

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 Burdi, 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.

ORDER

MUHAMMAD SHAFI SIDDIQUI, J:- These two petitions involve a common question as to the shifting of land of respondent namely Ghous Muhammad s/o Abdul Qadir Sanjranito watercourse LS-2R Twin Jamrao Canal.

2. Brief facts are that originally the land of the respondent-Ghous Muhammad was being catered through watercourse No.3-AL, 4-L and 5-L Ex-Runo Minor (Rohri Canal), however, on an application filed by respondent-Ghous Muhammad for transfer of his land admeasuring 134-27 acres from watercourse No.3-AL, 4-L, 5-L or Ex-Runo Minor (Rohri Canal) to watercourse No.LS/2R Ex.Twin Jamrao Canal (Nara Canal Circle), on the ground that there was no irrigation water supply from Ex-Runo Minor, Executive Engineer Jamrao Division, Mirpurkhas, called a report from Assistant Executive Engineer Khadro Sub-Division in respect

thereof. There were originally 32 *Khatedars* settled on watercourse No.LS/2R Ex.Twin Jamrao Canal (Nara Canal Circle), which fact is reflected from statement (*Bayaan*) [available at page 133 as annexure 'A' to the petition]. The Assistant Executive Engineer of Mirpurkhas, submitted his report along with some questionnaire and objections of *Khatedars* settled on the LS/2R Jamrao Canal. Out of 32 *Khatedars*, it appears that 21 *Khatedars* had given their no objections while 11 *Khatedars* raised objection against such transfer of land to Jamrao Canal. Consequently, proceedings under Section 91 of the Irrigation Act, were initiated and ADC/Additional Collector-I Sanghar issued notices to both the parties.

3. Upon notice of the said proceedings, the objectors/*Khatedars* namely Muhammad Akram on behalf of Zubair Ahmed Khan, Piaro Khan, Ayoub Kori, Moula Bux, Ghulam Ali, Hot on behalf of Choto Solangi, Ghulam Mustafa, Ghulam Asghar, Fakir Muhammad Kori, Ali Akbar Kori and applicants Ghous Muhammad alongwith his brother namely Abdul Khalique appeared before the ADC/Additional Collector-I Sanghar, on 17.05.2012. The objections of the objectors/*Khatedars* were that the land of Ghous Muhammad is on the higher contour, whereas, the watercourse LS-2R Ex-Twin Jamrao Canal (Nara Canal Circle) passes through a depression (low lying area) and as such the crops of the objectors are likely to be damaged. These objections were considered and a site inspection/visit was carried on, in presence of the parties on 29.05.2012. The representative of Zubair Ahmed did not appear despite notice on relevant dates and inspection. The learned ADC/Additional Collector-I, Sanghar, after hearing the parties and upon site inspection disposed of the proceedings vide its order dated 28.06.2012, which order is self explanatory. The relevant portion of the said order, for the sake of reference, is reproduced as under:-

“Site visit on 29.05.2012 reveals that ex-Runo Minor i.e. existing source of water for proposed area found dried and request for shifting/transfer of the same to LS/2R Ex-Twin Jamrao Canal (Nara Canal Circle) is genuine, as there has been no water in ex-Runo Minor for last more than a decade. The present applicant’s brother namely Abdul Khalique is already irrigating his land through water course No.LS/2R Ex-Twin Jamrao Canal (Nara Canal Circle) and applicant’s land is situated adjacent to the land of his said brother. The objections raised by the objectors appear to be not more than personal ego, hence the same are ruled out. However, concerned irrigation authorities are directed to ensure that each and every share holder, including present applicant should receive his due share as per share list prepared and maintained by the irrigation authorities.”

