

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

First Appeal No. D-32 of 2025
(Province of Sindh & Others v. Muhammad Aftab Khan & Others)
First Appeal No. D-33 of 2025
(Muhammad Aftab Khan & Others v. Province of Sindh & Others)

Before:

Justice Miran Muhammad Shah
Justice Muhammad Hassan (Akber)

Mr. Muhammad Humayon Khan, Advocate for Appellants

Mr. Muhammad Sharif Solangi, Assistant A.G Sindh along with Sirajuddin Soomro, XEN Provincial highway, Sanghar.

Date of Hearing : 17.03.2026

Date of Decision : .04.2026

JUDGMENT

MIRAN MUHMMAD SHAH, J: - Through this consolidated judgment, we intend to adjudicate upon two First Appeals, captioned above, both assailing the same judgment dated 27-05-2011, passed by the learned Additional District Judge, Tando Adam in Land Acquisition Reference No. 01 of 2005. Initially, these appeals were instituted as First Appeals No. D-37 (Province of Sindh & Others v. Muhammad Aftab Khan & Others) and 45 (Muhammad Aftab Khan & Others v. Province of Sindh & Others) of 2011 before the Circuit Court, Hyderabad; however, upon the establishment of the Circuit Court at Mirpurkhas, the instant appeals were transferred from the Circuit Court, Hyderabad to the Circuit Court, Mirpurkhas, where they were re-numbered and assigned new Appeal Nos. D-32 (Province of Sindh & Others v. Muhammad Aftab Khan & Others) and 33 (Muhammad Aftab Khan & Others v. Province of Sindh & Others) of 2025.

2. The brief but essential background of the lis, as borne out from the record, reveals that the present matter emanates from a land acquisition reference pertaining to agricultural land admeasuring approximately 9.30 acres, situated in Deh Tando Adam, which was owned and possessed by the present appellants/plaintiffs. The said land was admittedly acquired by the respondents for the public purpose of construction of a Circular Road (Bye-pass), Tando Adam, at the instance of the Provincial Highways Department, Government of Sindh.

3. It transpires from the record that the possession of a portion of the suit land was initially taken by the respondents as far back as January, 1996, whereas the remaining land was taken in May, 1998, without following due process of law and without completing acquisition proceedings as mandated under the Land Acquisition Act, 1894. This unlawful dispossession constrained the landowners to invoke the constitutional jurisdiction of this Court by filing Constitutional Petition No. D-274 of 2002 (Aftab Khan and others v. P.O Sindh and others) [Exh.60-C], wherein directions were issued to the respondents to finalize acquisition proceedings within a stipulated period.

4. Pursuant thereto, formal acquisition proceedings were initiated through issuance of notifications under Sections 4 [Exh. 49 and 108; dated 28.04.2003], 6 and 17 [Exh. 48 and 109; dated 11.02.2004] of the Land Acquisition Act, followed by the announcement of an award dated 14.06.2004 [Exh. 110] by the Land Acquisition Officer, whereby compensation for the acquired land was assessed at the rate of Rs. 1,20,000/- per acre along with solatium. Being aggrieved and dissatisfied with the quantum of compensation, the appellants, through their attorney, invoked Section 18 of the Land Acquisition Act and sought reference to the Court for determination of fair market value, though the awarded amount was received under protest.

5. The case of the appellants/plaintiffs, as set forth before the Reference Court, was that the acquired land possessed significant commercial and developmental potential, being situated in close proximity to the town of Tando Adam and surrounded by industrial

units, residential colonies, and commercial activities. It was their categorical stance that the Land Acquisition Officer had failed to consider the true market value, the potentiality of the land, and comparable sale transactions in the vicinity, thereby awarding grossly inadequate compensation. The appellants, therefore, claimed compensation at the rate of **Rs. 300/- per square foot** along with statutory benefits, including solatium, additional compensation, interest, and damages for structures allegedly demolished and earth excavated for construction purposes.

6. Conversely, the respondents contested the claim by asserting that the land in question was neither situated within municipal limits nor possessed the commercial potential as alleged. It was contended that the compensation awarded was already higher than the prevailing market value of similar lands in the vicinity, which, according to them, ranged substantially lower. The respondents further disputed the entitlement of the appellants to enhanced compensation and additional claims, asserting that the reference itself was devoid of merit.

7. Upon completion of pleadings, the learned Reference Court framed issues [Exh.11 dated 25.07.2005] relating to the location and potentiality of the land, entitlement of the appellants to enhanced compensation, damages for earth excavation, and alleged demolition of structures. For simplicity, the issues framed in the reference Court are reproduced below:

“1. Whether the land of the plaintiffs acquired by the opponents is surrounded by commercial, industrial and residential areas and is situated in the vicinity of the town, and if so, at what rate the applicants are entitled to compensation for the acquired land?

2. Whether the plaintiffs are entitled to damages at the rate of Rs. 2/- per cubic foot for the earth work carried out by defendant No.2 by taking earth from the adjoining land of the applicants for construction and buttressing of the road?

