

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Constt: Petition No: D- 410 of 2013.

Date of hearing

Order with signature of Judge

Present:

Mr. Zafar Ahmed Rajput, J.

Mr. Muhammad Iqbal Mahar, J.

Mr. Muhammad Afzal Jagirani, Advocate for petitioner.

Mr. Ali Akber Kalhoro, State counsel, alongwith Mr. Abdul Ghafoor Soomro, X.E.N, Drainage Division Larkana.

Date of hearing. 24.8.2016.

Date of judgment: 24.8.2016.

J U D G M E N T

Muhammad Iqbal Mahar J:- Through instant Petition filed under Article 199 of "the Constitution" of Islamic Republic of Pakistan, 1973, petitioner seeks directions to the respondents No: 1 to 4 to construct bridge over Shahdadt Kot drain, so that the flow of water of watercourse I.E.R may pass to other side of the drain to irrigate the lands of petitioner.

2. The case of petitioner is that due to shortage of water on tail of Bhutta, Sijawal and Chango Minors of Ratodero Sub Division, the father of petitioner made an application to Respondent No.4 for separate outlet from Allah Bux Minor in year 1984 which was processed and in year 1989, respondent No.5 accorded sanction of separate outlet at RD 2800 Ex-Allah Bux Minor. A water course I.E.R was excavated from Allah Bux Minor which led upto Shahdadt Kot drain where a culvert was to be constructed. The petitioner repeatedly approached the respondents No.1 to 4 but they did nothing, therefore seeing no other alternate, adequate and efficacious remedy the petitioner invoked the constitutional jurisdiction of this Court.

3. In response to the Notice of this Court Respondent No:1 filed his para-wise comments, stating therein that sanction of separate outlet at RD-2800 Allah Bux Minor was accorded at the entire cost of

applicant and subject to the observing all codal formalities under Sindh Irrigation Act on production of NOC from Highway authorities.

4. Learned counsel for the petitioner submitted that the application of father of the petitioner was processed and approval was accorded by the respondents, hence they are required to construct the bridge as the petitioner may be able to irrigate his lands. Therefore, he prayed that the respondents may be directed to construct bridge upon Shahdadkot drain.

5. The learned State Counsel contended that no doubt the approval was accorded for sanction of separate outlet in year 1989 but the father of the petitioner or the petitioner have never approached the respondents that they are ready to bear the entire costs of the bridge/culvert and instead filed instant petition mala fidely, which is not maintainable and is liable to be dismissed.

6. We have heard the learned counsel for the petitioner, learned State counsel and have gone through the material available on record.

7. Perusal of record reflects that the father of petitioner, namely, Muhammad Saleh made an application to Respondent No: 4 in year 1984, requesting him to shift his lands measuring 386 acres to Allah Bux Minor and provide separate out let as they were ready to construct water course at their own cost. His application was processed by Respondent No: 4 and the Respondent No: 5 accorded approval for sanction of separate outlet at RD 2800 Ex-Allah Bux Minor (Warah Division) for above area in the interest of betterment of irrigation at the entire cost of the applicant and subject to the observance of all codal formalities under Sindh Irrigation Act and production of N.O.C from Highway authorities but thereafter the father of the petitioner or the petitioner never approached the respondents and filed instant petition after about 13 years and the learned counsel took "U" turn that the

M. Saleh

petitioner is a poor person and cannot afford the expenses of construction of new watercourse.

8. In view of above discussions we are of the view that approval accorded for sanction of outlet on the costs of petitioner does not create vested right to petitioner to maintain the petition, seeking directions to respondents to construct watercourse and culvert on the expenses of Government, as the same comes in the domain of "policy matters" of Government, which requires consideration of various factual and fiscal aspects.

9. It may be relevant to mention here that the jurisdiction of High Court under Article 199 of the Constitution is of extraordinary nature. Constitution has conferred power on High Courts for enforcement of fundamental rights. Such power of High Courts includes issuance of orders, directions, or writ of five kinds, namely, habeas corpus, mandamus, certiorari, prohibition and quo-warranto; however, despite expensive nature, various limitations are required to be satisfied before jurisdiction is to be assumed by High Court. Jurisdiction cannot be exercised to interfere in the policy matters of the Executive as it is against the principle of trichomy of powers.

10. For the foregoing facts and reasons, we find no legal merit in the petition, which is hereby dismissed, with no order as to costs.


JUDGE


JUDGE