

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

1st Civil Appeal No.D-06 of 2002

Before:

*Mr. Justice Shamsuddin Abbasi,
Mr. Justice Ali Haider 'Ada'*

Appellant : Abdul Jabbar Soomro (since dead through his LRs),
through Mr. Zamir Ali Shah, Advocate.

Respondents : Assistant Commissioner/Land Acquisition Officer
Shikarpur and others *through Mr. Munawar Ali
Abbasi, Assistant Advocate General, Sindh and
Mr. Abdul Qadir Abro, Advocate,*

Date of Hearing : 16.09.2025.

Date of Decision : 23.09.2025.

JUDGMENT

Ali Haider 'Ada'.J:- Through the instant civil appeal, the appellant has assailed the order dated 26.06.1997 and the decree dated 03.05.2002, passed by the learned 1st Additional District Judge, Shikarpur (trial Court), in Land Acquisition Suit No.02/1981 titled Abdul Jabbar vs. Assistant Commissioner. By the said order and decree, the learned trial Court enhanced the compensation Rate from Rs.5,000/- to Rs.15,000/-. The appellant, being aggrieved by such enhancement and seeking further increase in the compensation, has preferred the present appeal.

2. The brief facts, as borne out from the record, are that the office of the Assistant Commissioner / Land Acquisition Officer, Shikarpur, passed an award for acquisition of land required for the construction of sludge lagoons under the urban Drainage Scheme, Shikarpur. For this purpose, the land of the appellant, measuring 12-05 acres, situated in Survey No.601, Taluka and District Shikarpur, was acquired. Upon completion of the legal formalities under the Land Acquisition Act, 1894, the Land Acquisition Officer announced the award, whereby compensation was fixed at the rate of Rs.5,000/- per acre, along with 15% compulsory charges and interest. The appellant, being dissatisfied with the said award, filed objections, whereupon a reference under Section 18 of the Land Acquisition Act was made before the learned trial Court. After considering the material aspects of the case, the

learned trial Court, vide order dated 26.06.1997, enhanced the rate of compensation from Rs.5,000/- to Rs.15,000/- per acre in respect of the appellant's land.

3. The appellant, through Civil Revision No.28 of 1999, challenged the aforesaid order before the learned Single Bench of this Court at Sukkur. The said revision was disposed of on 18.04.2002. For ready reference, the order dated 18.04.2002 is reproduced herein below:

“By consent, this Revision application is allowed and the 1st Additional District Judge, Shikarpur is directed to prepare a decree in Land Acquisition Suit No.2/1981, in accordance with the judgment dated 26.6.1997.

In view of the above order, other applications have become infructuous and stand disposed of accordingly”.

4. Thereafter, in pursuance of the aforesaid order, the learned trial Court, on 03.05.2002, passed the decree, which is now under challenge at the instance of the appellant.

5. Learned counsel for the appellant contended that the award as well as the proceedings before the learned trial Court are not sustainable in law, as the same were concluded without proper consideration of material facts. He submitted that two reports of the concerned Mukhtiarkar were available on record. In the first report, the land was valued at Rs.15,000/- per acre, whereas in the second report, its value was assessed at Rs.20,000/- per acre. However, the learned trial Court, without appreciating this material aspect, enhanced the compensation only from Rs.5,000/- to Rs.15,000/- per acre, instead of Rs.20,000/- per acre, which was duly supported by the second report. It was further argued that the land in question possessed greater value than what had been determined under the award, which was passed without taking into account its true worth. In support of his submissions, learned counsel placed reliance upon the case reported as PLD 2003 SC 480.

6. Conversely, learned counsel for respondent No.3 submitted that the Municipal Officer has unnecessarily been arrayed as a party in the present proceedings, as he was neither summoned nor impleaded before the learned trial Court, nor does his office have any concern with the subject matter of the acquisition.

7. On the other hand, learned Assistant Advocate General argued that the impugned order and decree of the learned trial Court are well-reasoned and

reflect due consideration of the appellant's grievance, as the compensation was substantially enhanced from Rs.5,000/- to Rs.15,000/- per acre. He further submitted that if the appellant intended to claim a higher rate, it was incumbent upon him to adduce cogent evidence to establish that the land formed part of a valuable area, which he failed to do. It was also contended that the present appeal is, in fact, the second round of litigation, whereas in the earlier round, the appellant himself had consented to the decree in light of the judgment of the learned trial Court. Having given such consent, his right to re-agitate the same issue is barred under the law, and therefore, he cannot now be permitted to challenge the very order and decree which he had earlier supported.

