

ORDER SHEET
**HIGH COURT OF SINDH CIRCUIT COURT,
HYDERABAD**

C.P. No.D-912 of 2015

[Zahid Ali and another versus Province of Sindh & Ors]

Before:-

Mr. Justice Nadeem Akhtar

Mr. Justice Adnan-ul-Karim Memon

Date of hearing & Order:

17.11.2021

Mr. Muhammad Arshad Pathan, advocate for petitioners

Mr. Allah Bachayo Soomro, Additional A.G Sindh

ORDER

ADNAN-UL-KARIM MEMON, J. - Through instant constitutional petition, under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (the “**Constitution**”), the petitioner have called in question the vires of letter dated 31.03.2015, whereby sub-module of khatedars of Ex-Murad Wah has been canceled by the competent authority of irrigation-department.

2. Mr. Muhammad Arshad S. Pathan learned counsel for the petitioners while attempting to give a brief history of the case, has contended that the petitioners’ agricultural land is rest for irrigation on the watercourse 52-DL, Ex-Murad Wah Sub Division Matli, for last so many years. He has further contended that the respondents are persistently attempting to obstruct water supply to the petitioners’ land from the said watercourse and are threatening him to cancel the sub-module duly sanctioned by the competent authority, against which the petitioner raised hue and cry but all went in vain, compelling the petitioner to approach this Court. He has also contended that the petitioner within his rights is entitled to have irrigation water to irrigate his lands and the official respondents are bound to supply the water under irrigation laws, but they are reluctant to exercise their legal authority to ensure smooth flow of irrigation water to petitioners’ land as per his share. He has also contended that interference of respondents in a flat supply of water to the petitioners’ land

through watercourse 52-DL Ex-Murad Wah Sub Division Matli and canceling sub-module amounts to an offense under irrigation laws but the competent authorities have failed to take any action against them.

3. We have heard learned counsel for the parties and perused the material available on record with their assistance

4. In our view, Article 9 of the Constitution provides the right to life, if a person is deprived of the fundamental right; he can always approach this Court by invoking Constitutional jurisdiction of this Court with a rider that such right is not hampered with any law. A right to irrigate agricultural land is also governed and protected under the Irrigation Laws and the Rules made thereunder and in case of infringement thereof, the same could be examined by this Court. In this regard, we deem it advantageous to refer the case law reported in 2014 SCMR 353, wherein the Hon'ble Supreme Court has observed that the provisions of the Sindh Irrigation Act, 1897 are required to be strictly observed so that nobody can encroach upon the rights of others, as the farmers are earning their livelihood for their own lives and their families, which is a fundamental right guaranteed under Article 9 of the Constitution. So far as the contention of involving disputed questions of facts as argued by the learned counsel for the private respondents are concerned, we are of the view that the claim of the petitioners that their lands rest on watercourse 52-DL Ex-Murad Wah Sub Division Matli for irrigation purpose, has not been denied by the official respondents; however, they have failed to produce any cogent documentary evidence in support of their contention to cancel the sub-module of khatedars of Ex-Murad Wah. The Honorable Supreme Court took Suo-Moto notice in the above-cited case. An excerpt whereof is reproduced below:

“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."

5. As regards the issue involved in the present proceedings, this Court vide judgment dated 18.4.2019 passed in C.P. No. 1375-D of 2017 directed the competent authority of the Irrigation Department to ensure supply of water to the khatedars under share list. The aforesaid judgment was assailed before Honorable Supreme Court in Civil Petition No. 410-K of 2019 which was disposed of in the following terms:

"Learned counsel for the petitioners has impugned the judgment dated 18.4.2019, whereby the issue as to the supply of water to the petitioners' land, which, according to the learned counsel, is being curtailed. Learned Additional Advocate General along-with Secretary Irrigation Department, Government of Sindh have filed their comments, duly signed by Secretary Irrigation and Managing Director, SIDA, Hyderabad, which read as under:- "As permanent relief relocation of head regular of Bilori Minor has been provided in ADP 2019-20, at Sr.No.1113 which is in process and will facilitate restoration of original source of irrigation water supply to the petitioner and others in due course of time". Learned Bench of the High Court, already seized of the matter, in terms of para No.23 of the impugned judgment has directed for compliance report before the Assistant Registrar of High Court. Since High Court itself is regulating and supervising the issue as urged in the petition, we are not inclined to interfere in the matter which is purely between the two departments and as stated by the learned Additional Advocate General same will be resolved on permanent basis no sooner the scheme allocated to ADB is executed for which funds are allocated it is expected that such scheme is materialized. The High Court will ensure that its orders are complied with in letter and spirit. The authority shall ensure to supply water from either of the available source of supply in accordance with share list. In this view of matter, we are not inclined to interfere in the impugned judgment. Petition disposed of."

6. The above orders passed by the Honorable Supreme Court resolve the issue, which is also the subject matter of this petition. Learned counsel for the petitioners demonstrated that sanctioned sub-module of the watercourse was the personal property of the individual landowner, who was required to construct and maintain it from his resources in terms of the Sindh Irrigation Act. Be that as it may, no authority has been conferred upon the khatedars to utilize water more than their sanctioned share as per the prescribed share list and the Irrigation Department is bound to ensure this.

7. This court vide common order dated 10.12.2019 passed in C.P. No.D-721 of 2010 (Umer Din Mehar v. Province of Sindh and others) has resolved the controversy, which is also the subject matter of this petition.

8. We, therefore, direct the official respondents to ensure supply of irrigation water to petitioner' land from watercourse 52 –DL Ex-Murad Wah Sub Division Matli, as per-share list and under the Irrigation Laws, Rules, and Regulations, without any unwanted disturbance from any corner. In case, the private respondents have any objection to the supply of irrigation water to the petitioners' land from said sanctioned watercourse, they are at liberty to approach the concerned authorities under the irrigation laws for cancellation of petitioners' sanctioned watercourse, who shall decide the same under the law.

The petition stands disposed of in the above terms with no order as to costs.

JUDGE

JUDGE

Sajjad Ali Jessar