

**BEFORE :**

**Mr. Justice Muhammad Saleem Jessar,**  
**Mr. Justice Adnan ul Karim Memon.**

**Date of hearing & Order: 27.02.2025**

Mr. Abid Hussain Qadri, advocate, along with the petitioner.

Mr. Liaquat Ali Shar, Addl. A.G. assisted by Mr. Aftab Ahmed  
Bhutto, Asstt. A.G a/w Satia Parkash, Assistant Ex-Engineer,  
Madejo Sub-Division/Respondent No.5.

Mr. Saeed Ahmed Bijarani, advocate for the respondents No.6  
to 8.

**ORDER**

**ADNAN UL KARIM MEMON-J.-** By this petition, petitioner is seeking directions to the official respondents for restoration of dismantled area of Water Course 3-L and ensure supply of irrigation water to the petitioner's land from source Water Course 3-L Wassan Distry enabling the petitioner to cultivate his lands during the current season.

2. The petitioner, owning 5.30 acres of farmland in Deh Khanwah, Larkana, relies on Water Course 3-L for irrigation. He alleges that private respondents 6-9 illegally destroyed this watercourse, including a sanctioned irrigation channel (Kassi). Despite a prior restoration with police assistance in 2020, the respondents have again destroyed the water source. His attempts to resolve this through the Anti-encroachment Tribunal and subsequent applications to relevant officials have been unsuccessful, prompting this petition.

3. In response to court notices, respondents 6-8, through their counsel, Mr. Saeed Ahmed Bijarani, submitted objections and supporting documents, which were shared with the petitioner. Mr. Satia Parkash, AXEN of the Madejo Sub-division, presented a 1939 map confirming the existence of the disputed watercourse before partition, indicating it served Survey Number 200, owned by the petitioner.

4. Prima facie, Respondents 6-8, owners of Survey Number 203, admit to dismantling the watercourse passing through their land, thereby denying the petitioner their rightful water share and hindering their land cultivation. The petitioner requests the court to order the restoration and preservation of the watercourse.

5. The Assistant Advocate General (A.A.G.), supported by the AXEN, did not object. However, respondents 6-8's counsel stated they have filed a civil suit regarding the same issue in the Senior Civil Judge's Court, Ratodero. He requested that the decision of this petition be contingent on the outcome of the civil suit and that, in the intervening period, they will maintain status quo.

6. This request was not opposed by the petitioner. Therefore, this court orders that the first instance civil suit, be decided by the competent court within a reasonable time and respondents 6-8 are restrained from dismantling the water course until the civil suit is decided within a reasonable time, i.e., two months.

7. In our view, Article 9 of the Constitution provides a right to life, if a person is deprived of a fundamental right, he can always approach this court by invoking Constitutional jurisdiction with a rider that such right is not hampered with any law. A right to irrigate Agricultural land is subject to the irrigation law and the rules. This right, however, if infringed, could be examined by this court.

8. Learned Counsel for the respondent 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 all these persons to utilize water more than their sanctioned share as per the share list, which the Irrigation Department shall ensure through sanctioned watercourse, for that civil suit is pending for decision. Besides this, the issues raised required factual enquiry which this court cannot attend to while exercising Constitutional jurisdiction. The irrigation law has provided a mechanism to get the share, including the issue of sanctioned watercourse or otherwise, coupled with that policy of the government. This court cannot substitute it.

9. Further, we have noticed that Section 16 of Sindh Irrigation Act requires that any person with the permission of a duly empowered Canal Officer may construct a watercourse on 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 have to 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.

10. A reading of the above provisions shows that though receiving of water in terms of Section 21 is the right of petitioner through sanctioned watercourse only, 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 from their due share in the water. The water sharing policy has to be made on equitable distribution of water for the benefits of all khatedars.

11. This petition is disposed of, without addressing the underlying claims. The dispute regarding the watercourse must be resolved by the appropriate legal forum/authority.