JUDGMENT SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Before:
Mr. Justice Omar Sial
Mr. Justice Muhammad Humayon Khan

First Appeals No. D-35 and 36 of 2011

Ahmed Khan and others ...in I.A. No. D-35 of 2011
Haji Shafi Muhammad and others ...in I.A. No. D-36 of 2011
...Appellants

Versus

Land Acquisition Officer and others ...in both case
...Respondents

For the Appellants	:	Mr. Abdul Ghafoor Hakro, Advocate
For the Respondents	:	Mr. Allah Bachayo Soomro, Additional Advocate General Sindh
Date of Hearing	:	13.10.2026
Date of Judgment	:	27.10.2026

JUDGMENT

Muhammad Humayon Khan, J.: These two appeals under s. 54 of the Land Acquisition Act, 1894 ("1894 Act") have arisen in the backdrop of the acquisition of an area of 21-11 acres for the construction of a road leading from the Matli Byepass, Deh Kathore. The acquisition was initiated at the instance of the Executive Engineer, Provincial Highways Division, Badin ("acquiring agency") by Letter No. HC/G_148/644 dated 19.04.2005 and the possession of the land was taken pending acquisition, in May 2005, with the consent of the landowners. In order to begin proceedings, a notification under s. 4 of the 1894 Act was published on 25.05.2005. To our surprise, all the parties' pleadings are silent as to any declaration under s. 6 (and read with s. 17 since the possession predates the award) of the 1894 Act having been made, however, we

proceed assuming that there is no genuine dispute on the issuance of the declaration under s. 6 read with s. 17 of the 1894 Act. In any event, the acquisition proceedings were carried out by the Respondent No. 1 ("Land Acquisition Officer"). Notices under ss. 9(1) and 9(3) of the 1894 Act were duly served upon all concerned. In each of those notices, the Land Acquisition Officer had called on the landowners to file their objections and claims as per the 1894 Act. However, the Appellants admittedly failed to file any such objections.

2. Finally, the Land Acquisition Officer passed an Award No. LAO/105 of 2006 dated 12.06.2006 according to which the market value of the land was assessed at Rs. 80,000/- per acre for the land adjacent to the main road and Rs. 70,000/- per acre for other land. On the base market values, the Land Acquisition Officer made awards of solatium under s. 23(2), additional compensation under s. 28A and compulsory interest under s. 34 of the 1894 Act. The awards were duly communicated to all those required under s. 12(2) of the 1894 Act.

3. Aggrieved, the Appellants filed two separate references under s. 18(1) of the 1894 Act before the learned District Judge, Badin, which were heard by the learned Additional District Judge-I, Badin ("Referee Court"). The reference filed by Ahmed Khan and others, out of which First Appeal No. D-35 of 2011 has arisen, was filed as Land Acquisition Reference No. 02 of 2006. They claimed compensation at the rate of Rs. 521,215/- per acre along with statutory benefits under ss. 23(2), 28A and 34. On the other hand, the reference filed by Haji Shafi Muhammad and others, out of which First Appeal No. D-36 of 2011 has arisen, was filed as Land Acquisition Reference No. 03 of 2006. They claimed the same amount in compensation for the area acquired. In both of the references, which were different in their

structure and drafting, the following common contentions were raised:

i) The Appellants were not provided opportunity to raise any objections on the measurement or claim appropriate compensation as to the acquired land.

ii) The measurement of certain survey numbers was incorrect and in fact the Respondents have occupied excess area.

iii) The acquired land is located within the limits of Matli Municipal Committee and as such the potentiality of the land had to be taken into account.

iv) The acquired land was to be treated as *sikni* for the purposes of the acquisition and compensation was to be determined accordingly.

v) There are several plots in the area and the Land Acquisition Officer had to account for them as well.

vi) In Reference No. 03 of 2006, an additional ground was raised that there is a tendency on the part of buyers and sellers to undervalue their property in registered deeds to save stamp duty and as such previous sale deeds are not reliable.

