ORDER SHEET IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD C.P.No.D-865 of 2014

DATE ORDER WITH SIGNATURE OF JUDGE

1. For hearing of MA-5374/14

2. For hearing of main case.

19.09.2019.

Mr. Allah Bachayo Soomro, Addl. A.G for the petitioners. Respondent is present in person.

The facts in brief necessary for disposal of instant constitutional petition are that the private respondent filed an application before learned Sessions Judge assigning him jurisdiction as a Director Human Right Mirpurkhas inter-alia praying therein to submit complete report with regard to repair / construction of the road from Digri to Amb Mori for year 2011 and to carry out repair of the road from Kangoro Shakh up-to Naokot Town also construct carpet road at main Station road from Judho Naka upto Maal Piri. Learned Sessions Judge assuming the jurisdiction as Chairman Human Right Board Mirpurkhas vide order dated 08.03.2014 directed the petitioners to construct the road as per report of Assistant Engineer Provincial Highways Sub-Division Digri, within three months, such order is impugned by the petitioners before this Court by way of instant constitutional petition.

2. It is contended by learned A.A.G for the petitioners that learned Sessions Judge was having no jurisdiction to have passed the impugned order in capacity of Chairman Human Right Board at Mirpurkhas, which is liable to be set-aside being illegal having been passed in excess of jurisdiction. In support of his contention he has relied upon case of *Director City Circle Gepco Ltd vs Shahid Mir and others* (*PLD 2013 Supreme Court 403*). 3. The respondent by defending the impugned order sought for dismissal of the instant petition by contending that learned Sessions Judge has put an attempt to enforce the fundamental rights of the public at large.

4. We have considered the above arguments and perused the record.

5. As per Article 175(2) of the Constitution of Islamic Republic of Pakistan, no Court shall have any jurisdiction save as is or may be conferred on it by the constitution or by or under any law. Nothing has been brought on record, which may suggest that learned Sessions Judge was conferred by the constitution or by any law any jurisdiction to be exercised by him. In that situation, it is rightly being contended by learned counsel for the petitioners that the impugned order having been passed by learned Sessions Judge in excess of jurisdiction is illegal. If for the sake of arguments, it is believed that learned Sessions Judge was having a jurisdiction to pass the impugned order even then the prayer made by the private respondent ought not to have been granted for want of Provincial Government as proper and necessary party simply for the reason that the construction and repair of the work is the function of the Provincial Government and not that of its functionaries. Consequently, the impugned order is set-aside.

6. Instant constitution petition is disposed of accordingly alongwith listed application.

JUDGE

JUDGE

Ahmed/Pa,