8. Heard and perused the material available on record.

9. First and foremost, it is pertinent to mention that through Civil Revision Application No.28 of 1999, the judgment/order dated 26.06.1997 was assailed before the learned Single Bench of this Court at Sukkur. On 18.04.2002, the matter was disposed of by consent, whereby it was agreed that the decree be prepared by the learned trial Court in lieu of its order/judgment. The element of consent given by the appellant clearly demonstrated his willingness to have the decree prepared in satisfaction of the said order. In such circumstances, the question arises as to on what grounds the appellant can now challenge the very decree which was drawn pursuant to his consent. Moreover, through the present appeal, the appellant has again assailed the order of the learned trial Court dated 26.06.1997, whereas the same had already been challenged by him through the aforesaid civil revision and was disposed of with his consent. For further elaboration on the concept of "consent," reference may be made to *Black's Law Dictionary (11th Edition)*, wherein the term is defined as follows:

Consent. A voluntarily yielding to what another proposes or desires; agreement, approval, or permission regarding some act or purpose, esp. given voluntarily by a competent person; legally effective assent.

10. It is also significant to note that once the appellant had given consent in Civil Revision, any subsequent grievance against the same order cannot now be entertained, as the grievance had already been addressed through consent. The principle is well settled that a party who has consented cannot later be heard to complain. In this regard, the Latin maxim *volenti non fit injuria – to one who consents, no harm is done (a complaint bars a later complaint)*

squarely applies. Once the matter has run its full course, there is no justification to reopen the chapter. It is further to be noted that after disposal of the civil revision, no review petition was filed on the ground of any subsisting grievance against the original order/judgment of the trial Court. Whatever was done, therefore, was with consent and attained finality. This principle is further reinforced by the Latin maxim *Quod consensu fit, ratum est*, meaning what is done with consent is valid, as well as *consensus tollit errorem*, meaning “consent removes error.

11. The Honourable Supreme Court in the case of *Syed Ali Ahmed Shah v. Syed Shoukat Hussain Shah and others (2025 SCMR 361)* has categorically held that where a revision application before the High Court was disposed of by consent of the parties’ counsel, and the appellant later disputed such consent alleging that neither he nor his counsel had consented, such a plea could not be entertained in the absence of any supporting material, affidavit, or evidence. The Apex Court observed that the presumption of correctness and sanctity attaches to all judicial proceedings, orders, and judgments of the Courts, which can only be assailed through appropriate legal remedies.

12. Thus, the settled legal position remains that consent orders, once passed by a competent Court, carry sanctity and binding effect unless successfully challenged through proper legal recourse supported by cogent material, and cannot be assailed on bald allegations alone.

13. It is the case of the appellant that, being an urban property, the dispute has assumed a more complex and elevated nature. It is also one of the crucial aspects that the learned trial Court, through its verdict, had already granted substantial relief to the appellant by enhancing the compensation rate from Rs.5,000/- to Rs.15,000/- per acre. Thus, the grievance of the appellant stood redressed to a considerable extent. It is further to be observed that the matter pertains to events of time ago, and the learned trial Court had already provided a significant enhancement almost a threefold increase, which in itself constituted a substantial relief.

14. It is also noteworthy that the appellant has failed to press or even properly agitate the crucial aspect of valuation of the subject property. It is a settled principle that factors such as location, neighbourhood, potentiality, and other attendant benefits cannot be disregarded in the determination of fair compensation. The place and situation of the acquired land remain paramount

considerations, which must receive due and thoughtful attention while assessing compensation. Mere classification or nature of the land may be treated as a relevant factor, but it cannot be taken as an absolute or conclusive criterion for determining compensation. In the present matter, the appellant has utterly failed to discharge the burden of proving the enhanced value of the acquired property. It is a settled principle that in order to claim higher compensation, the claimant must establish the market value of the land by producing reliable evidence regarding its location, neighbourhood, potentiality, and other relevant factors. However, in the instant matter, the appellant did not lead any substantive or independent evidence to demonstrate that the property commanded a higher value in comparison to the rate fixed by the learned Trial Court. In the absence of such proof, mere assertions or reliance on isolated reports cannot be treated as sufficient material to warrant further enhancement of compensation. Thus, the claim of the appellant for an increase beyond Rs.15,000/- per acre remains unsupported and unsubstantiated. In this context, reliance is placed upon the judgment of the Honourable Supreme Court in the case of *Province of Punjab v. Malik Abdul Latif Amar (2025 SCMR 830)*, wherein it had been held that:

6. It is by now settled that the most important aspect qua the lands compulsorily acquired is that the mandatory returns proposed to be given to the land owner is the 'compensation' and not merely the market value of such land. In this regard, it is noteworthy, as held by this Court in "Land Acquisition Collector and others v. Mst Iqbal Begum and others" (PLD 2010 SC 719) that compensation should be 'gold for gold' and not 'copper for gold'. A perusal of Section 23 of the Act reflects that various factors are to be taken under consideration while determining compensation, with market value being just one such factor as reiterated in "The Province of Sindh v. Ramzan and others" (PLD 2004 SC 512). Furthermore, it is pertinent to note that compensation is a very wide term, indicating that the land owners, for various reasons, are to be compensated and not merely paid the price of the land which is just an interaction of supply and demand fixed between a willing buyer and a willing seller. Additionally, although, mere classification or nature of land, can be taken as a relevant consideration for the purposes of determining compensation, it is not an absolute one. Factors such as location, neighbourhood, potentiality or other benefits could not be disregarded either. Indeed, the place and situation of the acquired land are paramount considerations that must be accorded due and thoughtful attention in the fair assessment of compensation.

7. The learned Referee Court, while assessing the compensation placed reliance on Ex. P 1, which reflects that the value of the acquired land was Rs. 200,000/- per marla. The Courts below also observed that Ex.P2 to Ex.P5 reflect an increase in the prices of land. Thus, keeping in view these legal and factual aspects of the case, the learned Referee Court rightly enhanced the compensation from Rs.50,000/- per marla to Rs.210,000/- per marla. In this regard, reference may be made to the case reported as "Malik Aman and others v. Land Acquisition Collector and others" (PLD 1988 SC 32) wherein this Court had explained the concept of 'potential value' and

differentiated it from the term 'market value'. It was held that market value was normally to be taken as the one existing on the date of notification under Section 4 (1) of the Act, based on the principle of a willing buyer and a willing seller. In contrast, the potential value was explained to be one to which similar lands could be put to any use in future. Furthermore, factors for determining the compensation of the land are not restricted only to the time of the notification, but, can also relate to the period in future, and that is why in a large number of cases the potential value has been held to be a relevant factor. In this regard, reliance may also be placed on the judgments reported as "Fazalur Rahman and others v. General Manager, SIDB and another" (PLD 1986 SC 158) and "NWFP through Collector, Abbottabad Land Acquisition and others v. Haji Ali Asghar Khan and others" (1985 SCMR 767).

8. We also take notice of the fact that, in the present case, the notification under Section 4 of the Act was issued on 24.01.2006, followed by notifications under Sections 6 and 17(4) on 24.12.2009 and in pursuance thereof, Award No. 1/2010 was announced on 24.06.2010 by the Appellant. Under the said award, the Respondent was awarded compensation at the rate of Rs. 50,000/- per marla along with 15% compulsory charges amounting to a total sum of Rs. 4,063,950/- compensation for the Factory and Godown, situated on the main Lahore-Raiwind Road.

9. It is also noteworthy that there is an unreasonable delay of four years in the announcement of the Award and issuance of notification under Section 4 of the Act. Obviously, any escalation in the value of the property during such period constitutes the potential value of the land, which was rightly taken into consideration by the Courts below while determining the compensation. In this context, reliance can be placed on the case reported as "Land Acquisition Collector Abbottabad and others v. Muhammad Iqbal and others" (1992 SCMR 1245). A similar view was taken in the case reported as "Pakistan Burmah Shell Ltd. v. Province of NWFP and 3 others" (1993 SCMR 1700) wherein it was once again reiterated that consideration of market value at the time of the notification and Section 4 of the Act was merely one of the modes for assessing the market value and not the yardstick for assessment of compensation. Numerous matters to be considered for determining compensation were elaborately laid down by this Court in Murad Khan's case (1999 SCMR 1647) followed by the judgment reported as "Nisar Ahmad Khan and others v. Collector Land Acquisition, Swabi and others" (PLD 2002 SC 25).

10. In our view, the compensation assessed and determined by the Referee Court in the instant case was just and reasonable as the Court had adverted to every aspect of the case and advanced valid and cogent reasons in support of its findings.

15. In view of the above discussion, it is evident that the appellant had already availed the remedy by way of Civil Revision, which was disposed of with his consent, leading to the preparation of the decree by the learned trial Court. Once such consent was recorded, the matter attained finality, and the appellant cannot now be permitted to reopen or challenge the very decree that was drawn in consequence of his own consent. Furthermore, the learned trial Court had already granted substantial relief by enhancing the compensation rate from Rs.5,000/- to Rs.15,000/- per acre, which constitutes a considerable increase. The present appeal, therefore, does not disclose any illegality,

irregularity, or misapprehension of law or fact that may warrant interference by this Court. Accordingly, keeping in view the facts and circumstances of the case, and for the reasons recorded hereinabove, this 1st Civil Appeal, being devoid of merits, stands dismissed. There shall be no order as to costs.

JUDGE

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