

## IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

*Civil Revision Application No.S-21 of 2009*  
(Secretary, Irrigation & Power Deptt: & Ors Vs. Pinyal Khan & Ors)

Applicants : Secretary, Irrigation & Power Department  
and others, *through* Mr. Abdul Waris  
Bhutto, Assistant Advocate General, Sindh  
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Respondents : Pinyal Khan Chandio through his legal  
heirs, represented by Mr. Ali Azhar Tunio,  
Advocate.  
Zulfiqar Ali Chandio *through* Mr.  
Inayatullah Morio, Advocate.

Date of Hearing : 06.11.2025.

Date of Decision : 06.11.2025.

### JUDGMENT

**Ali Haider 'Ada'.J:-** Through the instant Civil Revision Application, the applicant has assailed the judgment and decree dated 25.11.2003, passed by the learned Senior Civil Judge-I, Larkana, in F.C. Suit No.20 of 2000, whereby the suit filed by the respondent was decreed. The principal relief sought in the suit was to declare the order regarding cancellation of the watercourse, issued from the Irrigation and Power Department and signed by the Section Officer in his official capacity, as having been passed by an incompetent authority. The said judgment and decree were subsequently upheld by the learned Appellate Court in Civil Appeal No.05 of 2004, vide order dated 30.04.2009, hence the present revision.

2. The case set up by the respondent before the trial Court was that he, along with his co-sharer, was owner of the property in question and that a watercourse had earlier been duly sanctioned in his favour by the concerned government functionaries. It was contended that subsequently a cancellation letter was issued by the department, whereby the sanctioned watercourse was withdrawn. The respondent challenged the said cancellation on the sole ground that it was issued by a Section Officer,

who, according to him, was not the competent authority under the law. On this premise alone, the learned trial Court decreed the suit, and the said findings were affirmed by the learned Appellate Court.

3. Learned Law Officer submitted that the findings recorded by both the Courts below are contrary to the settled law and the statutory scheme governing irrigation matters. It is argued that the impugned letter of cancellation was issued by the Section Officer strictly in pursuance of and under the directions of the Secretary, Irrigation Department, and merely because the communication was signed by a Section Officer does not render it illegal or without lawful authority. It is further submitted that the Courts below failed to appreciate that the competent authority in such matters is the department acting through its authorized officers and that the internal mode of issuance of a departmental order cannot be made the sole basis to declare the action void. Learned Assistant Advocate General, Sindh, has supported the stance of the applicant and submitted that the watercourse in question was illegal and unauthorized from its inception. He further submitted that this Court, at its Sukkur Bench, in Constitutional Petition No.D-1043 of 2018, has already dealt with the issue of unauthorized lift machines and illegal watercourses, and it has been categorically held that no watercourse can be claimed as of right in the absence of a lawful and valid sanction. According to him, there was no proper or subsisting water sanction in favour of the respondent, and the Courts below fell in error in granting declaratory relief merely on a technical objection regarding the signing authority. He, therefore, prayed that the impugned judgments and decrees be set aside and the revision be allowed.

4. Conversely, learned counsel for the respondent No.01 has argued that the cancellation letter was admittedly issued and signed by a Section Officer, who, under the relevant law, is not the competent authority to cancel a sanctioned watercourse. He contended that the action of the department was in clear violation of law and, therefore, the learned trial Court rightly decreed the suit, which was correctly upheld by the learned Appellate Court. He maintained that once the authority issuing the

impugned order is found to be incompetent, the order itself becomes void and without lawful effect. “Learned counsel for respondent No.2 submitted that respondent No.2 has no interest in pursuing the matter.

5. Heard learned counsel for the parties and perused the material available on record.

6. For ready reference, the letter issued by the Section Officer (OP-I) on behalf of the Secretary to the Government may be carefully perused. At the very outset of the letter, the Section Officer clearly states that he was acting under directions to enclose a copy of the communication of the Superintending Engineer, Saifullah Magsi Branch, who, by law, is not competent to sanction such cases. The Section Officer, in compliance with the directions received, directed necessary action to cancel the separate pipe outlet which had earlier been sanctioned by an office letter. It is thus apparent that the Section Officer did not exercise independent discretion but acted in execution of the directions of the competent authority.

7. A perusal of the Sindh Irrigation Act, 1879 (Act VII of 1879) shows that the term “watercourse” is fully defined in Section 3(2) and that the Act prescribes the role and authority of officers empowered to deal with watercourse matters. Section 16 of the Act provides that any person desiring to construct a new watercourse must apply to a Canal-Officer **duly empowered to grant such permission**, and Section 17 requires the Canal-Officer to make inquiries, mark out the land, and publish notifications as part of the procedural process. Section 23 further provides that where a person seeks to use an existing watercourse or be declared a joint owner, the Canal-Officer, after inquiry and hearing objections, may grant such authority or make a declaration, subject to approval by the Collector where relevant. The Act thus clearly designates the competent authority in matters of construction, use, and ownership of watercourses.

8. In the present case, the officer who initially sanctioned the watercourse is not shown to have been empowered under the provisions of the Sindh Irrigation Act to grant such a sanction. The cancellation of the watercourse, therefore, executed by the Section Officer under the

instructions of the Secretary, Irrigation Department, was within the lawful authority of the competent functionary. The Section Officer, being subordinate, merely acted in accordance with the directions of the competent authority and cannot be said to have exceeded powers or acted illegally.

9. It is well settled that departmental functionaries may execute lawful directions of a competent authority and that the validity of such actions is not vitiated merely because a subordinate officer signs the communication. The Honourable Supreme Court of Pakistan, in **2014 SCMR 353**, observed that outlets sanctioned in violation of law or in relaxation of statutory prohibitions in favour of interested persons were null and void.

10. In view of the foregoing discussion and keeping in mind the statutory scheme, the record, and the settled principles of law, the instant Civil Revision Application is allowed. The impugned judgment and decree passed by the learned trial Court as well as the learned Appellate Court are hereby set aside. The respondents cannot claim any entitlement to a watercourse sanctioned by an officer who was not competent under law, and the action taken by the Secretary through the Section Officer stands fully validated. These are the reasons for the short order of even date.

**JUDGE**