

**ORDER SHEET
THE HIGH COURT OF SINDH AT KARACHI**

CP No.D-6550 of 2020

Date	Order with Signature of Judge(s)
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18.01.2021

Mr. Muhammad Daud Narejo, advocate for the petitioners No.2 & 5.
Mr. Salman Talibuddin, Advocate General Sindh.
Mr. Shabbir Shah, Additional Advocate General Sindh.
Mr. Farooq H. Naek, advocate.
Mr. Altaf Hussain, advocate for the defendant/SIDA.
Mr. Ishfaqe Ahmed, advocate for the intervener in CMA No.6550 of 2020.
Barrister Babar Hussain Shah, advocate for intervener.
Mr. Irfan Ahmed Qureshi, advocate and Javed Ahmed.
Mr. Abdul Rehman Bhutto, advocate in CMA No.5715/2020 and in CMA No.5712/2020.
Syed Ali Anwer Shah, advocate for the intervener.
Mr. Ali Nawaz Ghanghro and Mr. Mumtaz Ali Jessar, advocate in CMA No.28266/2020.
Mr. Amanullah Khan, holding brief for Mr. Mukesh Kumar G. Karara, advocate.
Blosch Ahmed Junejo, advocate for intervener in CMA No.7956/2019.
Mr. Rizwan Memon, advocate for intervener in CMA No.6229/2020.
Mr. Irfan Ahmed Qureshi, advocate in CMA No.580/2021.

We are seized of this petition, instituted in the year 2015, seeking removal of encroachment from lands of the Irrigation department and matters ancillary thereto. In this context it is considered appropriate to record that the august Supreme Court has also taken notice in such regard and its recent directions¹ are reproduced herein below:

“The land of Irrigation Department has been encroached upon and all such lands are to be recovered from the encroachers and used for the purpose that they are meant for, under law and in this connection Senior Member, BOR shall communicate these directions to all Commissioners in the Province of Sindh, Secretaries Irrigation and Forest & Wildlife Department to seek implementation of the court orders.”

In pursuance of the orders herein dated 23.12.2020, the learned Advocate General has placed on record an undertaking (“Undertaking”), duly executed by the worthy Minister of Irrigation, Chief Secretary and the Secretary Irrigation, delineating an envisaged roadmap for removal of the encroachments from the Irrigation lands. While the three phase encroachment drive is articulated to conclude by 30.06.2021; the timeline appended at the end of the Undertaking proposes to extend the exercise till 31.10.2021. In this context, we deem appropriate to advert to the orders passed herein on 14.01.2020, wherein the Government of Sindh’s undertaking for removal of the encroachments within a period of one year was entertained. We are constrained to observe that the said period has lapsed and no cogent justification has been placed before us to further extend the timeline for an additional period of ten months.

¹ Directions dated 3.12.2020 in CrI.M.A 7 of 2015 in CrI.O.P 15-K of 2013 in Civil Petition 13-K of 2013 (“SC Directions”), as reported vide the Statement submitted by the learned Advocate General Sindh dated 18.01.2021 as an inclusion in Agenda Item 8.2 in the Minutes of the Cabinet Meeting held on 06.01.2021.

The Statement envisages a three phase drive for removal of the encroachments, particularized as follows:

“Phase 1 – Removal of encroachments along Irrigation Main Canals, Branch Canals, Distributaries, Minors, Drains and Bunds in order to clear hindrances and activation of the system of Irrigation Department.

Phase 2 – Removal of commercial nature encroachment along Irrigation Channels, Drains and Bunds.

Phase 3 – Remaining Residential Houses along Channel Embankments and in Residential Colonies of the Department.”

While we have no cavil to the phased execution of the anti-encroachment drive, we respectfully convey our inability to comprehend the rationale to delay the same by another ten months. The inter-departmental assessment mechanism, proposed vide the Statement, is an internal matter of the Government and in such regard we eschew any observation at this juncture. Since this petition was filed seeking removal of encroachment from lands of the Irrigation department, and pertinent directions have also been illumined by the honorable Supreme Court in such regard, we consider it appropriate to confine our ambit to the issue before us, which is quite simply the removal of the encroachments. In this regard, it is our considered view that the anti-encroachment drive, albeit phase wise, ought to be concluded by 30.06.2021, per our understanding of the articulation before us during the course of the hearing today.

In view of the forgoing, it is hereby ordered that the entire exercise for removal of the encroachments from the lands of the Irrigation Department be concluded by 30.06.2021; with Phase 1, as particularized supra, to be concluded by 28.02.2021, Phase 2, as particularized supra, to be concluded by 30.04.2021 and Phase 3, as particularized supra, to be concluded by 30.06.2021. The executants of the Statement, through the office of the learned Advocate General, shall file a progress report in such regard on the next date of hearing.

Prior to parting with this order, it is considered appropriate to address the numerous applications for impleadment, per Order I Rule 10 CPC, filed and being filed in the present petition to agitate individual grievances. As noted supra, the ambit of this bench is confined to the issue demarcated above, to be considered in the light of the SC Directions. These applications require this Court to enter into a fact finding exercise, requiring appreciation of evidence and adjudication of conflicting claims, notwithstanding settled law that settlement of factual² issues is discouraged in the exercise of Constitutional jurisdiction. In such regard, we are constrained to observe that the applicants may prefer their respective claims before the fora of competent jurisdiction, which shall decide the same independently upon merit. With the said observations all such pending / listed applications are hereby disposed of.

Adjourned to 01.02.2021; to be taken up at 11 am.

JUDGE

JUDGE

JUDGE

Khuhro/PA

² 2015 PLC 45 & 2015 CLD 257.