3. To what damages, if any, the applicant No.6 is entitled on account of houses and buildings allegedly demolished by defendant No.2 during the construction of the road, and whether he is entitled to compensation of Rs. 10,00,000/- on this count?

4. What should the decree be?”

8. In order to prove their case, the plaintiffs [landowners] examined as many as five witnesses. **P.W.1 Tarique Hussain, State Officer Small Industries**, appeared at Ex; 25 and produced attested photo stat copy of the list of operational units functioning in the Industrial Estate, Tando Adam at Ex; 26, attested photo stat copy of the layout plan of the Industrial Estate at Ex; 27, and list of fifteen (15) commercial plots reflecting their sale price at Ex; 28. Thereafter, **P.W.2 Zulfiqar Ali, Assistant Mukhtiarkar (Revenue)**, was examined at Ex; 29, who produced photo copy of letter issued by the Land Acquisition Officer (B&R), Hyderabad dated 08.05.2003 at Ex; 30, along with photo stat copy of letter issued by Mukhtiarkar (R), Tando Adam indicating the value of the suit land at Ex; 31. **P.W.3 Imdad Ali, Tapedar of Deh Tando Adam**, was examined at Ex; 32 and he produced photo stat copies of eight (8) revenue entries at Ex; 33 to 40. **P.W.4 Imdad Hussain Kuhro, Land Acquisition Officer (B&R), Hyderabad**, appeared at Ex; 43 and produced notice under Section 9 of the Land Acquisition Act dated 02.04.2004 at Ex; 44, objection filed by Hamayoon Khan (plaintiff No. 6) at Ex; 45, schedule of the suit land at Ex; 46, circular dated 06.08.1981 issued by the Land Utilization Department at Ex; 47, Gazette Notification under Sections 6 and 17 of the Land Acquisition Act dated 11.02.2004 issued by E.D.O (R), Sanghar at Ex; 48, Gazette Notification under Section 4 of the Land Acquisition Act dated 28.04.2003 at Ex; 49, Award dated 21.09.1991 passed by the Assistant Commissioner, Tando Adam at Ex; 50, and rejoinder filed by Muhammad Hamayoon (plaintiff No. 6) and others at Ex; 51. **P.W.5 Muhammad Hamayoon Khan** appeared at Ex; 60 and produced General Powers of Attorney executed by other plaintiffs in his favour at Ex; 60/A and 60/B. He further produced copy of order dated 27.08.2002 passed by the Honourable High Court of Sindh, Circuit Court, Hyderabad in C.P. No. 274 of 2002 at Ex; 60/C, copy of judgment dated 03.06.1992 passed by the Honourable High Court in Civil Revision No. 55/1987 at Ex; 60/D, certificate dated 22.06.2004 issued by Taluka Municipal Administration, Tando Adam at Ex; 60/E, letter issued by Colonization Officer Sukkur Barrage to Deputy Secretary (Land

Acquisition) at Ex; 60/F, certified copy of order dated 03.05.2006 passed by District Judge Sanghar in Land Acquisition Reference No. 6/2001 at Ex; 60/G, eight (8) photographs of the site at Ex; 60/1-1 to 60/71-8, two photographs depicting factories at Ex; 61/A-1 to 61/A-2, four certified copies of registered sale deeds at Ex; 62/A to 62/D, photograph showing telephone exchange adjacent to the suit land at Ex; 63, letter dated 21.08.2000 issued by Assistant Engineer Highways Sub-Division Tando Adam at Ex; 64, Award dated 09.06.2004 passed by Land Acquisition Officer (B&R), Hyderabad at Ex; 65, letter dated 15.07.2004 addressed to Land Acquisition Officer by plaintiff No. 6 at Ex; 66, letter dated 17.12.2004 issued by Land Acquisition Officer Hyderabad to advocate for plaintiffs at Ex; 67, letter dated 19.07.2004 issued by Land Acquisition Officer (BOR), Hyderabad to plaintiff No. 6 at Ex; 68, certificate dated 30.06.2004 issued by Taluka Municipal Officer Tando Adam at Ex; 69, letter dated 27.02.2002 sent by plaintiff No. 6 to Land Acquisition Officer (B&R), Hyderabad at Ex; 70, and legal notice issued by advocate for plaintiff Hamayoon Khan at Ex; 71. Thereafter, learned counsel for the plaintiffs closed their side vide statement at Ex; 72. Subsequently, an application under Order XIII Rule 2 CPC for production of certified/attested copies of official record and necessary documents was allowed vide order dated 05.05.2010, whereafter plaintiff No. 6 Muhammad Hamayoon Khan produced additional documents on oath, including original brochure of Tando Adam Green City at Ex; 127, attested copies of applications dated 27.02.2002 and 17.05.2004 along with annexures at Ex; 128 and 129, respectively, and a series of official correspondence and letters from various authorities spanning from 2003 to 2004 at Ex; 130 to 142. He further produced attested copies of applications and reminders sent to the Land Acquisition Officer dated 24.05.2004, 12.06.2004 and 15.07.2004 at Ex; 143 to 145, attested copy of application under Section 19 of the Land Acquisition Act sent to District Court Sanghar at Ex; 146, attested copy and copy of reference under Section 18 of the Land Acquisition Act dated 16.07.2004 at Ex; 147 and 148, attested copies of record of rights (Form VII and Form II) at Ex; 149 & 149/A, certified copies of judgments passed in Land Acquisition

