

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Before :
Mr. Justice Nadeem Akhtar
Mr. Justice Adnan-ul-Karim Memon

C.P. No.D-721 of 2010
(Umer Din Mehar V/S Province of Sindh and others)

C.P. No.D-1260 of 2012
(Attique Ahmed & others V/S Province of Sindh and others)

C.P. No.D-1368 of 2012
(Rasool Bux & others V/S Province of Sindh and others)

C.P. No.D-1508 of 2015
(Abdul Nasir Memon & another V/S Province of Sindh and others)

C.P. No.D-1826 of 2015
(Wasayo Samijo & others V/S Province of Sindh and others)

C.P. No.D-2859 of 2015
(Masood Aslam Jat V/S Province of Sindh and others)

C.P. No.D-2981 of 2015
(Muhammad Azeem Rind & another V/S Province of Sindh and others)

C.P. No.D-950 of 2016
(Rasheed Ahmed V/S Director Nara Canal Irrigation Department and others)

C.P. No.D-2581 of 2016
(Muhammad Yousuf V/S Province of Sindh and others)

C.P. No.D-3387 of 2016
(Jan Muhammad V/S Province of Sindh and others)

C.P. No.D-3498 of 2016
(Muhammad Hashim V/S Province of Sindh and others)

C.P. No.D-3551 of 2016
(Dr. Nabi Bux & others V/S Province of Sindh and others)

C.P. No.D-3600 of 2016
(Atique Ahmed & others V/S Province of Sindh and others)

C.P. No.D-990 of 2017
(Faqir Muhammad & others V/S Province of Sindh and others)

C.P. No.D-2060 of 2017
(Ghulam Murtaza & others V/S Province of Sindh and others)

C.P. No.D-2075 of 2017
(Mureed Hussain & others V/S Province of Sindh and others)

C.P. No.D-2125 of 2017
(Sher Muhammad V/S Province of Sindh and others)

C.P. No.D-2177 of 2017
(Intezar Ali & others V/S Province of Sindh and others)

C.P. No.D-2304 of 2017

(Mushtaque Ahmed & others V/S Province of Sindh and others)

C.P. No.D-2399 of 2017

(Mst. Nusrat Phulphoto V/S Province of Sindh and others)

C.P. No.D-2644 of 2017

(Abdul Ghafoor V/S Province of Sindh and others)

C.P. No.D-2747 of 2017

(Jameela Begum V/S Province of Sindh and others)

C.P. No.D-3063 of 2017

(Muhammad Jam Memon V/S Abdul Shakoorand others)

C.P. No.D-3280 of 2017

(Ali Asghar& others V/S Province of Sindh and others)

C.P. No.D-3453 of 2017

(Muhammad Aachar& others V/S Province of Sindh and others)

C.P. No.D-3535 of 2017

(Muhammad Ibrahim & others V/S Province of Sindh and others)

C.P. No.D-3794 of 2017

(Gul Muhammad & others V/S Chief Engineer Irrigation and others).

C.P. No.D-349 of 2017

(Adeel Ahmed Khan V/S Province of Sindh and others)

C.P. No.D-2339 of 2017

(Sanaullah V/S Province of Sindh and others)

C.P. No.D-674 of 2017

(Muhammad Latif & others V/S Province of Sindh and others)

C.P. No.D-897 of 2017

(Haji Anwar Ali & another V/S Province of Sindh and others)

C.P. No.D-942 of 2017

(Sikandar Hayat & another V/S Province of Sindh and others)

C.P. No.D-961 of 2017

(ShabbirHasan&anotherV/S Province of Sindh and others)

C.P. No.D-969 of 2017

(Muhammad Qasim V/S Province of Sindh and others)

C.P. No.D-1027 of 2017

(Mir Muhammad & others V/S Province of Sindh and others)

C.P. No.D-1121 of 2017

(Liaquat Ali V/S Province of Sindh and others)

C.P. No.D-1134 of 2017

(Sindh Growers Alliance V/S Province of Sindh and others)

C.P. No.D-1397 of 2017

(Abrar Ahmed & another V/S Province of Sindh and others)

C.P. No.D-1557 of 2017

(Tail Abadgar Association V/S Province of Sindh and others)

C.P. No.D-1596 of 2017

(Umar Khan V/S Province of Sindh and others)

