

**IN THE HIGH COURT OF SINDH CIRCUIT COURT
LARKANA**

Civil Revision Application No.S-78 of 2022

Applicant: Waqar Ahmed s/o Mir Hazzar Dasti
Through Mr. Ghulam Muhammad Barejo
Advocate

Respondents No.1 to 4: Through Mr. Abdul Waris Bhutto, A.A.G

Respondents No.5 to 7: Through Mr. Riaz Hussain Khoso, D.A.G

Date of hearing: 16-05-2025

Date of Judgment: 30-05-2025

JUDGMENT

Jan Ali Junejo, J:- This Civil Revision Application under Section 115 of the Code of Civil Procedure, 1908 has been filed by Waqar Ahmed (hereinafter referred to as the “Applicant”), challenging the Judgment and Decree dated 18-05-2022 (hereinafter referred to as the “*Impugned Judgment and Decree*”) passed by the learned District Judge/MCAC Jacobabad (hereinafter referred to as the “*Appellate Court*”) in Civil Appeal No. 02 of 2022, whereby the Appellate Court dismissed the appeal and upheld the Judgment dated 13-12-2021 followed by Decree dated: 18.12.2021 passed by the learned Senior Civil Judge-I, Jacobabad (hereinafter referred to as the “*Trial Court*”) in F.C. Suit No. 31 of 2017. The Trial Court had decreed the Suit in favor of the Province of Sindh and other official respondents (hereinafter referred to as the “Respondents”) for the recovery of Rs. 17,63,680/- from the Applicant on the ground that the said amount was fraudulently received by him as compensation for land that had already been acquired by the Government for Pakistan Air Force Base Shahbaz, Jacobabad. The Appellate Court, after thorough examination of evidence and legal arguments, concurred with the findings of the Trial Court and dismissed

the appeal filed by the Applicant, leading to the present Civil Revision Application.

2. The facts of the case, as emerge from the record, reveal that in the years 1967-68, the Government acquired land measuring 219 Acres and 22 Ghuntas, and subsequently in the years 1972-73 and 1993-96, an additional area of 607 Acres and 11 Ghuntas was acquired from different landowners for the establishment and expansion of PAF Base Shahbaz, Jacobabad. The compensation for the acquired land, including Survey Numbers 291 and 292 of Deh Dashti, Taluka Jacobabad, was duly paid to the respective landowners. However, the mutations were not properly effected in the revenue records at the relevant time. In 2008, the Government initiated proceedings for acquiring an additional area of 1070 Acres and 31 Ghuntas for further extension of the PAF Base. During this process, it came to light through a letter No. AHQ/7366/RR/III dated 31-10-2011 from the Director Revenue Record, Air Headquarters, Islamabad, addressed to the Mukhtiarkar, Jacobabad (Respondent No. 4), requesting mutation of previously acquired land, that Survey Numbers 291 and 292 had already been acquired in the earlier acquisitions. Despite this, these survey numbers were fraudulently included in the 2008 acquisition notification published on October 10, 2008. The Applicant, being an employee of the PAF and acting as the attorney for the original landowner, Manzoor Ahmed son of Allah Dino Dashti, received compensation amounting to Rs. 12,43,380/- for an area of 01 Acre 23 Ghuntas from Survey No.291 and 04 Acres 39 Ghuntas from Survey No. 292. Additionally, the Applicant also fraudulently received compensation of Rs. 5,20,300/- for an area of 01 Acre 09 Ghuntas of Survey No. 351, which was not even within the acquired area for the PAF Base. Thus, the Applicant fraudulently received a total amount of Rs.17,63,680/- from the Government. At the time of receiving the payment, the Applicant had executed

an affidavit undertaking to refund the amount in case of any error, mistake, or fraud. When the fraud was discovered and the Applicant was asked to return the amount, he flatly refused, necessitating the filing of the suit by the Respondents.