References Nos. 4 to 7 of 2001 at Ex; 150 to 153, attested copy of approval/sanctioned order of Tando Adam Green City by Government of Sindh at Ex; 154, and approved layout plan of the said housing scheme at Ex; 155. Despite opportunity being provided, no cross examination was conducted by the Defendant. Thereafter, the plaintiffs finally closed their side vide statement at Ex; 156.

9. In rebuttal, *D.W.1 Gada Hussain, Land Acquisition Officer (B&R), Hyderabad*, examined himself at Ex; 107 and produced Gazette Notification under Section 4 of the Land Acquisition Act dated 28.04.2003 showing acquisition of 9.30 acres for construction of circular road at Ex; 108. He also produced original Gazette Notification under Sections 6 and 17 of the Land Acquisition Act at Ex; 109, original award relating to the suit land at Ex; 110, original map of Deh and Tapo Tando Adam at Ex; 111, and certified copies of various registered sale deeds bearing Nos. 730 dated 25.07.2000, 512 dated 26.06.2001, 665 dated 21.04.2003, 765 dated 15.09.2003, 111 dated 22.01.2004, 612 dated 10.06.2004, 938 dated 18.09.2004, 99 dated 14.01.2004, 617 dated 27.04.2005 and 1078 dated 27.07.2005 at Ex; 112 to 121 respectively. Thereafter, learned counsel for the defendants closed their side vide statements at Ex; 122 and 158.

10. Ultimately, the learned Additional District Judge partly accepted the reference and enhanced the compensation to Rs. 10,00,000/- per acre along with statutory benefits, while declining certain claims of the appellants, which judgment has now been assailed through the instant First Appeals.

11. During the pendency of the instant First Appeals, a Civil Miscellaneous Application bearing No. 132 of 2026 under Order XLI Rule 27 read with Section 151 C.P.C. was moved by the private appellants, seeking permission to place certain documents on record by way of additional evidence. Learned counsel for the private appellants submitted that the said documents are not only essential for the just and proper adjudication of the lis but, more importantly, reflect the **updated revenue record**, which has a direct bearing upon the determination of the controversy involved. It was further contended that all such documents

form part of the judicial/official record and are necessary to bring the record in line with the current and correct revenue position. Copies thereof were furnished to the learned A.A.G., who gave his no objection, consequently, vide order dated 19.02.2026, C.M.A. No. 132 of 2026 was allowed, and the documents, being reflective of the updated revenue record, were taken on record as additional evidence and shall be utilized for the purpose of proper adjudication of the matter:

1. **Certified copy of Order dated 07-04-2009** passed in C.P. No. D-91 of 2009. *Exhibited as 158/A.*

2. **Certified copy of Order dated 11-11-2010** passed in C.P. No. D-91 of 2011 along with **Certified Copy of Statement filed by A.A.G.** in C.P. No. D-91 of 2011, along with original Letter of Mukhtiarkar Tando Adam and its annexures [Entry No. 500 dated 19-08-2020, Jarian No. 63, Entry No. 665 dated 15-04-2008 (Form VII-B), and Entry No. 5600 dated 15-04-2008]. *Exhibited as 158/C.*

3. **Letter No. LA/B&R/-4884 dated 24-12-2012** issued by Director of Settlements Survey and Land Record Sindh, Hyderabad, along with correspondence, Ghat Wadh Form No. 63, Revised Ghat Wadh Form No. 63, and Revised Otaro. *Exhibited as 158/D.*

4. **Letter dated 16-12-2016** for correction of record (Otaro and Ghat Wadh Form) issued by Land Acquisition Officer to the Mukhtiarkar (Revenue), Tando Adam. *Exhibited as 158/E.*

5. **Corrected Order/Award dated 16-12-2016** under Section 12-A of Land Acquisition Act, along with Award dated 14-06-2004. *Exhibited as 158/F.*