C.P. No.D-1943 of 2017

(Ali Nawaz V/S Province of Sindh and others)

C.P. No.D-1946 of 2017

(Liaqat Ali & others V/S Province of Sindh and others)

C.P. No.D-2310 of 2017

(Qadir Bux & others V/S Province of Sindh and others)

C.P. No.D-2374 of 2017

(Syed Ali & another V/S Province of Sindh and others)

C.P. No.D-2551 of 2017

(Atta Muhammad V/S Province of Sindh and others)

C.P. No.D-2558 of 2017

(Arbab Ali & others V/S Province of Sindh and others)

C.P. No.D-2708 of 2017

(Mumtaz Ali V/S Province of Sindh and others)

C.P. No.D-3009 of 2017

(Muhammad Ayoub Khan & others V/S Province of Sindh and others)

C.P. No.D-3057 of 2017

(Mohammad Saleh & others V/S Province of Sindh and others)

C.P. No.D-3269 of 2017

(Allah Jurrio V/S Province of Sindh and others)

C.P. No.D-3556 of 2017

(Mst: Shareefan V/S Province of Sindh and others)

C.P. No.D-3578 of 2017

(Khuda Bux V/S Province of Sindh and others)

C.P. No.D-3616 of 2017

(Mohammad Panhwer & others V/S Province of Sindh and others)

C.P. No.D-3707 of 2017

(Ali Nawaz & others V/S Province of Sindh and others)

C.P. No.D-3768 of 2017

(Mohammad Yakoob V/S Province of Sindh and others)

C.P. No.D-298 of 2018

(Shoukat Ali V/S Province of Sindh and others)

C.P. No.D-1112 of 2018

(Syed Ghulam Nabi Shah & others V/S Province of Sindh & others)

C.P. No.D-1708 of 2018

(Zulfiqar Ali & another V/S Province of Sindh & others)

C.P. No.D-2016 of 2018

(Syed Pir Ali Dino Shah Jeelani V/S Province of Sindh and others)

C.P. No.D-2075 of 2018

(Aijaz Hussain Memon V/S Province of Sindh and others)

C.P. No.D-2216 of 2018

(Noumanullah & others V/S Province of Sindh & others)

C.P. No.D-2232 of 2018

(Saifullah & others V/S Province of Sindh and others)

C.P. No.D-2276 of 2018

(Sadique Ali Sohani & others V/S Province of Sindh and others)

C.P. No.D-2339 of 2018

(Sher Muhammad V/S Province of Sindh and others)

C.P. No.D-2340 of 2018

(Syed Noor Hussain Shah V/S Province of Sindh and Others)

C.P. No.D-2552 of 2018

(Zulqarnain V/S Province of Sindh and others)

C.P. No.D-2619 of 2018

(Iftikhar Ahmed V/S Province of Sindh &Others)

C.P. No.D-2770 of 2018

(Zulqarnain V/S Province of Sindh and others)

C.P. No.D-2814 of 2018

(Muhammad Talib V/S Province of Sindh and others)

C.P. No.D-2868 of 2018

(Abdul MutlabV/S Province of Sindh and others)

C.P. No.D-2961 of 2018

(Shahbaz Ali V/S Province of Sindh and others)

C.P. No.D-2979 of 2018

(Dost Muhammad & another V/S Province of Sindh and others)

C.P. No.D-2993 of 2018

(Liaquat Ali & another V/S Province of Sindh Andothers)

C.P. No.D-2999 of 2018

(Muhammad Ramzan Solangi & others V/S Raza Muhammad and others)

C.P. No.D-3100 of 2018

(Mehboob Ali V/S Province of Sindh and others)

C.P. No.D-3127 of 2018

(Faiz Muhammad V/S Province of Sindh and others)

C.P. No.D-3147 of 2018

(Javed Ali & others V/S Province of Sindh and others)

C.P. No.D-3150 of 2018

(Sajad Ali V/S Province of Sindh and others)

C.P. No.D-3175 of 2018

(Shahan Lakho & others V/S Province of Sindh & others)

C.P. No.D-3205 of 2018

(Shafqat Hussain & others V/S Province of Sindh and others)

C.P. No.D-2317 of 2018

(Punhal V/S Province Of Sindh & Others)

