

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA.**  
Constt: Petition No. **D-54** of 2025.  
(*Abdul Nabi and another v. Chief Engineer, Sukkur Barrage & Ors*)

DATE OF HEARING      ORDER WITH SIGNATURE OF HON'BLE JUDGE

**BEFORE:**

**Mr. Justice Muhammad Saleem Jessar.**

**Mr. Justice Adnan-ul-Karim Memon.**

**Date of hearing and Order: 18.3.2025.**

Mr. Sajid Hussain Mahessar, advocate a/w the petitioners.  
Mr. Liaquat Ali Shar, A.A.G. a/w Muhammad Saleem Tanwri, XEN  
Rice Canal Division, Larkana, SIP Zulfiqar Ali Mugheri on behalf  
of SSP Kamber Shahdaktot, SHO/Insp. Naeem Akhtar Abro P.S  
Naseerabad and Amanullah Awan, Assistant Engineer,  
Dhamraho Sub-Division/Respondent No.3.

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**ORDER**

**Adnan-ul-Karim Memon, J:-**      The petitioners request directions to the official respondents (1-8) to remove all illegal occupations, constructions, and encroachments from Water Course 15-AR Ex-Monder Branch, and to ensure proper water flow for the petitioner and other landowners according to legal requirements. He also sought direction to the official respondents to take strict legal action against private respondents (9-15) to prevent the discharge of sewage and garbage into the clean water of Water Course 15-AR Ex-Monder Branch, which is used for cultivation and drinking.

2.      The petitioners, representing small landowners, assert that their irrigation source, Water Course 15-AR Ex-Monder Branch, has been illegally obstructed by the private respondents as they have constructed dwellings and sanitation facilities directly on the watercourse and surrounding government land, significantly impeding water flow and rendering the petitioners' lands unproductive. Furthermore, the private respondents are polluting the watercourse with sewage and refuse, creating a health hazard. They also alleged that despite numerous complaints to the relevant authorities, no effective action has been taken, raising concerns of possible collusion. While notices for encroachment removal were issued, they were disregarded. The petitioner now seeks a court order to compel the removal of these obstructions, prevent further pollution, and restore proper water flow, claiming they have exhausted all other legal avenues.

3.      The official respondents admit the validity of the petitioners' complaints. They confirm that the petitioners' concerns were previously acknowledged, with

legal notices issued to the encroachers. However, these notices were not followed through with action. The current Executive Engineer promises immediate legal steps, including issuing new notices and initiating removal procedures. They are requesting court-ordered police protection to ensure the removal of the encroachments is carried out effectively.

4. We have heard the learned counsel for the parties present in court and perused the record with their assistance.

5. The core issue is the Irrigation Department's responsibility to equitably distribute water and remove the obstacles if any under the Sindh Irrigation Act. Deprivation of this right, related to Article 9 (right to life), allows recourse to the courts. The Sindh Irrigation Act (Sections 16, 17, and 21) governs watercourse construction, land acquisition for watercourses, and the rights/obligations of watercourse owners, including the right to water supply.

6. Encroachment on illegally converted public amenities is strictly forbidden, as established by Supreme Court and Division Bench precedents. Public property must remain accessible to all, and authorities are legally bound to prevent its privatization and protect it from unauthorized occupation. The Additional Advocate General has now affirmed that all existing encroachments will be removed.

7. Public access to and use of public property is a fundamental right protected by Articles 9 and 26 of the Constitution. These properties cannot be repurposed, leased, or encroached upon. Any attempt to alter their designated use, even by government bodies, is illegal. Authorities are obligated to maintain these properties for public use, and failure to do so can result in legal and disciplinary action. Unauthorized structures on public property must be removed.

8. Based on Supreme Court precedent, this court directs the Secretary of Irrigation to protect the petitioners' interests and all encroachments on the subject land must be removed immediately. The Deputy Commissioner, SSP concerned is ordered to assist the irrigation department to remove these encroachments within two months and submit a compliance report to the Additional Registrar of this Court.

*Disposal of encroachments*  
JUDGE

JUDGE  
19/05/2023