

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD
C.P No.D-402 of 2019**

DATE	ORDER WITH SIGNATURE OF JUDGE
1.	For orders on M.A No.2346/2019
2.	For orders on office objection
3.	For orders on M.A No.2347/2019
4.	For orders on M.A No.2348/2019
5.	For hearing of main case
<u>04.03.2019.</u>	

Mr. Tahseen Ahmed H. Qureshi, advocate for petitioner

1. Urgency granted.
- 2to5. By means of this petition, petitioner is seeking assorted reliefs, which prima facie have no connection to each other and are reproduced below for ready reference:

- A) *Declare that the learned Special Judge/Respondent No.1 has no lawful jurisdiction to entertain the complaint/application filed by the Respondents No.16 & 17 bearing Direct Complaint No: -- (Nil)/2019 (Re: Muhammad Aamir ... Versus ... SDO-Zulfiqar Ali) in the civil nature dispute, and further declare that the learned Special Judge/Respondent No.1 has misused his authority in excessively, illegally, and unlawfully, and the same is coram-non-judice, without lawful authority, and in consequence thereof the proceedings pending before him in the above matter may kindly be quashed / struck-off.*
- B) *Direct the Respondents No: 2 to 15 to act in accordance with the law and not to cause / sabotage the proceedings of the civil suit bearing F.C Suit No: 83/2018 (Re: Muhammad Maqsood & others ... Versus ... Province of Sindh & others) pending before the learned Court of Senior Civil Judge, Matli / Respondent No: 18, in respect of the disputed suit lands, during its pendency and till its finally disposal of litigation / suit, in any manner, whatsoever.*
- C) *Direct the Respondents No.2 & 3 not to sanction / approve or implement the Govt. Share List of the Water Course No: 3-AL of Gharo Minor during the pendency of F.C Suit No: 83/2018 (Re: Muhammad Maqsood & others ... Versus ... Province of Sindh & others) pending before the learned Court of Senior Civil Judge, Matli / Respondent No: 18, in respect of the disputed suit lands, and till its finally disposal of litigation / suit, in any manner, whatsoever.*
- D) *Direct the police authorities /Respondents No: 7 to 9 not cause any kind of harassment /illegal threats, illegal action, or interference in the possession of disputed suit land of Petitioner and other co-Plaintiffs as their mother's share from them on the instigation of Respondents No: 16 & 17, and not to commit any kind of*

favour to the Respondents No: 16 & 17, in any manner whatsoever.

- E) Direct the learned Court of Senior Civil Judge, Matli / Respondent No: 18, to decide the pending F.C Suit No: 83/2018 (Re: Muhammad Maqood & others ... Versus ... Province of Sindh & others) expeditiously, on merits, within shortest possible time of "Two Months" under intimation to this Honourable High Court, without any further delay.*
- F) Any other relief this Honorable High Court may deem appropriate and proper in the circumstances of the case.*
- G) Grant costs of this petition.*

Learned counsel while trying to satisfy the court about maintainability of this petition in reply to a question in this regard has mainly urged that learned Special Judge Anti-Corruption Court (Provincial) Hyderabad has no jurisdiction to entertain the complaint filed by respondents No.16 & 17 namely Muhammad Asif and Muhammad Aamir, as it amounts to interference in the civil dispute between the petitioner and said respondents regarding which an F.C Suit bearing No.83/2018 (Re: Muhammad Maqsood & others versus Province of Sindh & others) is already pending before learned Senior Civil Judge, Matli. He has relied upon the case laws reported in PLD 1987 SC 447, PLD 2003 Peshawar 14, 1986 CLC 1680 & 1987 SCMR 1463 in support of his arguments.

We have heard learned counsel and perused the material available on record as well as case law. Petitioner's main concern, so reflected from arguments of his counsel, appears to be against entertainment of a complaint filed by respondents No.16 & 17 before learned Special Judge Anti-Corruption Court (Provincial) Hyderabad and pursuant inquiry held by the said court. A copy of such complaint which is essentially an application is available at page No.97 of the file, which shows that Respondents No.16 & 17 have made a complaint against SDO (Assistant Executive Engineer) (Irrigation) Khairpur Gambo Sub-Division @ New Dumbalo, Taluka Matli District Badin for not sanctioning the government share list and not providing water to their land in Survey No.123 to 126.

From the annexures filed with the petition, it seems that said application has been treated as a complaint and in terms of section 202 learned Special Judge has started preliminary inquiry, whereby calling relevant report from aforesaid official. However, it is obvious that still the learned Special Judge has not taken cognizance on the said complaint and has not brought it on a regular file. While such enquiry is pending, the petitioner has filed objections in writing to the complaint, which seem to

have also been entertained by the said court. Irrespective of the question that whether or not the petitioner can file objections at the stage of preliminary enquiry in the complaint case, it is obvious that no order so far has been passed by the learned Special Judge against complained official least to say against the petitioner to maintain this petition.

Learned counsel's contention that the very entertainment of application/Direct Complaint by the learned Special Judge Anti-Corruption Court (Provincial) Hyderabad is illegal is not sustainable as the learned Special Judge under the provisions of Criminal Procedure Code is fully competent to entertain a complaint and hold an inquiry himself or direct an inquiry or the investigation by the police officer or any other person as he thinks fit for the purpose of ascertaining the truth or falseness of the complaint. Besides, the petitioner has not been able to show how he is aggrieved by the inquiry being held against an official of Irrigation Department or how the proceedings being conducted in aforesaid F.C Suit No.83/2018 would be prejudiced against him in case such inquiry is taken to its logical conclusion. Learned counsel was not able to convince us either that the entertainment of complaint against an official of Irrigation Department could have adverse bearings on civil suit filed by petitioner seeking declaration about his purported right over certain agricultural land which as per their claim was inherited by their mother from her deceased father; and subsequent mutation in foti khata in respect of the suit land in their favour. Such controversy appears to be independent and irrelevant to what is being agitated by the respondents against the official of Irrigation Department in the complaint.

Petitioner's prayer seeking direction to the learned Senior Civil Judge Matli to decide the aforesaid F.C Suit expeditiously within a period of two months is not sustainable either as nothing has been brought on record to indicate the stage of said suit; the delay, if any; the reasons for such delay and who is responsible for it. In absence of such necessary facts, we would not proceed to give any direction of the nature which is petitioner seeking through this petition to the trial court. It has also not been explained why petitioner is not moving a proper application as per law before the trial court for expeditious disposal of aforesaid F.C Suit, and how in view of such adequate remedy, he would maintain this petition.

Petitioner's prayer to direct the police officials not to cause any kind of harassment to the petitioner seems to be not maintainable either as no ostensible evidence pointing to any harassment being caused by the police officials to the petitioner has been submitted to justify interference

by this court under article 199 of the Constitution of Islamic Republic of Pakistan, 1973 in the matter which is being tried by the competent court of law.

This being the position, we are of the view that this petition is without any merits and is accordingly dismissed in limine alongwith listed application(s). However, petitioner would be at liberty to approach a proper forum for redressal of his grievance, if any, in accordance with law.

JUDGE

JUDGE

Sajjad Ali Jessar