C.P. No.D-3241 of 2018

(Muhammad Ayoob Lanjwani V/S Director Left Bank Canal area

C.P. No.D-159 of 2018

(Haji Mohammad Saleh V/S Province of Sindh and others)

C.P. No.D-449 of 2018

(Abdul Jabbar & another V/S Province of Sindh and others)

C.P. No.D-795 of 2018

(Imamuddin V/S Province of Sindh & Others)

C.P. No.D-950 of 2018

(Ghulam Rasool & another V/S Province of Sindh and others)

C.P. No.D-1122 of 2018

(Manzoor Hussain & another V/S Province of Sindh and others)

C.P. No.D-1173 of 2018

(Abdul Jabbar & others V/S Province of Sindh and others)

C.P. No.D-1376 of 2018

(Soofi Ali Bux V/S Province of Sindh and Others)

C.P. No.D-1767 of 2018

(Nabi Dost V/S Province of Sindh and others)

C.P. No.D-1768 of 2018

(Bilawal & Others V/S Province of Sindh & Others)

C.P. No.D-2009 of 2018

(Mohammad Essa Khan & others V/S Province of Sindh and others)

C.P. No.D-2031 of 2018

(Mohammad Achar & another V/S Province of Sindh and others)

C.P. No.D-2068 of 2018

(Bishar Ahmed V/S Province of Sindh and others)

C.P. No.D-2078 of 2018

(Hamid Ali & another V/S Province of Sindh and others)

C.P. No.D-2085 of 2018

(Aijaz Ali V/S Province of Sindh and others)

C.P. No.D-2183 of 2018

(Mohammad Faisal V/S Province of Sindh and others)

C.P. No.D-2186 of 2018

(Faqeer Muhammad V/S Province of Sindh and others)

C.P. No.D-2360 of 2018

(Muharram Ali Khaskheli & another V/S Province of Sindh and others)

C.P. No.D-2362 of 2018

(Qurban Ali Khoso & others V/S Province of Sindh and others)

C.P. No.D-2542 of 2018

(RaheemBux & othersV/S Province of Sindh and others)

C.P. No.D-2566 of 2018

(Mohammad Waseem Sadiq V/S Province of Sindh and others)

C.P. No.D-2583 of 2018

(Muhammad Yousuf V/S Province of Sindh &others)

C.P. No.D-2708 of 2018

(Mujtaba Ahmed V/S Province of Sindh and others)

C.P. No.D-2739 of 2018

(Shabbir Ahmed Khan V/S Province of Sindh and others)

C.P. No.D-2765 of 2018

(Darya Khan V/S Province of Sindh and others)

C.P. No.D-2780 of 2018

(Ali Anwar V/S Province of Sindh &others)

C.P. No.D-2863 of 2018

(Muhammad Qasim & others V/S Province of Sindh and others)

C.P. No.D-2922 of 2018

(GhulamRasool & Others V/S Province of Sindh and others)

C.P. No.D-2962 of 2018

(Sadique Ali & another V/S Province of Sindh and others)

C.P. No.D-3005 of 2018

(Hamal V/S Province of Sindh and others)

C.P. No.D-3097 of 2018

(AzamKhan V/S Province of Sindh and others)

C.P. No.D-3109 of 2018

(Javed Ahmed V/S Province of Sindh and others)

C.P. No.D-3177 of 2018

(WaliMuhammad V/S Province of Sindh and others)

C.P. No.D-3247 of 2018

(Ali Bux V/S Province of Sindh and others)

C.P. No.D-3337 of 2018

(HyderBux V/S Province of Sindh and others)

C.P. No.D-87 of 2019

(Muhammad Qasim V/S Province of Sindh and others)

C.P. No.D-126 of 2019

(Imran Ali & another V/S Province of Sindh and others)

C.P. No.D-643 of 2019
(Muazaffar Hussain V/S Province of Sindh & others)

C.P. No.D-1133 of 2019
(Muhammad Urs V/S Muhammad Khan and others)

C.P. No.D-1134 of 2019
(Ghulam Muhammad V/S Province of Sindh and others)

C.P. No.D-1410 of 2019
(Sain Dino & others V/S Province of Sindh and others)

C.P. No.D-1497 of 2019
(RasoolBux V/S Province of Sindh and others)