12. It further emerges from the record that, through the additional evidence produced vide Exhibits 158/D, 158/E and 158/F, a material and substantive alteration has been brought on record concerning the extent, identity and revenue description of the acquired land. The Letter No. LA/B&R/-4884 dated 24-12-2012 issued by the Director of Settlements, Survey and Land Record, Sindh, Hyderabad, along with Ghat Wadh Form No. 63, its revised version and the Revised Otaro (Exh.158/D), when read in conjunction with the subsequent correction proceedings initiated by the Land Acquisition Officer through

letter dated 16-12-2016 addressed to the Mukhtiarkar (Revenue), Tando Adam (Exh.158/E), and culminating in the Corrected Order/Award dated 16-12-2016 passed under Section 12-A of the Land Acquisition Act, 1894 (Exh.158/F), unequivocally demonstrate that the acquired land did not remain static in its original measurement or survey identity, but rather stood duly revised, corrected and enhanced in terms of area as well as slight correction of alignment, while ownership remained the same, as a result of survey conducted under the directions of this Court in C.P. No. D-91 of 2009 at Exhibit 58/A. These documents, being official acts carried out by competent revenue and settlement authorities in discharge of their statutory functions, carry a presumption of correctness attached to official record and, therefore, cannot be brushed aside lightly or ignored without cogent reasons. In consequence thereof, for the purposes of proper adjudication, determination of compensation, and more particularly for execution of the decree, the revised entries as reflected in Exhibits 158/D to 158/F shall take precedence over the earlier record, and the land in question shall be treated in accordance with its corrected size, survey numbers and revenue description as finally settled by the competent authorities. Any determination or execution founded upon the pre-correction record would not only negate the updated and legally recognised position but may also occasion serious miscarriage of justice. It is further borne out from the record that the subject land has since been duly transferred and mutated in the revenue record from the landowners in favour of the Secretary Works and Services Department Karachi, Highway Department Government of Sindh, vide mutation entries No. 5600 and 665 as Exhibits 158/C, Deh and Taluka Tando Adam, being part of official record, reinforce the conclusion that the revised record is genuine, lawful and correct.

13. The learned counsel for the private appellants raised a crucial objection regarding the array of parties in the appeal preferred by the Government. He contended that Appellant No.2, namely the Executive Engineer, Provincial Highways Division, Sanghar, was never a party to the impugned Reference No. 01 of 2005 filed in the District Court, Sanghar on 09.08.2004; transferred to Additional District Judge, Tando

Adam on 05.01.2005, later adjudicated by the Court of learned Additional District Judge, Tando Adam. A plain perusal of the record substantiates the contention of the learned counsel, as no material has been shown to demonstrate that the said appellant was ever impleaded or participated in the proceedings before the trial Court. This omission constitutes a serious procedural defect, which in itself could furnish sufficient ground for dismissal of First Appeal No. 32 of 2025, as it reflects an unwarranted and unjustified attempt on the part of Appellant No.2 to become a party in appellate proceedings arising out of a reference in which he neither participated nor led any evidence at trial. However, without resting the matter solely on this technical ground, and keeping in view that another connected appeal (First Appeal No. D-33 of 2025 is also before this Court, it is considered appropriate, in the interest of fairness and justice, to proceed with the adjudication of the appeals on merits. Nevertheless, a note of caution is hereby recorded for Appellant No.2 in First Appeal No. 32 of 2025, i.e., the Executive Engineer, Provincial Highways Division, Sanghar, being a government functionary, as well as for the learned Assistant Advocate General, to exercise due care and circumspection while instituting such appeals, so as to avoid recurrence of such procedural lapses.

14. Learned Assistant Advocate General, Sindh, appearing on behalf of the appellants, while relying upon the written arguments placed on record, contended that the impugned judgment dated 27.05.2011 passed by the learned Additional District Judge, Tando Adam in Land Acquisition Reference No.01 of 2005 is legally unsustainable, having been rendered in disregard of settled principles governing appreciation of evidence and determination of compensation under the Land Acquisition Act, 1894. It was submitted that the learned Reference Court gravely erred in placing reliance upon the evidence adduced by the respondents, which, in substance, comprised inadmissible secondary evidence produced in blatant violation of the provisions of the Qanoon-e-Shahadat Order, without laying down the foundational requirements for its admissibility. He further contended that a substantial portion of documentary material was brought on record beyond the pleadings, thereby causing serious

prejudice to the appellants and rendering the entire evidentiary exercise legally infirm. Learned AAG argued that the depositions of prosecution witnesses, namely the Estate Officer, Assistant Mukhtiarkar, Tapedar and the private respondent, clearly demonstrate that neither the primary record was produced nor the conditions for leading secondary evidence were satisfied, yet the same was erroneously relied upon by the learned Reference Court. It was further submitted that the claim of the respondents regarding the alleged conversion of land from agricultural to non-agricultural (Sikni) status was wholly unsupported by lawful evidence, inasmuch as the mandatory procedure prescribed under Standing Order No.4 of the Revenue Department and the relevant circulars of the Board of Revenue was not complied with, thus disentitling the respondents from claiming enhanced compensation on the basis of urban potentiality. Learned AAG emphasized that the burden of proof squarely lay upon the respondents to establish the nature, classification, and market value of the acquired land, which they failed to discharge through cogent and legally admissible evidence. He further submitted that the proceedings before the learned Reference Court were conducted in a manner inconsistent with the requirements of a fair trial, thereby vitiating the impugned judgment. Learned AAG also addressed the application moved under Order XLI Rule 27 read with Section 151 CPC (C.M.A No. 132/2026) for additional evidence, contending that the same does not satisfy the conditions prescribed for allowing additional evidence at the appellate stage and is liable to be dismissed. It was lastly contended that the very foundation of the respondents' claim is contingent upon the sustainability of the impugned judgment, and in the absence of legally admissible and reliable evidence, the findings recorded by the learned Reference Court cannot be maintained. He, therefore, prayed that the impugned judgment be set aside, and the reference be either dismissed outright or, in the alternative, remanded to the learned Reference Court for fresh adjudication strictly in accordance with law.