3. In response, the Applicant, in his written statement (Ex.17), raised preliminary legal objections regarding mis-joinder and non-joinder of necessary parties. He categorically denied the acquisition of 219 Acres and 607 Acres of land in the years 1967-68, 1972-73, and 1993-96 in favor of PAF Base Shahbaz, Jacobabad. He specifically denied that Survey Numbers 291, 292, and 351 of Deh Dashti, Taluka Jacobabad were acquired during those years, and contended that it was only in 2008 that the subject land was first acquired by the Government in favor of PAF Base Shahbaz, Jacobabad. Regarding the receipt of the disputed amount, the Applicant vehemently denied receiving any such compensation and also denied executing any receipts or undertakings as alleged in the plaint. He took the stance that the revenue officers, who were now the plaintiffs in the suit, were the custodians of the record, and it was impossible for a local person like him to access and manipulate such records. The Applicant further denied that Survey Number 351 (1-9 Acres) of Deh Dashti was included in the acquisition process of 2008 and that it fell outside the acquired land for PAF Base Shahbaz. He maintained that, as the attorney of Manzoor Ahmed Dashti (the owner of the subject Survey Numbers 291, 292, and 351), he never received the alleged amount of Rs. 17,63,680/- from the plaintiffs, and therefore, the suit was false and should be dismissed with costs. On the other hand, Defendants Nos. 1 to 3 (the Federation of Pakistan, Director Revenue Record Air Headquarters, and the Commanding Officer/Project Director PAF Base Shahbaz) in their joint written statement (Ex.26) admitted most of the contents of the plaint, including paragraphs 1 to 6 and 10 to 26. They only denied paragraphs 7 to 8, stating that

it was the default of the Land Acquisition Officer and they were not at fault. In paragraph 13 of their written statement, these defendants alleged that in light of the directives from the Military Estate Office, Hyderabad Circle, the Commanding Officer of PAF Shahbaz, Jacobabad had advised the plaintiff No. 4 to ensure that no survey numbers or parts already acquired or covered as part of the aerodrome Shahbaz (as indicated in old maps held by the Survey Superintendent, Larkana) be included in the acquisition proceedings. They further alleged that despite being provided with an authenticated list of land with survey numbers, the District Officer Revenue, Jacobabad sent notifications under Sections 4 and 6 of the Land Acquisition Act, 1894, and included Survey Numbers 291 (1-23 Acres) and 292 (4-39 Acres), which were already in possession of the Air Force Base, Jacobabad. They claimed that on 03-06-2009, the Commanding Officer of PAF Shahbaz, Jacobabad intimated the District Officer Revenue, Jacobabad regarding the duplication of Survey Numbers 291 and 292 in the notifications. They also alleged that the Applicant had undertaken, during the receipt of payment before the Land Acquisition Collector, that in case of any error or omission, the amount would be refunded accordingly. They further claimed that the Applicant later approached the Land Acquisition Officer, Jacobabad for further payment for Survey Number 291, but it was stopped, and the Land Acquisition Collector issued Notice No. 1 dated 17-12-2011 to the Applicant for refunding the amount received fraudulently. They concluded by alleging that the Applicant had committed fraud while receiving the payment for the land amounting to Rs. 17,63,680/- and was liable to repay it to the authorities concerned.

4. Based on the conflicting pleadings of the parties, the Trial Court formulated five issues for adjudication: (1) Whether the suit was maintainable under law; (2) Whether the Applicant, being an employee of defendant No.1 to 3,

fraudulently received compensation of Rs. 12,43,380/- for already acquired Survey Numbers 291 and 292; (3) Whether the Applicant fraudulently received compensation of Rs. 5,20,300/- for Survey No. 351, which fell outside the acquired land; (4) Whether the plaintiffs are entitled to the relief claimed; and (5) What should the decree be. The evidence led before the Trial Court included the testimony of Ghulam Abbas Sadhayo, the Mukhtiarkar, Jacobabad (Respondent No. 4), who produced various documents including letters from Air Headquarters, notices issued to the Applicant, affidavits executed by the Applicant, receipts of payments, and correspondence between various authorities. The Applicant himself was examined as DW-2, and Flight Lieutenant Arslan Ahmed appeared as DW-1 on behalf of the PAF. The Court also summoned the Mukhtiarkar as Court Witness (CW) to produce relevant revenue records. After a thorough examination of the evidence, the Trial Court found that the suit was maintainable, that the Applicant had indeed fraudulently received the claimed amounts, and that the Respondents were entitled to recover the same from him. Accordingly, the Trial Court decreed the suit in favor of the Respondents. The Appellate Court, upon a detailed re-examination of the evidence and legal arguments, concurred with the findings of the Trial Court and dismissed the appeal filed by the Applicant. The Applicant, through the present Civil Revision Application, has challenged the concurrent findings of the Trial Court and the Appellate Court on several grounds.