C.P. No.D-1537 of 2019
(Abdul Ghani V/S Province of Sindh and others)

C.P. No.D-1561 of 2019
(Humayoon Mubarak V/S Province of Sindh and others)

C.P. No.D-1589 of 2019
(Muhammad Ishaque & another V/S Province of Sindh and others)

C.P. No.D-1619 of 2019
(Abdul Hakeem V/S Province of Sindh and others)

C.P. No.D-1623 of 2019
(Mir Faisal Ahmed Talpur & others V/S Chairman Sindh Irrigation and others)

C.P. No.D-1635 of 2019
(Mst. Shabana & others V/S Province of Sindh & others)

C.P. No.D-1680 of 2019
(Nisar Ahmed & others V/S Province of Sindh and others)

C.P. No.D-1749 of 2019
(HuzoorBux & others V/S Province of Sindh and others)

C.P. No.D-1771 of 2019
(Zulfiqar Ali V/S Province of Sindh and others)

C.P. No.D-1893 of 2019
(Abdul Basit & others V/S Province of Sindh & others)

C.P. No.D-1814 of 2019
(Rana Sikandar Ali V/S Province of Sindh and others)

C.P. No.D-1906 of 2019
(Ali Akbar & others V/S Province of Sindh and others)

C.P. No.D-1925 of 2019
(Abdul Aleem & others V/S Province of Sindh and others)

C.P. No.D-1965 of 2019
(Fazal-ur-Rehman V/S Muhammad Ibrahim & others)

C.P. No.D-2040 of 2019
(Muhammad Ali & another V/S Province of Sindh & ors.)

C.P. No.D-2058 of 2019
(Saddam Hussain V/S Province of Sindh and others)

C.P. No.D-2079 of 2019
(Sikandar Hayat V/S Province of Sindh and others)

C.P. No.D-2199 of 2019
(Aijaz Ali V/S Province of Sindh &Ors.

C.P. No.D-2217 of 2019
(Mir Hassan V/S Province of Sindh & others)

C.P. No.D-2299 of 2019
(Mst. Hawa Jarwar V/S Province of Sindh and others)

C.P. No.D-2339 of 2019
(Baqa Muhammad & others V/S Province of Sindh & others)

C.P. No.D-2551 of 2019
(Abdul Hakeem & others V/S Province of Sindh & ors.

C.P. No.D-2598 of 2019
(Muhammad Haroon & another V/S Province of Sindh and others).

C.P. No.D-135 of 2019
(Muhammad Rafiq & others V/S Province of Sindh & others)

C.P. No.D-250 of 2019
(SawanKhan V/S Province of Sindh and others)

C.P. No.D-505 of 2019
(Habibullah & others V/S Province of Sindh and others)

C.P. No.D-528 of 2019
(Aijaz Ali & others V/S Province of Sindh and others)

C.P. No.D-572 of 2019
(Syed Pir Naveed Shah V/S Province of Sindh & others)

C.P. No.D-681 of 2019
Sher Muhammad & others V/S Province of Sindh and others)

C.P. No.D-1141 of 2019
(Muhammad Umar V/S Province of Sindh and others)

C.P. No.D-1404 of 2019
(Suleman V/S Province of Sindh and others)

C.P. No.D-1500 of 2019
(Muhammad Bux V/S Muhammad Ibrahim & others)

C.P. No.D-1540 of 2019
(Mir Noor Ahmed & others V/S Province of Sindh & ors.

C.P. No.D-1627 of 2019
(Meenhal & others V/S Province of Sindh and others)

C.P. No.D-1638 of 2019
(Latif & others V/S Province of Sindh and others)

C.P. No.D-1774 of 2019

(Syed Mir Mohammad Shah V/S Province of Sindh & Ors.

C.P. No.D-1822 of 2019

(Peer Bux Khan & others V/S Province of Sindh & others)

C.P. No.D-1873 of 2019

(Mehnoon Khan V/S Province of Sindh and others)

C.P. No.D-1923 of 2019

(Muhammad Jam & others V/S Abbas & others

C.P. No.D-2071 of 2019

(Mithal Khan & another V/S Province of Sindh & others.

