

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH CIRCUIT COURT**  
**MIRPURKHAS**

Constitution Petition No.D-614 of 2024

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**DATE      ORDER WITH SIGNATURE OF JUDGE**

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*Before*

Adnan-ul-Karim Memon, J

Amjad Ali Bohio, J

Date of hearing & Order 12.08.2024

Mr. Aziz Ahmed Laghari, Advocate for petitioner

Mr. Ayaz Ali Rajpar, A.A.G Sindh,

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**ORDER**

The instant Constitution Petition, under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, has been filed by the petitioner, seeking a declaration to the effect that the petitioner is khatedar and is entitled to water share to irrigate and mature his crops and that the respondents have no jurisdiction/authority to stop water supply, situated at the tail of the canal.

2. Learned AAG has submitted that during the year 1993 on the request of Ali Muhammad an area measuring 57-26 acres comprising of survey No. 99, 110, 119, 121, 129, 130 of Deh Dehti. Taluka Jhudo was transferred from water course No. 9T Ex: Dehti Minor to water course No. 1DR Ex. Run Distry vide erstwhile Superintending Engineer Nara Canal Circle Mirpurkhas letter No: RC/D-55(a)/ 1956 dated: 27 06. 1993; during the year 2007, One Esan Khan Chandio applied for the release of water supply to his Nakabuli Land comprising of block No: 131/1,2 of Deh Bhitaro Taluka Diplo area measuring 08-00 acres on water course No: 1DR Ex. Run Distry and the request of Esan Khan Chandio approved/sanctioned vide Director Nara Canal Area Water Board office letter No RC/D-55(a)/NCAWB/2214 dated 03.07.2007; after sanctioning the transfer of area and releasing water supply for nakabuli land, the government share list of water course No 1DR Ex. Run Distry was sanctioned vide Executive Engineer Mithrao Division office letter No RC/D-55(a)/MD/346 dated: 01 02 2008 on the request of Esan Khan Chandio, but the landholders of water course No 1DR Ex. Run Distry

objected to the government share list and did not allow water to the land transferred from water course No. 9T Ex: Dehti Minor area measuring 57-26 acres as well as 08-00 acres Nakabuli land and filed FC Suit No 31/2008 Re-Sikandar Ali S/o Bahadur and others V/s Province of Sindh & others in the Court of Senior Civil Judge Mithi eventually the above FC Suit was decreed vide order dated 22.10 2010, being aggrieved with the decree and judgment petitioner Yaqoub Khan filed Civil Appeal No. 44/2010 in the Court of District Judge Mithi subsequently the appeal was dismissed; during the year 2023. Petitioner applied for sanction of Government share list of water course No 1DR Ex. Run Distry, ultimately the government share list was sanctioned vide Executive Engineer Mithrao Division office letter No RC/D-55(a)/MD/ 1431 dated 30 08 2023, including the 08-00 acres of nakabuli land but the landholders bitterly opposed the enforcement of government share list and filed contempt application No. NIL of 2023 in FC Suit No 31/2008 in the Court of Senior Civil Judge Mithi due to the reason the government share list had not been implemented at the site and kept in abeyance; petitioner has filed this Petition No. D-614/2024 on the plea that the water for the Nakabuli land area measuring 08-00 acres may be provided the land of the petitioner is originally settled under the command of water course No 1DR Ex Run Distry and the water has been sanctioned by the official respondents of Irrigation Department after observing legal procedure, hence the petitioner is legally entitled to get water to cultivate his land from water course No. 1DR Ex Run Distry.

3. In our view, Article 9 of the Constitution provides the right to life, if a person is deprived of the fundamental right, he can always approach this court by invoking Constitutional jurisdiction with a rider that such right is not hampered by any law. A right to irrigate Agricultural land is subject to irrigation law and the rules, this right however if infringed could be examined by this court. Further, we have noticed that Section 16 of the Sindh Irrigation Act requires that any person with the permission of a duly empowered Canal Officer may construct a watercourse on land after obtaining the consent of the owners of the land. Under section 17 of the Act, land may even be acquired to enable a person to construct the watercourse to irrigate his land and it may also cause to be constructed by the Canal Officer; but all expenses have to be borne by the person applying for construction of watercourse. Any person desirous of obtaining the benefit of such watercourse may also apply for joint ownership thereof and upon paying his share in construction can be

benefited. Section 21 of the Act, however, deals with the rights and obligations of owners of watercourses and apart from requiring them to maintain them, confers upon such owners a right to have a supply of water on such terms as prescribed in the relevant Rules.

4. A reading of the above provisions shows that though receiving water in terms of Section 21 is the right of petitioners, it is subject to water sharing policy as discussed in the preceding paragraphs. Such right, however, would not be translated to mean depriving other khatedars at the tail end of their due share in the water. The water sharing policy has to be made on equitable distribution of water for the benefit of all khatedars including those at the tail end of the water source.

5. Before parting with this judgment, we direct the competent authority i.e. Respondent-department that the issue of supply of water to the lands of the Petitioner shall be made as per his share after appropriate proceedings in case the petitioner approach them. The compliance report shall be filed by the official Respondents with the Additional Registrar of this Court within the stipulated period regarding the distribution of water as per the share of the locality zamidars.

6. In view of the above, this petition stands disposed of in terms of the statement, given by Assistant Executive Engineer, Irrigation Naukot.

**JUDGE**

**JUDGE**

“Ali Sher”