4. As against the references, the Respondents filed their respective comments/written statements in which they defended the awards and stated that the same were awarded according to the law. They denied the claims of the Appellants and stated that the valuation and measurements of the acquired land were proper and

that the acquired land was not sikni for purposes of valuation. They stated that the land was partially barren and partially cultivated whereas certain survey numbers were even waterlogged.

5. The learned Referee Court framed six issues in both the references and on which the parties recorded evidence. By two separate Judgments, each dated 31.03.2011, the learned Referee Court decided the references in favour of the Appellants by enhancing the compensation from Rs. 70,000/- and Rs. 80,000/- per acre to Rs. 150,000/- per acre along with additional compensation under s. 23(2) and interest at bank rates from the date of possession. (We may note that the learned Referee Court passed decrees in both the references as well which was plainly incorrect and irregular for the reason that, under s. 26 of the 1894 Act, the Referee Court is to pass an award which is an altogether different category of documents created by the 1894 Act itself and which is treated under s. 26(2) to be a judgment and decree both, as opposed to the ordinary mode of civil disposal, which is by a separate judgment and decree. In any case, since this is more a matter of form than of substance, not much turns on this aspect and we regard this as an irregularity in procedure and proceed accordingly.)

6. The Judgments dated 31.03.2011 were challenged in these two appeals that are presently before us. In both the appeals the Appellants prayed for the compensation (including market value and all statutory benefits) to be enhanced to Rs. 731,078/- per acre and the common grounds raised by the Appellants were on similar lines as their references under s. 18(1) of the 1894 Act, filed before the Referee Court. In First Appeal No. D-36 of 2011, filed by Haji Shafi Muhammad and others, the Respondents filed cross-objections under r. 22 of O. XLI of the CPC read with s. 54 of the 1894 Act. They

stated that the amount of compensation should be reduced back to what had been awarded by the Land Acquisition Officer. No such cross-objections were filed in First Appeal No. D-35 of 2011.

7. These appeals came up before us on 13.10.2026 when we heard the able arguments of Mr. Abdul Ghafoor Hakro for the Appellants and Mr. Allah Bachayo Soomro, the learned Additional Advocate General Sindh and perused the record.

8. Mr. Abdul Ghafoor Hakro contended, inter alia, that the impugned Judgments were illegal and erroneous on both facts and law. He stated the facts of the case and reiterated the claims of the Appellants and thereafter contended that the learned Referee Court had failed to appreciate the law and the facts and evidence available in their true context. He argued that the learned Court below as also the Land Acquisition Officer had ignored the alternative uses to which other land in the vicinity had been put and as such they did not account for the potentiality of the land. He further stated that the acquired land is in municipal limits and as such it ought to have been regarded as sikni or non-agricultural for purposes of the acquisition. Learned Counsel was queried as to whether notices under s. 9 were served upon his clients and, if so, whether they had filed any written objections and claims in response. He replied that the notices were indeed received and that no objections in writing were filed although orally his clients attempted to raise their claims and objections. Finally, he prayed for the appeals to be allowed as prayed and for the cross-objections to be dismissed.

9. On the other hand, the learned Additional Advocate General Sindh categorically opposed the appeals and submitted that they should be dismissed and that the Government's cross-objections in

First Appeal No. D-36 of 2011 should be allowed. He argued that the compensation awarded by the Land Acquisition Officer was adequate and even the learned Referee Court should not have enhanced the compensation. He further argued that the learned Court below failed to appreciate s. 34 of the 1894 Act in awarding interest at bank rate. He stated that s. 28A of the 1894 Act was repealed retrospectively and as such no benefit under the said section can be granted to the Appellants. He argued that the acquired land at the relevant time had no potentiality by reason of its classification and local position. In support of his arguments he relied on *Dilawar Hussain and others v Province of Sindh and others* PLD 2016 SC 514, *Government of NWFP and others v Akbar Shah and others* 2010 SCMR 1408, *Commandant Indus Rangers and others v Zaheer Muhammad Khan* 2007 SCMR 1817, *Province of Sindh and others v Land Acquisition Officer and others,* First Appeal Nos. D-51 of 2010 and D-54 and 55 of 2011 (Judgment dated 11.02.2020; Hyderabad; unreported) and *Land Acquisition Officer and another v Syed Abdullah Shah and others* First Appeal No. D-13 of 2011 (Judgment dated 12.10.2023; Sukkur; unreported). He finally prayed for the appeals to be dismissed and for the cross-objections to be allowed as prayed.

