

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No. D-269 of 2014

Before :

Mr. Justice Nadeem Akhtar

Mr. Justice Khadim Hussain Tunio

Petitioner : Allah Dino Khidri, through Mr. Muhammad Jabbar Shaikh advocate.

Respondent No.7 : Ghulam Mustafa through Mr. Wasiullah M.Y. Pandhyani advocate.

Respondents 8-17 : Mr. Ayaz Ali Rajper Assistant AG, Sindh along with Maaz Saleem, Assistant Executive Engineer, Mirpurkhas Sub-Division-II.

Date of hearing and decision : 24.01.2023

ORDER

Through this petition, the petitioner has prayed that the official respondents 12 to 17 be directed to supply lawful share of water to him in respect of his land ; restore the old water course 5-AR by removing illegal private arrangements and obstructions made therein by private respondents 1 to 7 in collusion with official respondents ; and, remove the illegal lift installed at Survey No.101.

On our query regarding the maintainability of the present petition, learned counsel for the petitioner states that several applications were filed by the petitioner before the competent authorities for redressal of his grievance, but the said authorities failed to take any action. He states that the petitioner had also filed F.C. Suit No.53/2009 against private respondent No.1 and official respondents for declaration and permanent and mandatory injunction which was allowed to be withdrawn with permission to file a fresh one.

The official respondents have submitted their comments wherein they have denied the allegations made by the petitioner, and have asserted that he is receiving his due share of water as per his entitlement. The private respondents have also submitted their response by denying the allegations made by the petitioner.

It is an admitted position that the applications / complaints filed by the petitioner have not yet been decided by the competent authority. Prima facie, it appears that the same could not be decided because of the above mentioned

Suit filed by the petitioner. It is also an admitted position that the said Suit filed by the petitioner was dismissed as withdrawn vide order dated 27.10.2009 passed by the trial Court whereby costs of Rs.5000.00 were also imposed upon him. The relief sought by him in his said Suit was the same as sought in the present petition. After dismissal of the Suit on 27.10.2009, the present petition was filed by the petitioner on 28.06.2014 i.e. after a period of about five years. Learned counsel for the petitioner submits that the present petition is maintainable as permission to file a fresh Suit was granted by the trial Court to the petitioner while allowing him to withdraw the Suit. We do not agree with the learned counsel as only a fresh Suit on the same cause of action could be instituted if such permission had been granted by the Court at the time of withdrawal of the Suit. Filing of a Suit under Section 9 CPC cannot be equated with filing of a constitutional petition under Article 199 of the Constitution as the scope of both the above provisions are completely different and the jurisdiction of a Civil Court under Section 9 CPC and that of this Court under Article 199 are altogether different.

In *Umer Din Mehar & others v. 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 the khatedars. It was also held in the cited case 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 the remedy provided to him under the law as his applications / complaints are admittedly pending before the competent authority of the Irrigation Department. In these circumstances, the petition is not maintainable, particularly in view of the above-cited case. However, instead of dismissing the petition, the same is disposed of with direction to the competent authority of the Irrigation Department / official respondents to decide the applications / complaints filed by the petitioner through a speaking order strictly in accordance with law within two (02) months after providing opportunity of hearing to all concerned. There shall be no order as to costs.