C.P. No.D-2171 of 2019

(Shaman Hussain V/S Province of Sindh and others)

C.P. No.D-2193 of 2019

(Islam Nabi V/S Province of Sindh and others)

Dates of hearing & decision : 03.12.2019 & 10.12.2019

M/S. Muhammad Arshad S. Pathan, Ashfaq Nabi Qazi, Sajid Gorar, Bilawal Bajee, Nouman Sahito, Syed Waseem Shah, Abdul Rahim Gaju, Imdad Ali Memon, Gulab Khan Qaim Khani, Mir Shakir Ali Talpur, Dileep Kumar, Noor Ahmed Memon, Faqir Rehmatullah Hisbani, Muhammad Yousuf Leghari, Pervaiz Tagar, Bhagwan Das Bheel, Junaid Ahmed Soomro, Nisar Ahmed Durrani, Ghulam Nabi Meo, Ayatullah Khuwaja, Ashok Kumar, Qadir Bux Ghirano, Kashif Hussain Agha, Shabir Hussain Memon, Kashif Ali Lakho and Mrs. Razia Ali Ahmed Zaman Patoli, Ishrat Ali Lohar, Bilawal Bajee, Sher Muhammad Leghari, Muhammad Hayat Khan, Manzoor Ahmed Panhwar, Irfan Ahmed Qureshi, Wali Muhammad Khoso, Muhammad Ali Rind, Abdul Khaliq Leghari, Abdul Ghafoor, Muhammad Idrees Naqshbandi, Jagdesh R. Mullani, Muhammad Hashim Leghari, Kashif Ali Lakho, Rao Faisal, Om Parkash, Shakir Nawaz Shar, Nazeer Ahmed Bhatti, Muhammad Aslam Sipio, Aqeel Ahmed Siddiqui, Haji Khan Hingorjo, Badal Gahoti, Atif Imran Khuwaja, Faisal Nadeem Abro and Ali Abbas, Advocates for petitioners.

Mr. Muhammad Hayat Mughal, Advocate for respondent No.3 in C.P No.D-2060 of 2017.

Mr. Ayatullah Khuwaja, Advocate for respondent No.9 and 10 in C.P No.D-2060 of 2017.

Mr. Allah Bachayo Soomro, Addl. Advocate General, Sindh along with Abbas Ali Panhwar AXEN Nabisa Sub-Division @ Kunri, Muhammad Aslam Kaim Khani Assistant Engineer Sub-Division Samaro, Nawaz Hussain XEN Ghunri Canal Division, Akhtar Hussain Khas Kheli AXEN Irrigation Sub-Division Digri, AXEN Bakhoro Sub-Division, Sain Dino Memon Assistant Executive Engineer Hala Dub-Division Hala, Qadir Bux Mangrio Assistant Canal, Abdul Hameed Rajpar AXEN Nawabshah Sub-Division, Farhan Hussain Wagan o/b of AXEN Wassat, Imtiaz Abro Assistant Engineer Matli Sub-Division Phuleli Canal Division, Zulfiqar Ali Khoso, Assistant Engineer Shahpur Chakar, Shahabuddin Bhatti Assistant Executive Engineer Sub-Division Daur, Motio Khan AXEN Qazi Ahmed, Badardin Assistant Engineer Khadar, XEN

