

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

C.P. No.D-355 of 2017  
C.P. No.D-1343 of 2017

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DATE	ORDER WITH SIGNATURE OF JUDGE
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11.05.2022

Mr. Abdul Rehman, advocate for petitioners in C.P. No.D-1343 of 2017.

Mr. Ayatullah Khowaja, advocate for petitioners in C.P. No.D-355 of 2017.

Mr. Rafique Ahmed Dahri AAG Sindh.

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These petitions involve questions of fact and law as to the occupation of these petitioners over a land which is encroached either upon canal land or otherwise. Mr. Abdul Rehman and Mr. Ayatullah Khowaja learned counsel appearing for the petitioners emphasized that this could conveniently be adjudicated since a notification that concerns with the territorial extension of the canal land has to be issued by the Government of Sindh u/s 5 of Sindh Irrigation Act which has not been done hence it cannot be presumed that any part of the canal has been encroached upon.

We have heard the counsel and are of the view that such questions which embarked upon territorial limits cannot be adjudicated in proceedings under Article 199. It would involve factual controversies and even otherwise a declaration that relates to the status of the occupants cannot be adjudicated in these proceedings. If the canal land is not encroached, it may be revenue land but still the status is unascertained. In one of the petitions the lessee has already initiated proceedings before civil court for a declaration of their rights which land has been subleased to different individuals who have preferred these petitions. There cannot be a better title than enjoyed by lessee itself, rights of which are subjudice before civil court. These petitioners can conveniently be made party in the suit, in case they apply before a court where suit is pending i.e. Suit

No.465/2017 before 1<sup>st</sup> Senior Civil Judge Hyderabad. With this understanding, we dispose of these petitions that in case petitioners prefer any application to be made party in those proceedings they may do so within fifteen days from the date of the order and till then no coercive action be taken as observed by this court earlier. In case any of the petitioners prefer to file an independent suit they are at liberty however that too shall be filed within a period of fifteen days and not beyond and to be dealt with in accordance with law including law of limitation. In case, they failed to approach the civil court for the redressal of their grievance by moving an application u/o 1 Rule 10 CPC or any other application, and/or suit, the interim relief of fifteen days shall then cease to have effect. It is expected that once the applications of these petitioners are accepted to be a party in the proceedings, the suit (suits) be disposed of expeditiously in accordance with law at the earliest preferably in six months' time.

JUDGE

JUDGE

