

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P. No.D-469 of 2012.

C.P. No.D-256 of 2010.

DATE	ORDER WITH SIGNATURE OF JUDGE
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Before:

Mr. Justice Muhammad Shafi Siddiqui.

Mr. Justice Arshad Hussain Khan.

1. For orders on office objection.
2. For Katcha Peshi.
3. For Hearing of M.A. No.3083/2012.
4. For orders on M.A. No.4892/2017.

17.08.2017.

Mr. Jagdish R. Mullani, advocate and Mr. Abdul Hameed Bajwa, advocate for petitioners in C.P. No.D-469 of 2012.

Mr. Allah Bachayo Soomro, Addl. A.G. along with Muhammad Rehan Qureshi XEN Nasir Division, Hyderabad and Nadeem Wahid Memon, SDO Chang Sub-Division.

ORDER

Petitioners have filed this petition substantially for the compliance of order of this Court as well as of the Honourable Supreme Court in relation to watercourse of RD-151-R Naseer Canal.

Brief facts are that originally some of the petitioners having Khata in 11-R and 12-R Gharib Distry [Tail] have filed C.P. No.D-327 of 2006, praying therein that the official respondents be directed to shift the watercourse No. 11-R and 12-R from Gharib Distry to Naseer Canal. The petition was heard and was allowed. The Sub-Divisional Officer Irrigation and others have filed a petition before Hon'ble Supreme Court which was dismissed and the respondents were directed to implement the said order of the Division Bench passed in C.P. No.327 of 2006 dated 06.05.2009. Though certain applications for compliance of the orders were presented before the Honourable Supreme Court as alleged by the petitioners' counsel but they are not relevant for the

purposes of deciding the controversy as raised in this petition. Though the petitioner in the above petition have prayed for the “shifting of watercourse No. 11-R and 12-R from Gharib Distry to Naseer Canal” which prima facie mean that all Khatedars of 11-R and 12-R are required to be shifted yet the “rest of the Khatedars” in C.P. No.D-256 of 2010, sought orders / direction for shifting of the watercourse No.11-R and 12-R i.e. other than petitioner of C.P. No.327 of 2006. The enquiry was conducted on 22.11.2010 in presence of all Khatedars including Qalandar Bux who was objecting to the grant of such petitions. The objector Qalandar Bux was also a party in C.P. No.D-469 of 2012 which were earlier granted. The enquiry report relied upon by the Division Bench provides that the objections of Qalandar Bux and others are without any ground and does not provide any technical justification and the objections were rejected and the claim of the petitioners in C.P. No.D-256 of 2010, who are in fact rest of the Khatedars of 11-R and 12-R Gharib Distry are ordered to be catered from Naseer Canal through DR-151 and was found to be proper. The recommendation was forwarded to the Secretary Irrigation Department for consideration and orders within thirty days in accordance with law. Accordingly, the Revised Modular Statement was again prepared after shifting of the Khatas of petitioners of C.P. No.D-256 of 2010. It has also been observed by Honourable Supreme Court in Civil Petition No.748-K of 2011, that all Khatedars were heard by the Executive Engineer Rohri, Hyderabad Division and an order for the settlement of the parties for the distribution of watercourse was passed. The recent contention of the learned counsel for the petitioners was that the recommendations was forwarded to the Secretary Irrigation & Power Department, for consideration whose order has not been placed on record before shifting the watercourse of 11-R and 12-R Gharib Distry to DR-151 of Naseer Canal.

We have heard the learned counsel and perused the material available on record.

The petitioners in the present petition has only agitated that the official respondents should not interfere in the watercourse RD-151/R Naseer Canal

which has been sanctioned / approved only for them and that the report of Revised Modular Statement is motivated malafide and against the natural justice. The entire record does not show at all that the Revised Modular Statement of watercourse for the present petitioner in the shape of DR-151 Naseer Canal was only meant exclusively for the petitioner. This DR-151 Naseer Canal is one of the distributory artery of Naseer Canal and annexure 'H' which was prepared at the time of Revised Modular Statement of the petitioner was not meant for the petitioner alone. The petitioners have not at all agitated that they are not getting their due share of water in terms of the Revised Modular Statement but their only object is that no other water to other Khatedars of 11-R and 12-R Gharib Distry be provided water through DR-151 of Naseer Canal. The enquiry report dated 22.11.2010 satisfies all objections of the petitioners. The dimension of DR-151 of Naseer Branch was in fact enhanced from 0.86 cusics which was for an area of 297 acres to an enhanced dimension to provide water 3.29 cusics which is feasible for the remaining area of 11-R and 12-R Ex-Gharib Distry. Hence the petitioners are derying their water absolutely in terms of the share list as prepared in the first Revised Modular Statement dated 02.03.2010 and subsequently Revised Modular Statement dated 28.11.2011. In fact as stated above, they have no grievance in this regard at all. Similarly the compliance in terms of the orders of the Division Bench dated 22.07.2011, passed in C.P. No.D-256 of 2010, is also made in substance when Revised Modular Statement was prepared and all codal formalities were complied with in terms of the justification report available at the back of the Revised Modular Statement. At the end we may observe that the official respondents especially the XEN Muhammad Rehan Qureshi Naseer Division who has assisted this Court has cleared all issues raised and involved in this petition and that all Khatedars of DR-151 Naseer Canal shall get their due share of water in terms of the share list for both seasons i.e. 'Kharif' and 'Rabi'.

By a short order dated 17.08.2017 we have dismissed this petition and these are the reasons in support of the short order.

All pending applications in the connected petition in terms of the above reasoning also stand disposed of.

JUDGE

JUDGE

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