15. On the other hand, Mr. Muhammad Humayon Khan, who is one of the appellants and also appeared as learned counsel for the appellant in First Appeal No. D-33 of 2025, vehemently contended that

the impugned judgment passed by the learned Additional District Judge, Tando Adam, is well-reasoned, legally sound, and based upon proper appreciation of the evidence available on record. He submitted that the learned Reference Court rightly exercised its jurisdiction under the Land Acquisition Act, 1894, while determining just and fair compensation in accordance with settled principles laid down by the Honourable Supreme Court of Pakistan.

Elaborating his submissions, he argued that the concept of “market value” is not to be construed in a narrow or pedantic manner, rather it includes not only the existing use of the land but also its potentiality, location, surrounding development, and future prospects, as consistently held in *PLD 2003 SC 480*, *PLD 2004 SC 512*, and *PLD 2010 SC 719*, wherein it has been authoritatively declared that compensation must reflect the price which a willing purchaser would pay, taking into account all advantageous factors including urbanization and developmental trends. He further relied upon *2002 SCMR 407*, *1999 SCMR 1615*, and *PLJ 1997 SC 1492* to contend that future potential and proximity to developed areas are decisive considerations in determining compensation, and once such factors are established, enhancement of compensation is not only justified but required in the interest of justice.

16. Learned counsel further maintained that the learned Reference Court had rightly appreciated both oral and documentary evidence, which remained unshaken during cross-examination. He submitted that it is a settled proposition of law that any material fact not challenged in cross-examination is deemed to have been admitted, as held in *2007 SCMR 518*, *2001 SCMR 1700*, and *1991 SCMR 2300*. He contended that the appellants failed to rebut the evidence produced by the claimants, nor did they lead any independent evidence to contradict the same, therefore the findings recorded by the learned Court below cannot be interfered with.

17. He further argued that mere filing of written statements without substantiating the same through evidence carries no evidentiary value, as consistently held in *PLD 2010 SC 604*, *PLD 2004 SC 465*, and *2006 CLC 440*, therefore the objections raised by the appellants before the

Reference Court were rightly disregarded. Learned counsel also emphasized that the determination of compensation must be just, fair, and reasonable, and not confined to the average price or classification of land alone. In this regard, he relied upon *2006 CLC 970*, *2001 CLC 1746*, and *1980 CLC 574*, wherein it has been held that courts must consider surrounding circumstances, amenities, and potential use of land while assessing compensation. He further contended that once such determination is made on sound principles, appellate interference is unwarranted, as held in *1987 CLC 1844*.

18. With regard to statutory benefits, learned counsel submitted that the landowners are entitled to all mandatory benefits under Sections 23(2), 28-A, and 34 of the Land Acquisition Act, 1894, including solatium and interest, as consistently held in *PLD 2005 Karachi 37*, *PLD 2005 Karachi 47*, *PLD 2004 SC 855*, and *SBLR 2007 Sindh 1234*, wherein it has been declared that such benefits are mandatory and cannot be denied even in cases of delay.

19. He lastly contended that the entire case of the appellants suffers from non-reading and misreading of evidence, and no jurisdictional defect has been pointed out. The impugned judgment, according to him, is in consonance with settled principles of law, supported by authoritative precedents, and based upon preponderance of evidence as required in civil matters, as held in *1993 SCMR 356*. He, therefore, prayed that First Appeal No. 32 of 2025, being devoid of merit, be dismissed, whereas First Appeal No. 33 of 2025 be allowed.

20. We have heard the learned Assistant Advocate General, Sindh, as well as Mr. Muhammad Humayon Khan, learned counsel for the private appellants, at considerable length, and have carefully perused the entire record, including the impugned judgment, oral and documentary evidence, as well as the relevant provisions of law. It is evident that the controversy between the parties revolves around the legality and propriety of the findings recorded by the learned Reference Court, particularly with regard to the determination of fair market value

of the acquired land, its potentiality, and the entitlement of the claimants to enhanced compensation and statutory benefits.

From the divergent contentions advanced by the learned counsel for the parties, the sole and consolidated point which arises for determination by this Court is as follows:

Whether the impugned judgment passed by the learned Reference Court, in determining the market value, potentiality and compensation of the acquired land, suffers from any misreading or non-reading of evidence, jurisdictional defect, or legal infirmity – so as to warrant interference by this Court, and if so, to what extent the private appellants [landowners] are entitled to enhancement or modification of compensation and statutory benefits?