[Emphasis supplied]

4. The fact also reveals that against the order of the learned Additional Collector-I Sanghar, the objectors filed Revision Application bearing No.23 of 2012 before the Additional Commissioner-I, Mirpurkhas, which was also dismissed on 04.09.2012 on the assurance and undertaking of Assistant Executive Engineer, Khadro Sub-Division. The relevant portion of the said order, for the sake of reference, is reproduced as under:-

“While arguing the case the learned advocate for appellants raised objections/apprehensions and demanded assurance on the part of Government. In response to this, respondent No.4 submitted an undertaking in writing which is reproduced below:-

“I, undersigned, do hereby undertake on behalf of Respondent No.3 & 4 that:-

1. *Order passed by this honourable court will be applicable when the revised modular statement will be prepared in which the additional water for new proposed land will be made available and also new share list will be prepared for one week (56 pahrs) schedule.*
2. *On 29.05.2012 when honourable ADC-I, Sanghar alongwith undersigned as technical respondent applicant and private respondents visited the above mentioned site the water was flowing in the adjacent land.*

*Sd/-
Assistant Executive Engr.
Khadro Sub-Division for
Respondent No.3 & 4.*

The advocate for the appellants showed his satisfaction over the above “Under Taking”. However, he further requested that appellants may be allowed Right of Appeal in case any grievance arises in future, which was accepted.

In terms of above observations/Under Taking made by Respondent No.4, the Revision Application is disposed off. The order dated 28.06.2012, passed by Additional Deputy Commissioner-I, Sanghar (Respondent No.2) is maintained.”

5. 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 and bogus.

6. Learned counsel for the respondent-Ghous Muhammad while supporting the orders passed by ADC/Additional Collector-I, Sanghar and Additional Commissioner-I, Mirpurkhas, passed in Revision Application No.23 of 2012 has contended that ADC/Additional Collector-I, Sanghar, after hearing the parties including petitioner No.1 Abdul Khalique in C.P.No.D-1275 of 2017 and inspecting the site, passed the order dated

29.05.2012 which order was subsequently maintained by the Additional Commissioner-I, Mirpurkhas, in Revision Application No.23 of 2012. It is also contended that in pursuance of the order of the commissioner, approval order of the sanction of Nali to the land of respondent-Ghous Muhammad was passed and the Revised Modular Statement (RMS) were prepared in which additional water for the land was made available for the respondent-Ghous Muhammad and as per share list respondent-Ghous Muhammad and other *khatedars* have been receiving their due share since 19.04.2017. He further contended that the allegations of damaging the crops of the petitioners due to alleged spill over of water are false. It is further contended that pursuance to the requirement of the petitioner, the Revised Module Statement (RMS) was prepared and the module of the water course was widened for putting additional water for the lands of respondent-Ghous Muhammad. Learned Counsel further contended that during pendency of the petition, the petitioners in (C.P.No.D-1275 of 2017) forcibly demolished the water course bearing No.LS-2R Ex-Twin Jamrao Canal and made the water course non-functional.

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

8. 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 found 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 land measuring 134-27 acres of Ghaus Muhammad.

9. The record also reveals that the legal heirs of Zubair Ahmed had 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, however, the plaint was rejected under Order VII Rule 11 vide order dated 13.4.2016.

10. Apart from the above settled issues, we have also asked the Executive Engineers of Jamrao Division and Nusrat Division to carry out the technical inspection of the site in question and submit their reports as to the contour levels of the land which is already being irrigated by Twin Jamrao Canal and the proposed land of Ghaus 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 Ghaus Muhammad. It pierce 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 inches 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 water should be utilized in the best possible manner. They have not filed any objection to this technical report.

11. 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 Ghaus Muhammad was shifted to Twin Jamrao Canal which was upheld by the Assistant Executive Engineer Khadro Sub Division in the Revision Application.

12. At the end we may observe that the respondent shall ensure smooth flow of water from Twin Jamrao Canal to irrigate lands 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 private respondents. Petitioners are liable to restore the sanctioned water course in its original position and any person who interferes in the duly sanctioned water course is liable to be punished under Section 61 of the Sindh Irrigation Act, 1879.

13. The petitioners in the connected petition i.e. C.P.NO.D-1393 of 2011, have 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 only as an issue of ego rather than of any substance.

14. The upshot of the above discussion, we are of the considered view that the present petitions are devoid of any merit and accordingly the same are dismissed alongwith listed applications with no order as to costs.

Judge

Judge

Shahid