10. In our view, these appeals turn on the following points for determination:

i) What was the effect of the Appellants' failure to file their claim/objections in response to notices under ss. 9(1) and (3) of the 1894 Act?

ii) Whether any additional compensation under s. 28A of the 1894 Act could have been awarded to the Appellants?

iii) Whether any excess area was occupied by the Respondents?

11. We begin our discussion on Point No. 1. In any acquisition proceeding, the Land Acquisition Officer is required to notify the persons interested under ss. 9(1) to (4) of the 1894 Act. The first notice is under s. 9(1) which is displayed at convenient places on or near the land to be acquired, while the other is under s. 9(3) and which is directly served upon "the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to act for persons so interested…". In each of these notices, the common objective is to take the claims to compensation and objections to the measurements of the land to be acquired. S. 9(2) reads as follows:

> "Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent."

12. Upon service of a notice under s. 9, the person interested is required to tender their objections to measurement and claims to compensation. These objections are the foundation on which the claims and objections of the persons interested stand and as such it has been settled that such claims/objections are the pleadings of the parties for purposes of land acquisition proceedings. In *Muhammad Sharif v Afsar Textile Mills Ltd and another* 1985 SCMR 1181, the Supreme Court held as follows (emphasis added):

> "Reading sections 9, 11, 18 and 21 together what is imperative is that the claimant must give out the particulars of the claim as to the nature of the interest and the amount of compensation desired for it. *In other words he should fully*

> *present his case before the Collector as this in terms is his pleadings to which he remains confined till the decision of the Collector in regard to the compensation payable. Necessarily, therefore, he is precluded from making out a fresh case either by way of supplementary claim to compensation or otherwise at the stage of judicial determiantion.* This is what is emphasised by Curgenven, J., in Secretary of State v. C.R. Subramania Ayyar AIR 1950 Mad. 576, and I see much substance in it as the pleadings are a foundation for the determination under section 18 of the Act. In effect, therefore, it alone becomes a matter referred under section 18 of the Act and the Court has no power to determine or consider anything beyond it."

13. In *Mrs. Gunj Khatoon and another v The Province of Sind through Secretary, Revenue Department, Karachi and another* 1987 SCMR 2084, this same view was followed by a five-member Bench of the Supreme Court. It was held as follows (para 23; emphasis added):

> "23. *According to the provisions of section 9 of the Act the claimant is required to submit, inter alia, his claim with regard to the question of compensation payable to him and the claim made in response to the notice issued under section 9 cannot be modified during the course of the proceedings.* This rule has recently been reiterated in Muhammad Sharif v. Afsar Textile Mills Ltd. 1985 SCMR 1181 where the dictum of the Lahore High Court in State v. Tikkar Jagtar Sindh AIR 1936 Lahore 733 to the effect 'that under section 9 of the Act an objector must give particulars of his claims and if an item is not specified therein he will not be awarded compensation on that score. The basis for that decision was also the sanctity of the claim preferred by the objector as binding on him was approved by this Court and it was observed that section 9 requires the claimant/objector to fully present his case before the Collector which will be deemed to be his pleadings and that he shall be confined to them throughout the proceedings. The provisions to Section 25 are also to the same effect."

(This was then followed in *Haji Muhammad Yaqoob and another v Collector, Land Acquisition / Additional Deputy Commissioner, Peshawar* 1997 SCMR 1670 (para 9).)

