

Date of
Hearing

ORDER WITH SIGNATURE OF JUDGE

Coram:

Mr. Justice Omar Sial,
Mr. Justice Abdul Mubeen Lakho,

1. For orders on office objection-A.
2. For orders on M. A. No.1430/2021.
3. For orders on maintainability of main case.

Barrister Mohsin Shahwani and Mr. Asif Ali Abdul Razak Soomro,
advocates for the petitioners.
Mr. Habibullah G. Ghouri, advocate for intervenor.
Mr. Abdul Hamid Bhurgri, Addl. Advocate General.

Date of hearing : 16.09.2021.

Date of Order : 05.10.2021.

ORDER

The petitioners are owners of agricultural land situated in Deh Zarbelo, Taluka Khanpur, District Shikarpur, which is settled for cultivation on Water-course No. 10-AL Ex-Zerkhel Distry. ("Watercourse 10-AL").

2. Watercourse 10-AL was dismantled, ostensibly un-lawfully, which led the affected farmers of the area to lodge a complaint with the Irrigation Department. As a consequence, somewhere in the year 2017, Watercourse 10-AL was repaired and restored by the Irrigation Department.

3. Soon after its restoration, Watercourse 10-AL, was once again dismantled by some influential people of the area, against which act two FIRs were registered by the Irrigation Department at the Sultan Kot Police Station. Being aggrieved by the continuous dismantling, the Petitioners filed a petition (C.P. No. 582 of 2017) in this Court against the officials of the Irrigation Department praying, *inter alia*, that Watercourse

C.P. No. 0-123 of 2017
10-AL be given due protection so that the Petitioners land could have uninterrupted water supply. In those proceedings, the Executive Engineer Irrigation informed the Court that the persons who had been nominated as accused(s) in the two FIR(s) lodged had amalgamated the water-course with their land and were using it for growing their paddy crop.

4. In view of the comments filed by the Executive Engineer, the police was directed by this Court to provide the requisite legal aid to the Irrigation Department for the restoration of Watercourse 10-AL. Subsequently, on 2.8.2017 this Court dismissed C.P. No. 582 of 2017 on the ground that the parties had filed a similar petition earlier bearing No. C.P. 462 of 2017, which had been dismissed as not being maintainable on 20.06.2017.

5. The Petitioners approached the Hon'ble Supreme Court against the Order dated 2.8.2017 (Civil Petition No.535-K of 2017 and C.M.A. No.943-K of 2017). On 28.03.2019 the Hon'ble Supreme Court disposed of Civil Petition along with C.M.A. No. 943-K of 2017 by observing as follows:

"The representative of the Department states that such watercourse was restored, however, it will be subject to the final outcome of the decision of the learned Senior Civil Judge. It is expected that the matter will be decided expeditiously, and the parties will not seek undue adjournments in the matter."

6. In this petition once again the Petitioners have prayed that Watercourse 10-AL be restored and they may be provided with uninterrupted supply of water for their land as well as provision of security and protection to the watercourse in future. A query from the learned counsel for the Petitioners was made as to how this petition was maintainable in light of the fact that a petition seeking a similar remedy had been dismissed earlier as being non-maintainable and that the dismissal order was challenged before the Hon'ble Supreme Court which had disposed of the Petition in the terms referenced above in the presence of the parties. Learned counsel submitted that what he was primarily seeking was an implementation of the Order of the Hon'ble Supreme

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C.F. No. 111 of 2019
Court dated 28.03.2019. He further submitted that the Irrigation Department had misrepresented to the Hon'ble Supreme Court that Watercourse 10-AI had been restored. In support of his argument, he has relied upon the judgment reported as **Khushi Muhammad v. Inspector General of Police Punjab Lahore & others (1999 SCMR 2868)**, which had held that a High Court may be approached for the enforcement of any direction, order or decree passed by the apex Court. He has also relied on **Umar Gul v. Government of Sindh & others (2007 YLR 3191)** as well as a judgment reported at **PLD 1978 Peshawar 128**. In both these cases it was held that the High Court is duty bound to execute the orders of the Supreme Court. Similarly, he has relied on a judgment reported at **PLD 2008 Karachi 499** where it was observed that a petition seeking implementation of the orders of the Hon'ble Supreme Court was maintainable. He has also relied on a judgment of the Hon'ble Supreme Court reported as **Khalid Rashid v. Kamran Lashari (2010 SCMR 594)** where it was held that if an undertaking is given to a court by a party or on behalf of his counsel, it becomes bound to fulfill the same on the ground that the undertaking has exactly the same force as an order made or an injunction issued by the Court.

7. There is absolutely no dispute regarding the point that once the Hon'ble Supreme Court has passed a direction, order or decree, it is mandatory for everybody including the High Court to comply with the same. The situation in the present case however is different. The order of the Hon'ble Supreme Court referenced above does not make any direction, order or decree apart from the fact that the civil court should decide the case expeditiously. Further, with all respect and humility at our disposal, the Hon'ble Supreme Court in the case of **Khalid Rashid (supra)** has held that an *undertaking* given by a party would have the same force as an Order made by a Court. It is clear from the Order passed by the Hon'ble Supreme Court on 28-3-2019 that the Irrigation Department did not give an undertaking that they will restore the watercourse and, at best, it was a representation which representation according to the learned counsel for the Petitioner was false. It is not upto us to interpret the order dated 28.03.2019 passed by the Hon'ble Supreme

Court and if the petitioners had a grievance that a misrepresentation had been made to the Hon'ble Supreme Court; it would have been appropriate that the Petitioners should have brought the same to the attention of the Hon'ble Supreme Court when the matter was being heard or they would have approached the Hon'ble Supreme Court with such a grievance subsequently. Indeed, the legal notice which was sent to the Secretary, Irrigation Department by the Petitioners' counsel on 22.07.2020 stated that the Hon'ble Supreme Court of Pakistan would be approached to initiate contempt proceedings.

8. As regards the counsel's assertion that what he is seeking is an implementation of the order of the Hon'ble Supreme Court, we direct the learned 1st Senior Civil Judge, Shikarpur seized of Suit being F.C. Suit No. 135/2017 to comply fully with the directions of the Hon'ble Supreme Court given in its order dated 28.03.2019. More than 2 and a half years have passed since the Hon'ble Supreme Court made that order for expeditious disposal. Keeping in view that substantial time has passed we deem it appropriate to direct the learned Senior Civil Judge to decide the said Suit within four months and report compliance through the learned Additional Registrar of this Court.

9. The petition stands disposed of in the above terms.


JUDGE


JUDGE