5. The learned counsel for the Applicant has contended that both the Courts below have misread and mis-appreciated the evidence on record, leading to erroneous conclusions. It has been argued that there was no fraud committed by the Applicant as alleged, and that the compensation received by him was legitimate and in accordance with law. The counsel has submitted that the Survey Numbers 291 and 292 were not previously acquired as claimed by the

Respondents, and that the inclusion of these survey numbers in the 2008 acquisition was proper and legal. Similarly, it has been contended that Survey No. 351 was within the area acquired for the PAF Base and not outside it as alleged. The counsel has further argued that the Applicant never executed any affidavit undertaking to refund the amount in case of any error or fraud, and that the documents produced by the Respondents in this regard are fabricated. It has also been submitted that the Respondents, being revenue officials, are the custodians of the revenue records, and it is impossible for the Applicant to manipulate these records. The counsel has emphasized that the Applicant, as the attorney for the landowner, was entitled to receive the compensation, and that there was no fraud or misrepresentation on his part. It has been argued that both the Courts below failed to properly appreciate the legal defenses raised by the Applicant, which, if correctly appreciated, would have led to the dismissal of the suit. Lastly, the learned counsel has prayed for allowing the Civil Revision Application. The learned counsel has relied upon PLD 2002 Supreme Court 84; PLD 2002 Supreme Court 403; and 2018 MLD 1408.

6. On the other hand, the learned D.A.G and A.A.G have vehemently opposed the Civil Revision Application, contending that the concurrent findings of the two courts below are based on a proper appreciation of evidence and sound legal principles. He has pointed out that the Applicant himself had filed F.C. Suit No. 05 of 2012 before the Senior Civil Judge-I, Jacobabad, wherein he had admitted receiving the amount of Rs. 17,63,680/- as compensation for the disputed survey numbers. This suit was later withdrawn by the Applicant when the Mukhtiarkar filed a detailed written statement exposing the fraud. The counsel has further highlighted that the Applicant, in his evidence before the Trial Court, admitted receiving the compensation amount and also admitted executing an undertaking to be responsible in case of any fraud in the acquisition

of the said survey numbers. The counsel has emphasized that the evidence of Flight Lieutenant Arslan Ahmed, who appeared as DW-1 on behalf of the PAF, clearly established that Survey Numbers 291 and 292 were already in possession of the PAF since 1974-77, and were adjacent to the fencing/boundary wall towards the outer side in buffer areas. This evidence was not denied by the Applicant during cross-examination. The counsel has also referred to the documentary evidence, including the letters from Air Headquarters and the Military Estate Office, Hyderabad, which confirm that the disputed survey numbers were already acquired in the earlier acquisitions. The counsel has submitted that the Applicant's fraud is clearly established by the evidence on record, and that both the courts below have rightly decreed the suit in favor of the Respondents. The counsel has relied on the principle laid down by the Hon'ble Supreme Court in the case reported in 2016 SCMR 01. Lastly, the learned counsel for the Respondents has prayed for dismissal of the Civil Revision Application.

7. After hearing the learned counsel for the parties and perusing the record with their able assistance, this Court is of the considered view that the Civil Revision Application is devoid of merit and deserves to be dismissed. The concurrent findings of fact recorded by the learned courts below are well-reasoned and based on a proper appreciation of the evidence on record. A critical aspect of this case that merits detailed examination is the series of admissions made by the Applicant during the proceedings, both in his pleadings and in his oral testimony, which significantly undermine his position and corroborate the allegations of fraud leveled against him. These admissions, when viewed in the context of the entire evidence, provide compelling grounds for upholding the concurrent findings of the Courts below. First and foremost, it is pertinent to note that the Applicant himself had previously instituted F.C. Suit No. 05 of 2012

before the Senior Civil Judge-I, Jacobabad, seeking a “Declaration and Permanent Injunction” against the Respondents’ attempts to recover the disputed amount. The copy of the plaint of this suit was produced on record as Ex.P/34/Q. In paragraphs 5 and 7 of the said plaint, the Applicant made crucial admissions that directly contradict his subsequent denials. In paragraph 5, he explicitly stated: *“That the compensation of area of 2-22 acres out of survey No.292 measuring 1-39 acres was amounting to Rs.12,43,380/- (Twelve Lacs, Forty Three Thousands Three Hundreds and Eighty) and the compensation of Survey No. 351 measuring 1-09 acres amounting to Rs.5,20,300/- (Rupees Five Lacs Twenty Thousands and Three Hundreds) had been paid to the plaintiff. As such the plaintiff in all has received Rs 17,63,680/- (Rupees Seventeen Lacs, Sixty Three Thousands, Six Hundred and Eighty) from the then District Officer (Revenue) Jacobabad, presently known as Deputy Commissioner/Collector Jacobabad”*. This admission is of profound significance as it unequivocally confirms the Applicant’s receipt of the exact amount claimed by the Respondents in the present case. It is a well-established principle of law that admissions made by a party in his pleadings constitute the strongest evidence against him. The Applicant has not claimed that his admissions in F.C. Suit No. 05 of 2012 were made under any mistake, fraud, or coercion. On the contrary, the fact that he withdrew the said Suit when the Mukhtiarkar filed a detailed written statement exposing the fraud further strengthens the inference that the admissions were true and that the Applicant realized the futility of pursuing a case based on false premises.