21. The case of the appellants [Landowners], as emerging from the Reference and the material placed on record, is that they, being dissatisfied and aggrieved by the Award dated 14-06-2004 (Exh-110) passed by the Land Acquisition Officer under Section 11 of the Land Acquisition Act, 1894, sought reference of the matter for judicial determination. According to them, the Award was sent by post, whereafter appellants No.1 to 7 received the same on 18-06-2004, while appellants No.8 and 9 received it on 25-06-2004 through the Mukhtiarkar (Revenue), Tando Adam. It is their case that they had filed Land Acquisition Reference No.1 of 2004 before the Land Acquisition Officer on 26-04-2004, as reflected from Exh-1, Exh-147 and Exh-148, which was thereafter transmitted to the learned District Judge, Sanghar under Section 19 of the Land Acquisition Act dated: 09-08-2004 vide letter No. 234 at Exhibit No. 146, and the same was eventually transferred to and decided by the learned Additional District Judge, Tando Adam vide judgment dated 27-05-2011 at Exhibit 166. In the said Reference, the appellants asserted that they were owners of land measuring 9-30 acres, more particularly described in Schedule-A of the Reference, which land was acquired for the construction of Tando Adam Circular Road. It was

specifically pleaded that the said land is situated within the limits of Taluka Municipal Administration, Taluka Tando Adam, District Sanghar, and that Notification under Section 4 of the Land Acquisition Act was issued on 28-04-2003, as evidenced by Exh-49 and Exh-108.

22. The further case set up by the landowners is that respondent No.2 had, in fact, taken possession of Survey Nos.455/4 and 467/2 as far back as January, 1996, and possession of the remaining survey numbers mentioned in Schedule-A was taken in May, 1998, for the purpose of construction of Tando Adam Circular Road, without any notice, intimation or lawful acquisition proceedings. According to the appellants, such possession was taken forcibly and through threats administered by the then SDM, Tando Adam, as reflected from Exh-64, despite the fact that the land had not at that stage been acquired in accordance with law. Their case is that the Notification under Section 4, which was the first legal step in acquisition proceedings, was issued only on 28-04-2003, whereas the land had already been occupied years earlier. It is further noted that respondent No.2 had decided to construct Tando Adam Circular Road passing through the lands of the appellants situated in Deh Tando Adam, Taluka Tando Adam, District Sanghar, as detailed in Schedule-A. It is stated that the construction activity commenced in January, 1996 when the engineers and staff of the Highways Department entered upon the land and started construction work without obtaining permission of the landowners and without following the mandatory legal requirements. The landowners claim that they protested against such unauthorized intrusion and addressed several letters to the Highways Department objecting to the construction of the road over their land without prior acquisition. According to them, the construction on the land was completed around the year 2001 and thereafter the road was opened for traffic.

23. The road was thus constructed without initiation and conclusion of any proceedings under the Land Acquisition Act, and without payment of compensation of any nature whatsoever. It was on account of such inaction and illegality that appellants No.1 to 7 instituted Constitutional Petition No.D-274 of 2002 before the Honourable High

Court of Sindh, Circuit Court Hyderabad, whereupon the Honourable High Court, through order dated 27-08-2002, directed the respondents to finalize the land acquisition proceedings for Tando Adam Bye-Pass Road passing through the lands of the appellants within three months, as evidenced by Exh-60-C.

24. The landowners' case is that only after the aforesaid order of this Court, and after repeated applications and notices on their part, did the respondents commence formal land acquisition proceedings, beginning with the publication of Notification under Section 4 of the Act on 28-04-2003, evidenced by Exh-49 and Exh-108. Thereafter, Notification under Sections 6 and 17 of the Act was published on 11-02-2004, whereby the land was sought to be acquired on the footing of urgency, as shown through Exh-48 and Exh-109.

25. It is also the case of the landowners that notice under Section 9 of the Land Acquisition Act was issued on 02-04-2004 by respondent No.1, as reflected by Exh-44 and Exh-142. In response thereto, the appellants filed detailed objections, as well as their claim for compensation, on 26-04-2004 and 05-05-2004 before respondent No.1. These objections and claims are stated to be available on record as Exh-45 at relevant Page no. 631, 639 and 233 of R&P, and Exh-51. In those objections, the appellants set forth the factual and legal basis of their claim regarding market value and potential value of the acquired land. Landowners' prayer is reproduced as under:

"That the Objectors claim compensation under the following heads, in view of the facts stated hereinabove:

(a) Value of the land acquired as compensation at the rate of Rs.300/- per square foot, along with 15% compulsory acquisition charges (solatium) under Section 23(2) of the Land Acquisition Act, 1894, further 15% additional compensation under Section 28-A of the Act, and 6% simple interest under Section 34 of the Act.

