

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

R.A.No. 205 of 2000

For hearing of main case.

09.05.2023.

Mr. Ayaz Ali Rajper, Assistant A.G, Sindh for Applicants.
Mr. Abdul Ghafoor Hakro, Advocate for Respondents.

ORDER

MUHAMMAD FAISAL KAMAL ALAM, J.- This Revision is filed against the concurrent Judgments of learned Appellate and Trial Court. The learned Appellate Court has Dismissed the Appeal primarily on the ground of limitation, being time barred and affirmed the Judgment of learned Trial Court which has Exparte Decreed the Suit of present private Respondents because there was no contest offered on behalf of the present Applicants.

2. The main controversy as averred by Respondents, is about getting water supply from water course No.3R RD 94.9 viz. direct outlet from West Branch Jamshoro at RD 94.9 for the full command of Water Course No.3R, sanctioned / granted and approved in the name of Plaintiffs / Respondents, after completing all the legal and codal formalities, since 1994.

3. Learned A.A.G has stated that both the Judgments are not within the parameters of law as the Government was not heard, besides the fact that Cancellation Order by the Applicants of the subject water course was correctly passed, as the same was given to private Respondents on the basis of political favouratism. He has referred to the Correspondence of 30.09.1997 (available at Page 33 of the file). He has pointed out that number of water

courses were cancelled including that of present Respondents whose name is appearing at Serial No.6 in the said document.

4. Learned counsel for the Respondents has rebutted the arguments of learned A.A.G and states that number of Suits were filed against the highhandedness of Irrigation Department, which were decided against them, but only in his Suit the Appeal and present Revision is filed. To substantiate this, he has referred to the Correspondence of Applicants inter se, dated 29.01.1999 (available at Page-57 in R&P).

5. Arguments heard. Record perused.

6. To a specific question, learned A.A.G could not justify the fact that the purported Cancellation Order (*ibid*) was ever brought on record in the proceedings filed in the learned Trial Court and the Appellate Court. Grounds mentioned in the memo of Appeal (available in record) so also in the Revision Application have been perused. In the Appeal although it is stated that subject water course was illegally sanctioned and hence was cancelled in order to give equal distribution of water supply to all Khatedars / Land owners, but the above alleged Cancellation Letter has not been filed with the Appeal; whereas, perusal of the Plaint shows that it was mainly filed, seeking a restraining order against the Applicants from cutting off the water supply to their lands, which would ruin the Respondents.

7. The present land of Respondents comprises of 150-00 acres (as mentioned in the Plaint) which is getting water supply from the above subject water course. Section 91 of the Sindh Irrigation Act, 1879, relied upon by the learned A.A.G in support of the alleged cancellation decision has also been examined; but my considered view is contrary to what the learned A.A.G has stated. **The source of water supply can only be changed by the Irrigation Department after following a due process and with the object to**

implement an efficient distribution of water. The Applicants-Government is unable to justify their action. The Correspondence inter se (*ibid*), as referred to by the Respondents' counsel has also been perused in which it is stated that number of Suits have been decided against the Irrigation Department. Learned counsel for the Respondents has also referred to record (of R&Ps), to show that before getting water supply all formalities were completed.

8. In addition to the above, learned A.A.G on behalf of the Applicants, is unable to justify the finding of the Appellate Court, that their Appeal was time barred. Applicants and the Government Departments should realize that if any highhandedness is done in respect of supplying water from designated water courses, as per the share list, it can cause irreparable consequences, as the agricultural lands would become barren; producing a disastrous situation, *inter alia*, considering the fact that agriculture sector contributes significantly in the Country's economy.

9. Consequently no ground is made out to show material irregularity or illegality in the two decisions and hence no interference is required in this Revisional proceeding, which is dismissed. However, it is clarified that the Applicants being regulator, in order to prevent any illegality, can take an action against any one in accordance with the above statute and law, rules framed thereunder, but only through due process.

JUDGE

Tufail