

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

C.P No. D- 780 of 2020

***Before:-
Mr. Justice Abdul Maalik Gaddi
Mr. Justice Adnan-ul-Karim Memon***

Petitioners : Through Mr. Tehseen Ahmed Qureshi,
Petitioner No.1 in Person and Attorney of
other petitioners.

Private Respondents : Through Mr. Ghulam Nabi Meo,
Advocate

Official Respondents. : Through Mr. Allah Bachayo Soomro,
Addl. Advocate General, Sindh.

Date of hearing. : 20.08.2020
& decision.

ORDER

ADNAN-UL-KARIM MEMON, J:- The instant Petition, under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, has been filed by the petitioners, seeking declaration to the effect that the proceedings initiated against them by learned District Judge, Mirpurkhas, by means of Criminal Complaint No.116 of 2020 (Re- Waseem and others Vs. Assistant Executive Engineer and others) were coram-non judice, not sustainable under the law and are liable to be set-aside.

2. At the outset we asked the petitioner, who is present in person to satisfy this court with regard to maintainability of this petition against the order dated 18.3.2020 passed by learned District Judge, Mirpurkhas, in the aforesaid criminal complaint, he replied that threats by official Respondents to stop water supply to the lands of Petitioners are illegal, against the law and equity; that they have no authority to interfere with the water supply to the lands of Petitioners or change the dimension of the water course duly sanctioned by the competent authority; that official respondents are bound to supply water to the lands of Petitioners in accordance with Irrigation Act; that water supply of Petitioners is being disturbed by the official Respondents by changing the dimension of water course No. DO-3 17/L, Ex-Nasir Branch without any notice and affording opportunity of hearing to them; that the people have the

right to have access to safe drinking water and irrigate their land; that the impugned order being without lawful jurisdiction is not sustainable under the law. He further states that he and his family members own agricultural lands in Deh 196, Taluka Digri, District Mirpurkhas, which are settled on the command of water course No. DO-3 17/L, Ex-Nasir Branch and regarding that a Civil Suit bearing No.88 of 2019 has already been filed by the petitioner and his family members against the Irrigation Department and others and there is every likelihood that under the garb of impugned order the petitioners shall be deprived from their due water. He lastly prayed for allowing the instant petition. At this stage, we confronted him with the findings of learned District Judge in the aforesaid proceedings on the premise that no prejudice is to be caused to either party if his findings remain on record, he realizes and submits that he will be satisfied if an appropriate direction may be issued to learned trial Court to decide the Suit No.88 of 2019 of the petitioners (Re- Abdul Hameed Qureshi and others Vs. Province of Sindh and others) pending before IIIrd Senior Civil Judge, Digri District Mirpurkhas strictly in accordance with law, without being influenced by the findings dated 18.3.2020 of learned District Judge, Mirpurkhas, in Criminal Complaint No.116 of 2020 (Re- Waseem and others Vs. Assistant Executive Engineer and others).

3. Mr. Allah Bachayo Soomro, learned Additional Advocate General, Sindh and Mr. Ghulam Nabi Meo learned counsel representing the private respondents have assailed the maintainability of instant petition and prayed that the Petitioners have no case, therefore, the same may be rejected in the interest of justice and equitable distribution of water supply amongst all *khatedars*.

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

5. It appears from the record that 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). A perusal of said decision shows that certain outlets were sanctioned in violation of law and in relaxation of the ban imposed by the Sindh Government vide letter No.2/687-S.O. (OP)/70-Vol-III, dated 2-1-1999. But, in the relaxation of the ban from time to time, outlets were sanctioned in favour of influential and interested persons, consequently,

the lands of Khatedars situated at tail end were not getting water according to their share, as before reaching the tail, the entire water was consumed by upper riparian's. The Khatedars raised their voice of concern to protect their rights. The Honorable Supreme Court took Suo-Moto notice and passed the order dated 03.12.2013. For convenience sake, an excerpt of the order is reproduced as under: -

“In such view of the matter, we direct the Secretary, Irrigation that immediately he should take action to protect their interest. Here we deem it appropriate to reproduce operative part of the report of the learned District and Sessions Judge Badin dated 27-11-2013:-

It is further submitted that frames of the outlets were tampered and some were having repaired freshly. The type of the frames as sanctioned was 2" x 2" inches but after tampering; the same were found up to 1 to 2 feet width. It is further submitted that on 25-11-2013 the most of the outlets were closed and the Irrigation Officers informed that the same have been closed due to rotation; hence, the flow of water was found up to the sanctioned level and reached at the tail of Sangi Pharho/Regulator. It is further submitted that the outlet of Kamal Khan Chang crossed Pir Sakhi Minor. It is further submitted that again on 26-11-2013 the undersigned conducted the surprise visit of the site without accompanying the Irrigation Officers and found that most of the outlets were opened, hence, there was no pressure of flow of the water at the tail and it was not flowing at sanctioned level at the tail of Sangi Phraho. It is further submitted that if all the outlets remain opened, then the flow of the water will not reach at the tail of Naseer Branch. In this situation, the Zamindars of tail of Naseer Canal Branch cannot get the Irrigation water for cultivating their lands.”

6. The order passed by Honorable Supreme court resolves the issue, which is also subject matter of this petition.

7. Further, we have noticed that Section 16 of Sindh Irrigation Act requires that any person with the permission of duly empowered Canal Officer may construct watercourse on land after obtaining consent of 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 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 rights and obligations of owners of watercourses and apart from requiring them to maintain them, confers upon

such owners a right to have supply of water on such terms as prescribed in the relevant Rules.

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

9. Perusal of record clearly depicts that learned District Judge simply recorded the findings to the effect that since the matter between the parties is pending before the trial court and the irrigation department may contest such Suit as per law and till such period, the defined design / dimensions of water courses shall be maintained across the board and it shall be ensured by the officials of Irrigation Department that petitioners get their due share of water as per the approved share list.

10. In view of the facts and circumstances of the present case, we do not see any enforceable right of the petitioners to receive water for irrigation beyond their claim.

11. Before parting with this judgment, 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 share after appropriate proceedings in case if the petitioners approach them. The compliance report shall be filed by the official Respondents with Additional Registrar of this Court in regard to the distribution of water as per the share of the local Zamidars.

12. For the aforesaid conclusion, we do not see any merit in this petition which is dismissed along with pending application(s).

JUDGE

JUDGE