Shahbaz AXEN Division Sehwan Bhan Sub-Division, Zulfiqar Ali Lashari Assistant Engineer Khairpur, Junaid Hidayat Jokhio AXEN Chang Sub-Division, Shamshad Ahmed SDO Maru Sub-Division Hala, Zahid Hussain Memon Assistant Executive Engineer Sub-Division Thar Division Mirpurkhas, Azharuddin Bhatti AXEN Naukot Division Mirpurkhas, SDO Sirajuddin Sub-Division Hala, Abdul Rashid Khoso Assistant Engineer Sub-Division Tando Adam-II Hala Division, Muhammad Luqman AXEN Tando Muhammad Khan Sub-Division Rohri Canal, Kapil Dev Assistant Engineer Sindhri Division and Nasrullah Mukhtiarkar Hala, ASI Muhammad Hasil Rajpar PS Abadgah, ASI Abdul Hamid PS Magli, ASI Abdullah PS Shahpur Chakar, SIP Liaquat Ali SHO PS Talar District Badin, Ins. Afzal Magsi o/b of SSP Tando Allahyar, SIP Nooruddin Mallah SHO PS Sultanabad, SIP Zaheer Solangi o/b of SHO PS Saeedabad, Ins. Ghulam Mustafa o/b of SSP Umerkot and ASI Muhammad Moosa PS Tando Ghulam Ali District Badin, Muhammad Nadeem Siddiqui Deputy Director o/b of Director General Farm Water, Zahid Hussain Memon Asst. Executive Engineer Sub-Division Thar Division Mirpurkhas, Zulfiqar Ali Lashari Asst. Executive Engineer Khipro, AXEN Kunri Sub-Division Nalisan, Ahmed Khan Memon Addl. Director, Jahanzeb Saeed AXEN Tando Allahyar, Jawaid Hidayat Jokhio AXEN Chang Sub-Division, Muhammad Saleh Junejo AXEN Gaja Sub-Division Tando Muhammad Khan, Muhammad Bachal Memon, Canal Asst. Gaja Sub-Division, Tando Muhammad Khan, Executive Engineer Canal Sub-Division Badin, Azharuddin Bhutto AXEN Naukot Sub-Division, Syed Mutahir Ali Shah AXEN Irrigation Mirpurkhas, AXEN Bakhoro Sub-Division, Asst. Executive Engineer Kot Ghulam Muhammad, Asst. Executive Engineer Hala Sub-Division, Sirajuddin Memon SDO Irrigation Shahdadpur Hala Sub-Division, Shamshad Channa SDO Irrigation, Zulfiqar Ali Khoso AXEN Nawab Shah-I Sub-Division, Moula Bux Leghari AXEN Irrigation Sub-Division Thar, Abdul Hameed Rajpar AXEN Nawab Shah-I, Noushad Khan Junior Clerk Sub-Division Golarchi, Abdul Rashid Khoso Asst. Engineer Tando Adam-II, Fayaz Ali Qambrani S.D.O Sub-Division Shahdadpur and Muhammad Aslam Rajput AXEN Bukerani Sub-Division, ASI Rustam Ali PS Airport, Ins. Gul Sher Otho PS Chambar, ASI Ghulam Shabbir PS S.H.D, ASI Dhanji PS Jhudo, Mirpurkhas, ASI Muhammad Bux PS Tando Ghulam Ali PS Badin, Ins. Salehram Meghwar SHO Bodar Form o/b of SSP Umerkot, ASI Javed Hussain Soomro PS Sanghar, SIP Muhammad Iqbal o/b of SHO PS Jhol, SIP Muhammad Tufail Jat PS Khipro, Syed Irfan Ali Shah DSP Chambar District. Tando Allahyar, Ins. Ghulam Mustafa Shah SHO PS Pithoro, Muhammad Azeem Leghari PS Jhudo, SIP Iftikhar Ali Shah PS Jam Nawaz District Sanghar.

ORDER

ADNAN-UL-KARIM MEMON, J. – Since the facts are common, hence all the above numbered petitions are being disposed of by this common order with the consent of learned counsel for the parties and learned AAG.

2. As per pleadings of the parties, petitioners own agricultural lands situated in Hyderabad, Shaheed Benazirabad and Mirpurkhas Divisions, which are settled on different water courses, seeking declaration to the effect that they are khatedars and are entitled to water share to irrigate and mature their crops in accordance with the share list.

3. All the learned Counsel for the petitioners argued that threats by therespondents to stop water supply to the lands of the petitioners are illegal, against the law and equity; that the official respondents are bound to supply water to the lands of the petitioners in accordance with Irrigation Act; that the people have right to have access to safe drinking water and to irrigate their lands; that water supply to the petitioners is either illegally denied or is disturbed by the official respondents arbitrarily and at their whims in exercise of authority not vested in them and even without providing an opportunity of hearing to the khatedars; that due to mismanagement of the irrigation authorities the tail enders are seriously affected. They also raised their voice of concern with regard to their other water related issues, which are not being addressed by the irrigation authorties. Having explained their grievances prayed for allowing the instant petitions.

4. Mr. Allah Bachayo Soomro learned Additional Advocate General, Sindh has assailed the maintainability of instant petitions. He prayed that the petitioners have no case; the same may be rejected in the interest of justice. However, he agreed to the extent of equitable distribution of water supply amongst all khatedars.