8. Secondly, during his examination as DW-2 before the Trial Court, the Applicant made further damaging admissions. As noted by the Appellate Court in its judgment, the Applicant *“admitted such version during cross by deposing that he had undertaking to be responsible in case of any fraud of acquisition of said survey*

numbers/suit land". This admission directly contradicts his earlier denial in the written statement where he had claimed that he never executed any affidavit or undertaking to refund the amount in case of error or fraud. The admission of executing such an undertaking is particularly significant because it establishes the Applicant's awareness of the potential irregularities in the acquisition process and his acceptance of responsibility to refund the amount if any fraud was discovered.

9. Thirdly, the Applicant's failure to deny or rebut key pieces of evidence presented against him amounts to an implied admission under Article 113 of the Qanun-e-Shahadat Order, 1984. This provision stipulates that no fact needs to be proved in any proceeding if the parties or their authorized agents admit it during the hearing, or have agreed to admit it in writing prior to the hearing, or are deemed to have admitted it by their pleadings or under applicable rules. The evidence of Flight Lieutenant Arslan Ahmed, who appeared as DW-1 on behalf of the PAF, categorically established that Survey Numbers 291 and 292 were already in possession of the PAF since 1974-77. During cross-examination, the Applicant's counsel specifically asked DW-1 about the possession of these survey numbers, to which DW-1 replied: "*We were already in possession of survey No. 291 & 292 since 1974-77. The survey No.291 & 292 were in our possession adjacent to fencing/boundary wall towards outer side in buffer areas*". Significantly, the Applicant did not challenge or deny this crucial testimony, which directly contradicted his claim that these survey numbers were not previously acquired. This failure to deny constitutes an implied admission of the truth of DW-1's testimony.

10. Fourthly, the documentary evidence produced by the Respondents, including the affidavits executed by the Applicant (marked as Ex.34/F to Ex.34/J) and the receipts of payment, further corroborate the Applicant's

admissions. These documents were duly proved in evidence and their authenticity was not successfully challenged by the Applicant. The affidavits clearly show that the Applicant had undertaken to refund the amount in case of any error, mistake, or fraud, which he later refused to honor when the fraud was discovered.

11. Fifthly, the Applicant's conduct in approaching the Land Acquisition Officer (LAO) Jacobabad for further payment for Survey No. 291, as mentioned in the written statement of defendants Nos. 1 to 3, is also indicative of his awareness of the irregularities. This attempt was stopped, and subsequently, the Land Acquisition Collector issued notice No. 1 dated 17-12-2011 to the Applicant for refunding the amount received fraudulently. The Applicant's response to this notice was not to deny receipt of the amount or the execution of the undertaking, but to file F.C. Suit No. 05 of 2012 seeking to prevent the recovery, which itself contained the damaging admissions discussed above.

12. It is a well-established principle of law that a party is bound by its pleadings and conduct and cannot subsequently evade the legal consequences arising therefrom. Once a party has made an admission or has voluntarily submitted to the jurisdiction of a particular authority, it is estopped from challenging the same at a later stage. Accordingly, the doctrine of estoppel squarely applies to the Applicant in view of the admissions evident on record. In a similar context, the Hon'ble Supreme Court, in ***Combind Investment (Pvt.) Ltd. v. Wali Bhai and others (PLD 2016 SC 730)***, held that: "*Where the principle of estoppel is pressed into service on the basis of some admitted/undisputed facts of the case, a party is bound by his pleadings and conduct. Hence, at any later stage, he cannot turn around to wriggle out from the consequence of such admission and conduct of submitting to the jurisdiction of such authority*".