(b) Cost of earth filling up to 5 feet in the bed of the road, approximately measuring 21,23,550 cubic feet, at the rate of Rs.2/- per cubic foot." [Exh.45]

That, in continuation of the objections filed on behalf of the Objector, namely Muhammad Humayon Khan, under Section 9 of the Land Acquisition Act, 1894, it is further submitted that there existed Kutcha and Pucca houses as well as an Otak constructed upon the acquired land, all of

which belonged to the said Objector. The said structures were demolished by the SDM Tando Adam and the Highways Department for the purpose of construction of the Tando Adam By-pass Road. The Objector, therefore, claims compensation to the tune of Rs.1,000,000/- (Rupees One Million only) on account of demolition of the aforesaid houses and Otak. In support thereof, a photocopy of Letter No. SDC/HW-TA 225 of 2000 dated 21-08-2000, issued by the Assistant Engineer, Highways Sub-Division, Tando Adam, addressed to Muhammad Humayon Khan, is annexed herewith." [Exh. 45]

Their case was that the 9-30 acres of acquired land was urban land, situated within Taluka Municipal Administration. It is located in the centre of rich/fertile lands, where the surrounding area had already developed or was rapidly developing into agricultural, commercial, residential and industrial uses. Their title was also verified as seen through Exh. 128, 129, 130, 131, 132, and 135, which was proven to be genuine and unchallenged, attaining finality without any dispute. According to them, the market value of the surrounding locality was continuously rising. It was their categorical case that along the Circular Road there existed factories, shopping centres, Eidgah, housing societies, Government College, petrol pumps, fish ponds spread over 16 acres, small and big industrial units and industrial estates. They also pleaded that telephone, electricity and gas facilities were available in the locality, that sub-soil water was sweet and fit for drinking, agricultural, commercial and industrial use, and that a Sui-Gas line had been laid all along the Circular Road. It was further asserted that Taluka Hospital, office of DDO (Revenue), shops, housing society and civil court buildings were situated about 300 yards from the Bye-Pass Road; colleges and schools for boys and girls were situated within 200 yards; and housing schemes like Muhammadi Town, Tor Colony, Telephone Exchange, Hira Public School, Tor Colony Phase-II, fully developed small industrial estate, and housing schemes like Gulshan Mehmood and Gulshan Nawaz were all situated within one-fourth kilometre of the road.

26. In continuation thereof, Gulshan Suleman, Jamal Town Housing Scheme, Imran Petrol Pump, Flour Mill, Food Department Godown, Government Degree College and Tando Adam College were

situated at a stone's throw distance, and the main Tando Adam Road ran parallel to the Circular Road at a distance of about 100 yards. On the strength of these facts, the appellants asserted that the Bye-Pass Road was located in the very hub of the town. They further stated that all these facts had been fully set out in their written objections filed before respondent No.1, along with supporting documents. It was also their specific case that the Land Acquisition Officer had been repeatedly requested in writing, vide Exh-45, Exh-143 and Exh-144, to visit the site and verify the correctness of these assertions, as also to verify the detailed report of the Mukhtiarkar available at Exh-31 and Exh-141. However, according to the appellants, the Land Acquisition Officer never took the trouble of visiting the site or verifying the above facts, despite such request also having been specifically made in their objection under Section 9 of the Act.

27. In this context, it is pertinent to observe that under Section 9 of the Land Acquisition Act, 1894, the Collector is mandatorily required to issue notice inviting all persons interested to put forward their claims, interests and objections. Sub-section (1) obligates the Collector to give public notice that the Government intends to take possession of the land and that claims to compensation may be made. Sub-section (2) further requires such persons to appear and "*state the nature of their respective interests... and the amount and particulars of their claims... and their objections (if any)*", while sub-section (5) mandates participation of the acquiring department in the enquiry process. A conjoint reading of these provisions makes it abundantly clear that the claims, objections, and statements submitted pursuant to notice under Section 9 are not mere formalities but constitute the foundational pleadings before the Collector. These objections define the scope of enquiry under Section 11, wherein the Collector is bound to adjudicate upon the measurements, valuation and competing claims strictly on the basis of such material. Consequently, any failure on the part of the Land Acquisition Officer to consider, verify, or investigate the objections so filed—particularly where supported by official record and accompanied by requests for site inspection—amounts to a serious procedural lapse, vitiating the fairness and legality of the award itself.

28. Thereafter, respondent No.1, i.e. the Land Acquisition Officer, passed the Award on 14-06-2004, whereby compensation for the entire 9-30 acres was assessed at Rs.13,45,500/- at the rate of Rs.1,38,000/- per acre, together with 15% solatium under Section 23(2) of the Land Acquisition Act. The grievance of the Landowners is that while passing the Award, respondent No.1 completely ignored and disallowed the benefit of Section 28-A of the Act and interest under Section 34 thereof, though according to the appellants they were lawfully entitled to both such benefits. They further asserted that they had claimed compensation at the rate of Rs.300/- per square foot together with benefits under Sections 23(2), 28-A and 34 of the Act, but such lawful and just claim was not accepted. It was also their case that the Land Acquisition Officer failed to grant compensation for the cost of earth filling up to 5 feet in the bed of the road, measuring approximately 21,23,550 cubic feet, at the rate of Rs.2/- per cubic foot, which according to them formed part of the compensation payable. It was specifically pleaded that no objection had been filed by the Highways Department, respondent No.2, before the Land Acquisition Officer against this part of the claim, yet the same was not awarded. The appellants, therefore, maintained that the Award dated 14-06-2004 was liable to be set aside and that they were entitled to compensation at the claimed rate of Rs.300/- per square foot along with benefits under Section 28-A, other statutory benefits including interest under Section 34, as well as compensation for earth filling and damages.

