

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

C.P. No.D—1393 of 2011.

C.P. No.D- 1275 of 2017.

DATE	ORDER WITH SIGNATURE OF JUDGE
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26.09.2017.

1. FOR ORDERS ON OFFICE OBJECTIONS.
2. FOR KATCHA PESHI.
3. FOR HEARING OF M.A. 5813/2017.
4. FOR HEARING OF M.A. 5814/2017.
5. FOR ORDERS ON M.A. 7254/2017.
6. FOR HEARING OF M.A. 7508/2017.
7. FOR HEARING OF M.A. 8340/2017.

Mr. Zeeshan Ali Burdin, Advocate for petitioners in C.P. No.D-1393/2011.

Mr. Ayaz Hussain Tunio, Advocate for the petitioners in C.P. No.D-1275 of 2017.

Mr. Allah Bachayo Soomro, A.A.G. along with DSP Ghulam Sarwar S.D.P.O. Sinjhor District Sanghar, SIP M. Ishaque Sangrasi S.H.O. Police Station Sinjhor, Naeem Memon Executive Engineer Jamrao and Sirajuddin Assistant Engineer Khadro Sub-Division.

Mr. Jhamat Jethanand, Advocate for respondent No.8 in C.P. No.D-1393 and for respondent No.15 in C.P. No.D-1275 of 2017.

Mr. Wali Mohammad Khoso, Advocate respondents No.16 to 26 in C.P. No.D-1275 of 2017.

These two petitions involve a common question as to the shifting of land of respondent namely Ghous Muhammad s/o Abdul Qadir Sanjrani to LS-2R Twin Jamrao Canal.

Brief facts are that originally the land of the respondent was being catered through Rano Minor however, on an application of the respondent the report came that the Rano Minor has almost dried and, as such, the application of the shifting of the land to Twin Jamrao Canal was considered. There were originally 32 Khatedars which report is mentioned in the statement (Bayan) annexure 'A' at page 133.

The Khatedar Ghaus Muhammad s/o Abdul Qadir Sanjrani approached for transfer of their land admeasuring 134-27 acres from watercourse No.3-AL, 4L, 5L or Ex-Rano Minor (Rohri Canal) to watercourse No.LS/2R Twin Jamrao Canal (Nara Canal Circle). The Executive Engineer of Mirpurkhas, submitted the report along with some questionnaire and objections of Khatedars. Out of 32 Khatedars it appears that 21 Khatedars have given their no objection while 11 Khatedars raised objection against such transfer of land to Jamrao Canal. Hence their objections were considered by the Additional Collectorate under Section 91 of the Irrigation Act. The proceedings initiated under Section 91 of the Irrigation Act by issuing notices to both the parties. Objections of Muhammad Akram on behalf of Zubair Ahmed Khan, Piyaro Khan etc were considered and the applicant Ghaus Muhammad Sanjrani along with his brother Abdul Khaliq appeared on 17.05.2012. It is pertinent to mention that at the relevant time of transferring of the land of the respondent Ghaus Muhammad Sanjrani, his brother Abdul Khaliq appeared along with Ghaus Muhammad Sanjrani. The objection raised by the objector was that the land of the applicant i.e. Ghaus Muhammad goes on higher side i.e. the contour level is higher than the land which was being fertilized by Jamrao Canal and the Ex-Twin Jamrao Canal has to pass through a depression, as such, the crops are likely to be damaged. These objections were considered after a site visit on 29.5.2012 in presence of parties. The representative of Zubair Ahmed did not appear despite notices on the relevant dates and inspection. The order of the Additional Collector under Section 91 of the Irrigation Act, provides that on inspection Ex-Rano Minor i.e. the existing source of water for proposed land found dried and the request of shifting of the land was found genuine. It was also found feasible as the land of the applicant was adjacent to the land of the objector. Hence the objections were found to be not more than personal ego. The facts also reveal that as against the order revision application No.23 of 2012 was also dismissed on assurance and

undertaking of Assistant Executive Engineer Khadro Sub-Division Khadro, that the order of shifting of the land shall be made applicable when the Revised Modular Statement will be prepared in which the additional water for new proposed land will be made available and after the preparation of the share list on weekly basis. It was further on assurance that on 29.5.2012 when the A.D.C. Sanghar along with Additional Commissioner visited the site the water was found flowing in the adjacent land.