13. In the present case, the Applicant's admissions, both express and implied, establish beyond reasonable doubt that he received the amount of Rs. 17,63,680/- as compensation for Survey Numbers 291, 292, and 351, that he executed an undertaking to refund the amount in case of any error or fraud, and that Survey Numbers 291 and 292 were already in possession of the PAF since 1974-77. These admissions directly contradict his defenses and support the Respondents' case that the amount was fraudulently received for land that had already been acquired or was outside the acquisition area. The evidence on record clearly establishes that Survey Numbers 291 and 292 were already acquired by the Government for the PAF Base in the earlier acquisitions of 1967-68, 1972-73, and 1993-96. This is corroborated by the testimony of Flight Lieutenant Arslan Ahmed, who categorically stated that these survey numbers were in possession of the PAF since 1974-77. The Applicant did not deny this crucial piece of evidence during cross-examination. Moreover, the letter dated 31-10-2011 from the Director Revenue Record, Air Headquarters, Islamabad, requesting mutation of previously acquired land, further confirms this fact. The inclusion of these already acquired survey numbers in the 2008 acquisition notification was clearly fraudulent, and the Applicant, being an employee of the PAF and well aware of the previous acquisitions, took advantage of this situation to fraudulently receive compensation for land that had already been acquired. Similarly, the evidence establishes that Survey No. 351 was not within the area acquired for the PAF Base, yet the Applicant fraudulently received compensation for this survey number as well. The Applicant's fraud is further evidenced by the fact that he executed an affidavit undertaking to refund the amount in case of any error, mistake, or fraud, which he later refused to honor when the fraud was discovered. The Applicant's own admission in F.C. Suit No. 05 of 2012, which he later withdrew, and his admission during cross-examination in the present case, leave

no doubt about his culpability. The legal principles applicable to the case have been correctly applied by both the Courts below. It is a well-established principle that a person who obtains money through fraud or misrepresentation is bound to return it to the rightful owner. It stands established on record that the Applicant fraudulently obtained the compensation amount and, therefore, cannot be permitted to retain the same. As held by the Hon'ble Supreme Court in the case of *Mst. Nazeeran and others v. Ali Bux and others (2024 SCMR 1271)*, *"Fraud vitiates all actions and no Court can uphold a right on fraud. It is very easy to assert fraud but it is difficult to prove the same. No law provides a special quantum of evidence for the establishment of fraud. While it is true that the Courts should be careful in coming to a finding of fraud and should normally satisfy themselves that the finding is based on reliable evidence, it cannot be said that any special number of witnesses or any special nature of evidence is needed to establish fraud"*.

14. Furthermore, the scope of revisional jurisdiction under Section 115 of the Code of Civil Procedure is narrowly defined. The High Court may interfere only where the subordinate Court has: (a) exercised a jurisdiction not vested in it by law; (b) failed to exercise a jurisdiction so vested; or (c) acted in the exercise of its jurisdiction illegally or with material irregularity. In the present case, the Applicant has failed to demonstrate the existence of any such jurisdictional error or material irregularity. The Courts below were fully competent to entertain and adjudicate the suit, and they exercised their jurisdiction strictly in accordance with law. The mere disagreement of the Applicant with the concurrent findings of fact does not constitute a valid ground for interference in revision. It is a well-settled principle that a revisional Court, while exercising jurisdiction under Section 115 C.P.C., does not ordinarily interfere with concurrent findings of fact recorded by the Courts below. This principle rests on the rationale that the

appellate forum is the final authority for the resolution of factual disputes. However, this rule is not absolute and is subject to exceptions. Intervention may be warranted in cases involving gross misreading or non-reading of material evidence, or where the courts below have acted illegally or with material irregularity in the exercise of their jurisdiction. In this regard, reference may be made to the authoritative judgment of the Hon'ble Supreme Court of Pakistan in *Haji Wajdad v. Provincial Government through Secretary, Board of Revenue, Government of Balochistan, Quetta and others (2020 SCMR 2046)*, wherein the Court reiterated the limited scope of revisional jurisdiction and the exceptional circumstances under which it may be invoked. It is evident from the record that the Applicant has not been able to establish any gross misreading or non-reading of evidence, nor has he demonstrated any illegality or material irregularity warranting interference. Furthermore, no exceptional circumstances have been shown that would justify the revisional Court's intervention in the concurrent findings of fact recorded by the learned Courts below.

15. In light of the foregoing discussion, this Court finds no merit in the present Civil Revision Application. Accordingly, the Civil Revision Application is dismissed being without substantive merit. The concurrent findings of fact recorded in the impugned Judgment and Decree dated 18.05.2022, passed by the learned District Judge/MCAC Jacobabad in Civil Appeal No. 02 of 2022, affirming the Judgment dated 13.12.2021 and Decree dated 18.12.2021, rendered by the learned Senior Civil Judge-I, Jacobabad in F.C. Suit No. 31 of 2017, are hereby upheld. The parties shall bear their own costs in relation to these proceedings.

JUDGE