14. It will thus follow that when a person interested fails to object to measurement or make a claim of compensation in response to a notice under s. 9, the result would be that the person would be surrendering themselves to the discretion of the Land Acquisition Officer, meaning thereby that, subject to sound exercise of discretion, the Land Acquisition Officer would be entitled to pass an award

deemed appropriate by him. But what effect would the non-filing of a claim/objection under s. 9 have in a reference under s. 18 before Court? The answer to that is in s. 25 which is quite clear and envisages three situations in the following manner:

> "**25. Rules as to amount of compensation.** (1) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed.
>
> (2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.
>
> (3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector."

This provision on its own language does not extend to objections made against measurement of acquired land and as to which, in our view, a reference would properly lie for any aggrieved person interested. However, the provisions of s. 25 operate in relation to the award of compensation and in each of the three situations the consequences seem to us to be fairly clear: where a claim under s. 9 has been made, the compensation to be awarded by the Court may be more than the award of the Land Acquisition Officer but not more than what was claimed by the persons interested; where no claim under s. 9 has been made *without sufficient reason*, the award to be made by the Court shall not be more than the award of the Land Acquisition Officer; and where the claim has not been made *for sufficient reason*, the compensation may be more than the award of the Land Acquisition Officer but not less than it.

15. As to the precise meaning of "sufficient reason" for purposes of s. 25, we are of the view that there cannot be any. The words are genuinely broad and as such what reason may or may not be

sufficient is entirely to be gathered from the facts and circumstances of every case. However, in our view, the two ingredients that are indispensable in constituting truly "sufficient reason" are (i) good faith, and (ii) absence of negligence on the part of the person interested, and the Court will have to look for these when determining "sufficient reason." These were considered by the Bombay High Court in *Ranchhodlaji v Acquisition Officer, Ahmedabad* AIR 1945 Bombay 49 and subsequently endorsed in *K. Subrahmanyamma v Welfare Officer, Eluru* AIR 1966 Andhra Pardesh 15 in the following manner and we fully agree with the view so given (para 9; emphasis added; accessible at <https://indiankanoon.org/doc/463692/?utm_>):

> "9. In Ranchhodlaji v. Acquisition Officer, Ahmedabad, AIR 1945 Bombay 49 a Bench of the Bombay High Court had held that there cannot be a hard and fast definition of 'sufficient reason'. It is to be gathered from the facts of each case. In that case the fact that the agent who received the notice on account of his mismanagement was dismissed, had not been disproved, and their Lordships held that it was not improbable that the claimant was not aware of the receipt of the notice by the Agent, and the proceedings before the Collector took place without the claimant's knowledge. It was held that good faith and absence of negligence are the two important ingredients in sufficient reason. In that case no claim was at all made under section 9 but the claimant appeared through a pleader in the initial proceedings of the acquisition when the first notice was issued and their Lordships held that there was no reason at all why in his own interest he could not have appeared before the Collector if he was aware of the notice given to him under Section 9. As the evidence did not disclose that the claimant was negligent it was held that the claimant was entitled to receive the amount which in the opinion of the Judge he would but for his case falling under Section 25 of the Act."

16. In the present case, it is an admitted position that notices under both s. 9(1) and 9(3) were duly served upon and received by the Appellants, and in each of these notices the persons interested were told to file their objections and claims before the Land Acquisition Officer. Subsequently, in the Award it has been shown that the Appellants did appear before the Land Acquisition Officer.

However, no explanation whatsoever has been provided as to why they failed to file their claim under s. 9 of the 1894 Act. The situation would have been different if the Appellants had not been required to file their claims and objections in writing, but that is not the case as the notices under s. 9 clearly stipulate that the persons interested should file their statements in writing:

Notice u/s 9(3) bearing No. LAO/167 of 2006 dated 26.05.2006 (p. 117 of R&P of L.A. Reference No. 02 of 2006)	**Notice u/s 9(1) bearing No. LAO/166 of 2006 dated 26.05.2006 (p. 119 of R&P of L.A. Reference No. 02 of 2006)**
"It is now notified that occupiers/ interested person of S.Nos. shown in the schedule may appear at Hyderabad on 12.06.2006 in the office of the undersigned with certified copy of their entitlement to receive compensation of land, crops, treets, etd. *They are invited to filed their objections to area acquired as well as file measurement claims for compensation under each item.*"	"All persons interested in the land mentioned below are here by required to appear personally or by their agents on the date mentioned in the schedule at the undersigned officer and to submit: i) *A statement writing signed by them or by their agents* showing the nature of their respective interest in the land here in below mentioned, the amount and particulars of their claim to compensation for each interests and their objections, if any, to the measurements and area of the land to be acquired. ii) A statement under section 10..."

