of his said Otaq. The *undertaking* / statement of Dr. Abdul Ghafoor, is appreciated and *happily* made part of the proceedings with hope that this shall be

honoured. Admin: Officer of Bawani Sugar Mills is directed to submit a comprehensive report with regard to details of schools established by them, number of the kids of villagers studying in that schools as well providing other facilities like roads and medical dispensary etc. It is expected that Mills administration will open a Welfare Clinic at Chanary Stop, having facility of ambulance service free of cost; as well the services / facilities which were being provided by the ex-administration of the mills during last ten (10) years, shall be restored immediately.

As regard the petition, the Irrigation Authorities are directed to ensure that watercourse 7R is opened immediately, if the same is stopped by respondents No.4 and 5 thereby shall ensure that petitioners get due share of water for irrigating their lands from that watercourse without any disturbance. In case of failure the Irrigation Authorities / official respondents shall lodge F.I.R. against the Mills administration or any other person, responsible for *hindrance* and SSP Badin shall provide all cooperation to Irrigation Authorities in that regard. In case of failure, contempt proceedings can be initiated against SSP Badin. District & Sessions Judge, Badin is directed to depute any Magistrate to ensure the compliance of this order in its letter and spirit.

Copy of this order shall be sent through fax to District & Sessions Judge, Badin and SSP Badin for compliance.

To come up on 20.09.2017.

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