5. We have heard learned Counsel for the parties and perused the material available on record. Before discussing the issue at hand, it must be kept in mind that Article 9 of the Constitution provides right to life and the right to receive water to irrigate agricultural land is indeed a fundamental right, however, such right is subject to irrigation laws and rules.

6. Prima-facie, the basic issue involved in the present proceedings is distribution of water to the lands of lawful Khatedars of the concerned area in accordance with Sindh Irrigation Act. The official respondents along with others have allegedly attempted to obstruct the water supply to the petitioners' lands and in some of the cases have allegedly closed or blocked the source of

water supply to them and/or threatened to close the water source through force, in order to accommodate khatedars of their choice irrespective of their entitlement and created bottlenecks for their water related issues involved in the present proceedings.

7. It appears from the record that the issue as raised in the present proceedings has already been set at rest by Honorable Supreme Court in the case of Action Against Giving of Direct outlets from Naseer Branch Rohri Canal by Chief Minister Sindh reported as **2014 SCMR 353**. A perusal of said judgments shows that certain outlets were either sanctioned in violation of law or in relaxation of the ban, imposed by the Government of Sindh vide letter No.2/687-S.O. (OP)/70-Vol-III, dated 02-01-1999, in favour of influential and interested persons and consequently, the lands of Khatedars situated at tail end were not getting water according to their share, as before reaching the tail, the entire water was consumed by upper riparian's. The Khatedars raised their voice of concern to protect their rights. The Honorable Supreme Court took Suo-Moto notice in the above-cited case an excerpt whereof is reproduced below:

"In such view of the matter, we direct the Secretary, Irrigation that immediately he should take action to protect their interest. Here we deem it appropriate to reproduce operative part of the report of the learned District and Sessions Judge Badin dated 27-11-2013:- "It is further submitted that frames of the outlets were tampered and some were having repaired freshly. The type of the frames as sanctioned was 2" x 2" inches but after tampering; the same were found up to 1 to 2 feet width. It is further submitted that on 25-11-2013 the most of the outlets were closed and the Irrigation Officers informed that the same have been closed due to rotation; hence, the flow of water was found up to the sanctioned level and reached at the tail of Sangi Pharho / Regulator. It is further submitted that the outlet of Kamal Khan Chang crossed Pir Sakhi Minor. It is further submitted that again on 26-11-2013 the undersigned conducted the surprise visit of the site without accompanying the Irrigation Officers and found that most of the outlets were opened, hence, there was no pressure of flow of the water at the tail and it was not flowing at sanctioned level at the tail of Sangi Phraho. It is further submitted that if all the outlets remain opened, then the flow of the water will not reach at the tail of Naseer Branch. In this situation, the Zamindars of tail of Naseer Canal Branch cannot get the Irrigation water for cultivating their lands."

8. As regards the issue involved in the present proceedings, this Court vide judgment dated 18.4.2019 passed in C.P. No. 1375-D of 2017 directed the competent authority of Irrigation Department to ensure supply of water to the entitled khatedars in accordance with share list. The aforesaid judgment

was assailed before the Honorable Supreme Court in Civil Petition No. 410-K of 2019 which was disposed of in the following terms :

“Learned counsel for the petitioners has impugned the judgment dated 18.4.2019, whereby the issue as to the supply of water to the petitioners’ land, which, according to the learned counsel, is being curtailed. Learned Additional Advocate General along-with Secretary Irrigation Department, Government of Sindh have filed their comments, duly signed by Secretary Irrigation and Managing Director, SIDA, Hyderabad, which read as under:-

“As permanent relief relocation of head regular of Bilori Minor has been provided in ADP 2019-20, at Sr.No.1113 which is in process and will facilitate restoration of original source of irrigation water supply to the petitioner and others in due course of time”.

Learned Bench of the High Court, already seized of the matter, in terms of para No.23 of the impugned judgment has directed for compliance report before the Assistant Registrar of High Court. Since High Court itself is regulating and supervising the issue as urged in the petition, we are not inclined to interfere in the matter which is purely between the two departments and as stated by the learned Additional Advocate General same will be resolved on permanent basis no sooner the scheme allocated to ADB is executed for which funds are allocated it is expected that such scheme is materialized. The High Court will ensure that its orders are complied with in letter and spirit. The authority shall ensure to supply water from either of the available source of supply in accordance with share list. In this view of matter, we are not inclined to interfere in the impugned judgment. Petition disposed of.”