Learned counsel for the petitioners on the basis of the above facts submitted that the technical aspect of the matter was never considered and in addition to this the 'No Objection Affidavits' of the petitioners in C.P. No.D-1275 of 2017, are all fake.

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

Commencing from the last point of the petitioners' counsel that the Affidavits of the petitioners were fake, we may point out that Abdul Khaliq who is the brother of Ghous Muhammad, whose land is being transferred to Twin Jamrao Canal appeared along with his brother Ghous Muhammad Sanjrani and raised no objection whatsoever. Therefore, the objections of wife, sons and daughters of Abdul Khaliq are of no consequence. Their father appeared along with his brother and he raised no objection whatsoever. Similarly after issuance of notices under Section 91 of the Irrigation Act, the petitioners No.2 to 6 never raised any objection whatsoever as required in terms of Section 91 *ibid*. Hence their present objections are of no consequence. As far as the subsequent 11 Khatedars are concerned, it appears that their objections were considered by the Additional Collector-I Sanghar and were considered to be of no more than an ego issue of the petitioners in the connected petition and aggrieved of the order of the Additional Collector-I Sanghar the petitioner in the connected petition has preferred a Revision Application wherein they reached to a settlement on account of assurance of Executive Engineer Jamrao Division and Assistant Executive Division Khadro that the Revised

Modular Statement will only be made applicable in case additional water of subject additional Khatedars will be made available. Admittedly the Revised Modular Statement was prepared on account of providing additional water to irrigate an additional land of 134 acres of Ghous Muhammad.

In addition to that the legal heirs of Zubair Ahmed also filed a Suit i.e. the rests of the 11 Khatedars bearing Suit No.60 of 2014 seeking identical relief that the orders of the Additional Collector-I Sanghar and in Revision are illegal and unlawful in which the suit was rejected under Order VII Rule 11 vide order dated 13.4.2016.

Apart from the above settled issues we have also asked the Engineer to carry out the technical inspection of the site in question as to the contour level of the land which is already being irrigated by Twin Jamrao Canal and the proposed land of Ghous Muhammad Sanjrani. The coloured Map filed along with statement dated 19.09.2017, shows that the Twin Jamrao Canal starts irrigating the land of the petitioner at two stages of survey No.64 and it passes through survey No.65, 66 & 67 of the petitioners' land before it enters the proposed land of the respondent Ghous Muhammad. It pears through two points one at the upper line of survey NO.67 and the other at the lower line of survey No.67 and in between survey No.67 and 96 and enters through survey Nos.68, 69, 70, 93, 94 & 95. The Revised Modular Statement is prepared only after the sanction of additional water to irrigate additional 134 acres. The question of contour level is not applicable in survey No.58 and 59 where there is hardly a difference of 3 to 6 inch in terms of the report obtained through technical instruments whereas the other survey numbers such as 68 and 69 has a difference of 1 ½ feet and 2 ½ feet. This contour level is almost insignificant as it could either be managed by digging the Canal deeper then as required in the normal course or by providing a Water Pump at the subject point where contour level may play its role. This has to be ensured by the Irrigation Department that no water shall spill over any part of the

land either of the petitioners or of the respondents and it should be utilized in the best possible manner.

They have not filed any objection to this report.

After hearing the parties at length we do not find any substantial question to interfere in the orders of the Additional Collector-I Sanghar, whereby the land of the respondent Ghous Muhammad was shifted to Twin Jamrao Canal which was upheld by the Assistant Executive Engineer Khadro Sub Division in the Revision Application.

At the end we may observed that the respondent shall ensure smooth flow of water from Twin Jamrao Canal to irrigate land of all Khatedars including the newly added Khatedar Ghous Muhammad and that no water shall spill over any part of land of petitioner or of respondent.

The petitioners in the connected petition has exhausted their remedy under hierarchy under the Irrigation Act and such concurrent findings of two forums below cannot be disturbed in this writ jurisdiction where all objections of the petitioners were taken care of and were considered to be of an issue of ego rather than of any substance.

The petition stands disposed of.

Judge

Judge

A.