

ORDER SHEET

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

R. A. No. S – 50 of 1998

| | |
|-----------------|-------------------------------|
| Date of hearing | Order with signature of Judge |
|-----------------|-------------------------------|

Hearing of case

1. For hearing of CMA No.321/1998 (Limitation)
2. For hearing of main case

11-12-2020

Mr. Ahmed Ali Shahani, Assistant Advocate General Sindh along with Malik Dino Mallah, Sub-Divisional Forest Officer, Afforestation Sub-Division, Naushahro Feroze.

.-----.

CMA No.321/1998 is an application under Section 5 of Limitation Act to condone the delay in filing this revision on the ground of confusion as to jurisdiction and having filed the same on re-opening of the Courts after summer vacations. In the counter-affidavit the matter of jurisdiction is challenged, however, the filing on the opening day not being challenged, whereas, the matters are to be decided on merits, the same stands allowed. The respondents who were appearing in the matter have since long failed to pursue the same and considering the warnings given earlier as to conclusion with whatsoever assistance as may be available this matter has been heard accordingly.

2. Learned AAG has filed copies of notifications with a statement and an affidavit of the Forest official along with the relevant portion of the survey report, according to which, the subject land belongs to Forest Department.

3. Learned AAG states that this revision has been filed in these proceedings whereby the suit of permanent injunction and declaration as filed by the private respondents in the matter was decreed without considering the notification of declaration of forest land brought up on part

of the Forest Department by the learned trial Court. The learned trial Court was not cognizant of the fact that once a notification in respect of forest land was granted, no rights could be exerted without nullifying the notification itself. It is also contended that the notification in the present matter belongs to the year 1938. It is further contended by learned AAG that although non-rebuttal of evidence is present before the learned trial Court, however, the subject notification having been produced, it was liable for the learned trial Court to assert the exact location and distinguish the same in terms of the location to the claimed land from the land of the Forest Department. Learned AAG further states that the appeal in the matter was dismissed on account of limitation without considering the merits, and in this regard, the alleged lease on part of the private respondents said to have been present was never brought on record along with the alleged inquiry report as was said to have been relied upon.

4. Having gone through the record, wherein the respondents have claimed rights over hundreds of acres of land on *darya khurdi* right in the area Bhandmari, however, copies of the notifications of 1878 and 1938 have been produced, according to which, the Bhandmari Kacho having an area of 3300 acres on the river bed was to be treated as forest land. The respondents in the matter claiming their entitlement of *darya khurdi* right which is limited to an existing right over land taken over by the change of course / size of the river and its reappearance i.e. on the river size reducing. The matter of entitlement has rightly been described by the learned AAG to have no existence once a notification has been issued, and as such in the circumstances, apparent failure of considering record is present on part of the learned trial Court as well as the learned appellate Court. I have intentionally not discussed the element of limitation as present before the learned appellate Court but irrespective to the same,

no right existing on part of the private respondents in the matter after issuance of the notification describing the subject land as that of forestry nature, the impugned orders cannot sustain. In the circumstances, this revision application stands **allowed** and the impugned orders are set aside. However, no order as to costs is found available.

Abdul Basit

J U D G E