

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

C.P. No.D-6550 of 2020

Date	Order with signature of Judge
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1. For orders on CMA No.3199/2021.
2. For hearing of main case.
3. For orders on CMA No.3613/2021.

08.02.2021

Mr. Altaf Hussain, Advocate, for petitioner
Mr. Blosch Ahmed Junejo, Advocate, for applicant
Mr. Irfan Ahmed Qureshi, Advocate, for applicant

Mr. Salman Talibuddin, Advocate General Sindh
Ms. Saima Imdad, Assistant Advocate General

Mr. Sohail Anwer Siyal, Minister Irrigation
Mr. Syed Mumtaz Ali Shah, Chief Secretary Sindh
Mr. Muhammad Saleem Raza, Secretary Irrigation

1. This application, filed by 2 applicants not party herein on behalf of themselves and another 14 persons also not party herein, seek initiation of proceedings for contempt of court, in respect of the orders herein dated 27.10.2020, against 6 persons, including the Chief Secretary, Irrigation Secretary & Others. At the very onset, learned counsel for the applicants was confronted with respect to the maintainability of a contempt application preferred by strangers hereto. Learned counsel was also directed to identify the specific directives, alleged non-compliance whereof could be placed squarely upon the persons alleged. In view of the learned counsel's manifest inability to present any cogent justification with regards hereto, we find the present application to be misconceived; hence, the same is hereby dismissed *in limine*. The applicants remain at liberty to seek redress of any individual grievance/s before the court of competent jurisdiction.

3. This application seeks review of the Order dated 18.01.2021. Even though the supporting affidavit is executed by one person, the memorandum of application pleads to seek review on behalf numerous others, not having executed any affidavit in support hereof.

Learned counsel rested his application on the following primary grounds: the applicant is not an encroacher; the applicant has title (lease) to his property on the embankment of river / canal / irrigation channel; utility connections and road access has been provided to the *property* of the applicant. Learned counsel stressed that the applicant had no prior notice of the three phase plan of the Government, for removal of encroachments,

and was not in agreement therewith as the same constituted an infringement of the applicant's right to fair trial.

The present proceedings are in respect of encroachments upon irrigation lands and appropriate recourse is available¹ to those asserting valid title to property under occupation. It has already been observed earlier that individual claims in respect of property may be asserted before the courts of competent jurisdiction, as such an exercise cannot be undertaken in the present proceedings. In any event the issue of asserted title to individual property has already been deliberated by us and the findings in respect thereof have already been rendered in the order under consideration. No new and / or cogent grounds has been articulated to merit revisiting the same.

It is further observed that the applicant has no *locus standi* to object to the three phase plan of the Government to remove encroachments from irrigation land. The applicant has remained at liberty to assert his rights in respect of any property claimed and no restraint has been placed, either upon him or any competent court, in such regard.

It is clear that the jurisdiction of this Court in review proceedings is limited to the ambit of Section 114 read with Order 47 CPC. The entire thrust of the arguments advanced by the applicant's counsel was directed towards re-agitation of issues already considered / addressed and there was absolutely no effort to identify any mistake or error apparent on the face of the record and / or any other sufficient reason justifying a review of the order.

We have duly appraised the contents of the present application and the arguments advanced by the applicant's counsel and are of the considered opinion that no grounds for review have been made out. The applicant's counsel has not demonstrated the discovery of any new and important matter which could not have been addressed earlier; has failed to identify any mistake apparent on the face of record; and finally no reason has been advanced to justify the review of the Order. It is thus our considered view that this application is devoid of merit, hence, the same is hereby dismissed *in limine*.

2. It is imperative to reiterate that the present petition was filed in 2015 and numerous orders have been passed herein in pursuit of removal of encroachments from irrigation land. The honorable Supreme Court has also taken notice in this regard and rendered orders, including that reproduced vide Order dated 18.01.2021.

The first phase of the removal of encroachments has been undertaken to be concluded by 28.02.2021; however, the progress report, placed on record by the learned Advocate General today with respect to the period between 01.02.2021 till date, demonstrates that hardly any progress has taken place thus far. While we respect the domain of the executive branch and remain sanguine that the Government shall ensure

¹ As denoted vide the Order dated 18.01.2021.

the timely removal of encroachments, per the plan undertaken; however, we are constrained to observe that the manifest efforts on ground do not *prima facie* appear to adhere to the timeline undertaken before us. It is expected that the respondents, and functionaries thereof, shall ensure progress at a rate commensurate with their deadline; to which they shall be held responsible. It is also noted with much concern that the progress report was required to be submitted under the signature of the executants to the Undertaking, taken on record vide Order dated 18.01.2021 (“Undertaking”). The progress report not only has not been submitted under the requisite signatures but is *prima facie* an unsigned document. We are constrained to observe that such conduct cannot be appreciated by this Court.

It is hereby directed that a progress report shall be filed at each date of hearing, under the signatures of the executants of the Undertaking, particularizing the progress made, between the last progress report and the one being submitted, along with corroboratory documentation as enunciated vide the Order dated 01.02.2021 (with each photograph being date stamped). In addition thereto each progress report shall contain a tabular district wise report demonstrating the progress made thus far (per respective phase), in percentage terms.

There remains the issue of contempt, initiated vide order dated 01.02.2021, with regards to non-compliance of the Order dated 18.01.2021 by the executants of the Undertaking. We are constrained to observe that the relevant order remains un-complied till date as no progress report has been submitted with respect to the period between 18.01.2021 and 01.02.2021. Mr. Sohail Anwer Siyal, Mr. Syed Mumtaz Ali Shah and Mr. Muhammad Saleem Raza² (“Alleged Contemnors”) are present in Court and have submitted their replies; which are *prima facie* an inadequate narrative having no nexus with the issue of contempt. The learned Advocate General Sindh has requested that another opportunity may be afforded to the Alleged Contemnors in this regard. In deference to the request of the learned Advocate General, the Alleged Contemnors are afforded a further opportunity to provide their reply, in the form of individually sworn affidavits, on the next date of hearing; when they shall remain present in person.

Adjourned to 15.02.2021; to be taken up at 11am. The office is instructed to directly communicate a copy hereof to the office of the learned Advocate General Sindh.

JUDGE

JUDGE

JUDGE

² In advertently recorded as Mr. Rafique Ahmed Buriro, vide Order dated 01.02.2021.