17. In our view, the Appellants were fully aware of the proceedings and they were at least negligent in failing to file their claim as required in the notices under s. 9. We therefore hold that the case of the Appellants is covered by s. 25(2) of the 1894 Act, meaning that the compensation could not have been legally enhanced by the learned Referee Court beyond the compensation awarded by the Land Acquisition Officer. The market value of the acquired land had been

settled at Rs. 70,000/- per acre for land away from the main road and Rs. 80,000/- per acre for land adjoining the main road which was conclusive in the circumstances and the learned Referee Court erred in enhancing the same. All statutory benefits, under s. 34 and 23(2) would stand accordingly modified. We may note that, although in First Appeal No. D-35 of 2011, no cross-objections or appeal have been filed by the Respondents, this Court still bears the power to modify the awards to bring it in accordance with the law under r. 33 of O. XLI read with ss. 53 and 54 of the 1894 Act. We proceed accordingly.

18. We may also note that the learned Referee Court awarded interest under s. 34 of the 1894 Act at prevalent bank rates, which is plainly incorrect. In fact, under s. 34 any interest to be paid for taking possession of any acquired land before award must necessarily be fixed at 6% per annum from the date of possession until payment. The amount could not have been more than that nor less. Therefore, since the possession was admittedly taken in May 2005 (we take the date to be 01.05.2005) and the Award was passed on 12.06.2006, the Appellants would be entitled to 6% simple interest under s. 34 from 01.05.2005 till payment of the amount. (This point is short and does not require a separate issue for discussion.)

19. This brings us to Point No. 2, which is as to the grant of the statutory benefit under s. 28A. This provision used to exist in the 1894 Act and provided as follows:

> "**Additional Compensation. –** In addition to the compensation fixed on the basis of market value as prevailing on the date of notification under Section 4, an additional amount of fifteen percent per annum of the compensation so fixed shall be paid from the date of the notification under Section 4 to the date of payment of the compensation."

S. 28A existed only in Sindh and Balochistan and its *vires* and repugnance with the Injunctions of Islam came in issue before the Federal Shariat Court in *Re: The Land Acquisition Act (I of 1894)* PLD 1992 FSC 398 (hereinafter the "S. 28A case") and were nullified by it in its judgment. In pursuance of the *S. 28A case*, in the Province of Sindh the Land Acquisition (Sindh Amendment) Act, 2009 ("2009 Act") was enacted which repealed s. 28A in the following manner (s. 4; emphasis added): "[i] in the said Act, section 28-A shall be omitted and *shall be deemed to have been so omitted as if it had never been enacted.*"

20. As will be seen, the language employed by s. 4 of the 2009 Act in omitting s. 28A was novel in that it created a legal fiction by which s. 28A was deemed never to have existed (which is to say as if it was never enacted). In our respectful opinion, the manner in which this provision has been made is a practical and logical difficulty (which being not a matter presently before us, we leave to be determined at some other time), and it did cause huge problems in due course of time. Consequently, the matter became one of contention and came up before the Supreme Court in *Dilawar Hussain and others v Province of Sindh and others* PLD 2016 SC 514. Their Lordships directly discussed the repeal of s. 28A and held as follows (para 5; emphasis added):

