

Order Sheet
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
C.P. No. D-521 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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1. For orders on MA-746/23 (urgency, if granted)
2. For hearing of main case.

01.02.2023

Mr. Muhammad Nasir advocate for the petitioner.

1. Urgency granted.
2. Through this petition, the petitioner has prayed that the sanction and construction of a new water course at RD No.11 by the official respondents and private respondents be declared as illegal ; the respondents be restrained from raising further construction and irrigation through the aforesaid new water course ; and, the respondents be directed to close and remove the said water course. Record shows that several applications / complaints were filed by the petitioner before the competent authority viz. the Executive Engineer concerned / respondent No.8 who had given certain instructions and directions to the officials of the irrigation department. It is stated on behalf of the petitioner that his said applications / complaints have not been finally decided by respondent No.8. Record further shows that FC Suit No.16/2021 was filed by the petitioner against the present private and official respondents the plaint whereof was rejected by the trial Court vide order dated 13.02.2021. It appears that the said order of rejection of his plaint was not challenged by the petitioner as he has stated in paragraph 18 of the petition that the present petition has been filed by him after rejection of his plaint by assuming that he did not have any other remedy. The plaint of his aforesaid Suit clearly indicates that there is dispute between him and the private respondents in relation to the subject water course involving disputed questions of fact.

In *Umer Din Mehar & Others V/S Province of Sindh and others (PLD 2021 Sindh 298)*, it was held by this Court that the Irrigation Act provides a complete mechanism for equitable distribution of water amongst khatedars and remedies for redressal of their other water related grievances which exercise cannot be undertaken by this Court under Article 199 of the Constitution and it is for the Irrigation Department / official respondents to take prompt action for redressal of the grievances of khatedars. It was also held in the aforesaid order that the aggrieved person not only has to first avail the remedy provided to him by the law before the competent authority of the Irrigation Department, but also has to exhaust such remedy before approaching this Court. The record shows that the petitioner has not exhausted his remedy before

the competent authority of the Irrigation Department for redressal of his alleged grievance as his applications / complaints are still pending before the said authority. He also did not challenge the order passed by the trial Court in his Suit whereby his plaint was rejected. Moreover, the matter involves disputed questions of fact which cannot be looked into or decided by this Court in its constitutional jurisdiction.

In these circumstances, the petition is not maintainable, particularly in view of the above-cited case. Accordingly, the petition and listed application are dismissed with no order as to costs leaving the petitioner at liberty to pursue / avail his remedy, if any, before the competent authority in accordance with law.