9. The above orders passed by the Honorable Supreme Court resolve the issue, which is also subject matter of these petitions. Learned counsel for the petitioners took us through various provisions of Sindh Irrigation Act, and demonstrated that sanctioned watercourses were personal properties of individual landowners, who were required to construct and maintain them from their own resources in terms of Sindh Irrigation Act. Be that as it may, no authority has been conferred upon the khatedars to utilize water more than their sanctioned share as per the prescribed share list and the Irrigation Department is bound to ensure this.

10. Further, we have noticed that Section 16 of Sindh Irrigation Act requires that any person with permission of duly empowered Canal Officer may construct watercourse for his land after obtaining consent of 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 would 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 rights and obligations of owners of

watercourses and apart from requiring them to maintain them, confers upon such owners a right to have supply of water on such terms as prescribed in the relevant Rules.

11. A reading of above provisions show that though receiving of water in terms of Section 21 is the right of petitioners, but 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, even at tail end from their due share in the water. The water sharing policy is to maintain equitable distribution of water to benefits of all khatedars including those at the tail end of water course/source.

12. A perusal of record and consideration of contention of petitioners raised before us has persuaded us to believe that the issue involved in the present proceedings is distribution of water to the lands of genuine Khatedars of the area concerned in accordance with Sindh Irrigation Act. Distribution of water according to its availability in equitable manner without discrimination to sanctioned channels in accordance with Sindh Irrigation Act is the sole responsibility of Irrigation Department, Government of Sindh.

13. There are three (03) Barrages in Sindh Province viz. Guddu, Sukkur and Kotri, which provide required water to the lands in Sindh. The pivotal issue as stated above is equitable distribution of irrigation water by the Irrigation Department and other ancillary water related issues of Khatedars. The Irrigation Department and/or all its officials are under statutory obligation not only to perform their duty in conformity with the policy of equitable distribution of water, but also to keep close and constant vigilance and supervision to ensure uninterrupted supply of water to the lands as per the prescribed share lists and also to take action against illegal connections.

14. In view of the main grievance of the petitioners discussed above, we hold that Irrigation Department shall ensure supply of water to every khatedaras per his share prescribed in the share list; and shall take action forthwith according to law against such khatedars who have violated or violate the law by tampering with the sanctioned modules and/or by changing the watercourse and/or by creating obstruction in the water supply of other khatedars.

15. The Irrigation Act provides a complete mechanism for equitable distribution of water amongst khatedars and remedies for redressal of their other water related grievances, which exercise cannot be undertaken by this Court under Article 199 of the Constitution and it is for the official respondents to take prompt action to redress the genuine grievances of the khatedars.

16. In all these petitions allegations have been made by the petitioners against Irrigation Department regarding unfair distribution or stoppage of water supply at the instance of influential persons private parties, illegal change / cancellation of the watercourse or refusal to change the watercourse. According to the petitioners, they were constrained to file these petitions as the Government functionaries had failed to discharge their functions according to law. However, it may be observed that in all the cases / situations discussed above, an aggrieved person has to first avail the remedy provided to him by law before the competent authority of Irrigation Department and he must exhaust such remedy before approaching this Court instead of bypassing the appellate forum. Office is, therefore, directed to entertain only such petitions in future wherein all remedies, including remedies provided under the Irrigation Act and/or litigation before any forum, have been fully exhausted by the person before approaching this Court.

17. In view of the above discussion, the competent authority of the respondent-department is directed to ensure regular of supply of water to the lands of the petitioners and khatedars / land owners in the Province of Sindh according to the Irrigation Act, and grievances / complaints, if any, placed before them by the aggrieved khatedars shall be addressed / decided promptly within a period not exceeding thirty (30) days from the date of complaints strictly in accordance with law after providing opportunity of hearing to all concerned. Issue notice to the Chief Secretary Sindh and the Secretary Irrigation Department, Government of Sindh, to ensure compliance of the above directions in letter and spirit.

18. All these petitions and applications pending therein stand disposed of in the above terms with no order as to costs.

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Fahad Memon