> "In the present circumstances, the Federal Shariat Court found the provisions of the section 28-A to be repugnant to the Injunctions of Islam. The preamble of the repealing Act states that the Federal Shariat Court has directed that certain amendments be made to the Act in its application to the Province of Sindh. The plain words of section 4 of the repealing Act indicate the intention of the legislature that this Section 28-A is non est and therefore as per the ratio of Dr. Mubashir Hassan case (supra) the appellants cannot be granted the benefit of section 28-A as claimed in the instant appeal. It is settled law that appeal is a continuation of the original lis and therefore there is no past and closed transaction which may

> have afforded them protection in the event of Section 28-A being declared to have 'never been enacted'…"

The issue was again raised before their Lordships in *B.P. Pakistan Exploration and Production Inc v Ashique Hussain Halepoto and 2 others* 2024 SCMR 833 and decided to the same effect. The Court first discussed s. 28A followed by *Dilawar Hussain* and thereafter observed that "it would be safe to state that in view of the present legislative dispensation, the appellant-company cannot be burdened with the payment of additional compensation to the private respondents/landowners under Section 28-A of the Act." An earlier division bench of this Court arrived at the same conclusion (and indeed it ought to have done so in view of the binding judgments discussed above) in *Ghulam Abbas and 2 others v IInd Additional District Judge, Badin and 4 others* 2025 YLR 1522.

21. As such, it is by now well-established that the statutory benefit under s. 28A, having been repealed with retrospective effect, cannot be granted to any landowner in pending claims. The situation of course would be different in relation to cases where such a benefit was granted, paid and no appeal or litigation ever ensued post repeal of the provision, but for all that presently matters, we hold that the Appellants cannot be entitled to the benefit of a provision which, by legal fiction, never existed. This point is answered in the negative.

22. We now turn to Point No. 3 which, as we have already held, was within the jurisdiction of the Referee Court under s. 18 and hence of this Court as well under s. 54 of the 1894 Act. On this point the parties only made allegations in their references under s. 18 of the 1894 Act, however, it seems to us that they subsequently abandoned their claim. No such point was raised during evidence nor any issue was framed on the measurement of the land. Even in the

memo of appeal no ground to this effect has been raised. We however deemed it appropriate to discuss this point briefly as the same was raised in the pleadings of the parties, and we answer it in the negative.

23. We therefore answer the points for determination in the following manner:

Point No. 1	The Appellants had been duly served notices under ss. 9(1) and (3) of the 1894 Act in which they were required to file their claims and objections in writing. However, they failed to do so and as such the learned Referee Court as also this Court are precluded under s. 25(2) of the 1894 Act from enhancing compensation any more than what had been awarded by the Land Acquisition Officer. Answered accordingly.
Point No. 2	S. 28A of the 1894 Act has been repealed as if it never existed by way of s. 4 of the Land Acquisition (Sindh Amendment) Act, 2009. Consequently, it cannot be granted in claims that are pending. However, we hold that where such a benefit has been granted and litigation has come to a close, the matter would be past and closed and no recovery can be made from dues already paid. Answered in the negative.
Point No. 3	Negative.

24. For these reasons, we dismiss these appeals and dispose of the cross-objections in First Appeal No. D-36 of 2011 along with any listed applications in the following manner:

i) The award of the learned Referee Court is modified by reducing the compensation back to the amount granted by the Land Acquisition Officer (Rs. 80,000/- per acre for land adjoining the road and Rs. 70,000/- per acre for land not adjoining the road).

ii) The Appellants shall be entitled to the statutory benefits under s. 23(2), and interest at 6% per annum under s. 34 from 01.05.2005 till due payment of the entire amount, if any remains.

iii) The Appellants are not entitled to the statutory benefit under s. 28A of the 1894 Act since repealed.

iv) Any amounts deposited before this Court shall be disbursed to the respective landowners according to their entitlement. If any excess amount has been deposited, the same is to be refunded to the government exchequer as per law. If any amount remains to be paid, the same shall be disbursed immediately to the landowners.

v) There shall be no order as to costs.

25. Office is directed to prepare a decree in the above terms in compliance with s. 54 of the 1894 Act. R&Ps may be returned.

JUDGE

JUDGE

Approved for reporting