29. It was then stated that respondent No.1 filed a written statement denying the claim of the appellants and pleading, inter alia, that the suit land did not fall within municipal limits, nor was it situated within 220 yards of Tando Adam town; that the housing schemes and other facilities referred to by the appellants were not situated within one-fourth kilometre of the suit land; and that the average sale price of surrounding land during the year 2003 was about Rs.45,392/- per acre, whereas the market value of the acquired land had been determined at Rs.1,20,000/- per acre with an addition of Rs.18,000/- under Section 23(2) of the Act. On this premise, respondent No.1 pleaded that the appellants

had been awarded compensation much above the market value, and prayed for rejection of the Reference.

30. The Executive Engineer, Provincial Highways Division, Sanghar had filed a written statement, though according to the landowners such written statement was contrary to law. In that written statement, almost the same stance was adopted as that of respondent No.1, and it was additionally asserted that the Law Secretary had forbidden the Land Acquisition Officer from adding compensation under Section 28-A and interest under Section 34 of the Act. However, the landowners pointed out that in the said written statement, the Executive Engineer did not deny their claim for compensation at the rate of Rs.300/- per square foot and other statutory benefits, nor did he deny their claim regarding earth filling up to 5 feet in the bed of the road. It was further the case of the appellants that the Executive Engineer did not specifically controvert the factual assertions regarding the existence of commercial, industrial and residential colonies surrounding the acquired land, nor the existence of a cotton ginning factory in Survey No.607, nor the sale of plots adjoining the Circular Road at the rate of Rs.17/- per square foot in the year 1993 at concessional rate, nor the sale of land by housing schemes at the rate of Rs.335/- to Rs.625/- per square foot, nor the sale by Abdul Shakoor to Abdul Latif of a plot measuring 2400 square feet in Deh Tando Adam at the rate of Rs.165/- per square foot in the year 2004, nor even the prevailing sale price of residential plots in the vicinity of the Circular Road at Rs.500/- to Rs.600/- per square foot and commercial plots at the rate of Rs.800/- per square foot. According to the appellants, all these significant assertions remained unanswered.

31. So far as the grounds on which the impugned judgment of the learned Reference Court was assailed are concerned, the landowners' case is that the learned Reference Court arbitrarily fixed compensation at Rs.10,00,000/- per acre without adopting or applying the recognised methods and parameters provided under Section 23 of the Land Acquisition Act. According to them, the learned Court relied only upon documents pertaining to the Award for Telephone Exchange dated 21-09-1991, produced at Exh-50, although the said acquisition had taken place

about thirteen years prior to the present acquisition. It is their grievance that such reliance constituted a clear violation of law, because neither the present nor the future potential value of the acquired land was properly evaluated. It is further their case that the amount awarded by the learned Reference Court was even less, on comparative basis, than the compensation earlier granted for Telephone Exchange at the rate of Rs.33/- per square foot by award dated 21-09-1991, despite the undisputed fact that prices had escalated manifold during the intervening period.

32. The learned Reference Court failed to properly follow and apply the observations and principles laid down by the superior Courts with regard to determination of compensation payable to landowners whose lands are acquired compulsorily. According to landowners, although the learned Judge discussed in considerable detail the principles laid down by superior Courts concerning potential value and compensation, yet he failed to grant relief to the appellants in accordance with those very principles. Their grievance is that while the law quoted in the judgment correctly emphasised potentiality, liberal approach, future use, rise in prices, inflationary trends and depreciation in currency as relevant considerations in fixation of compensation, the ultimate relief granted by the learned Judge did not reflect those settled principles and was thus internally inconsistent.

33. Before the Award was passed by respondent No.1, landowners had made several requests that the factual position at the site and the correctness of their objections filed under Section 9 of the Land Acquisition Act be verified through personal inspection, but the Land Acquisition Officer paid no heed to such requests and did not visit the site. Those requests are available on record as Exh- 45, Exh-113 and Exh-114, besides the specific request made in the objections under Section 9. It is their case that none of those requests was complied with.

34. A significant grievance raised by the landowners is that the learned Judge himself admitted in paragraph 46 of the impugned judgment that the Land Acquisition Officer, while determining

compensation, had not taken into consideration the potentiality and future value of the suit land. Yet, according to the appellants, the learned Judge committed the same mistake by arbitrarily fixing compensation at Rs.10,00,000/- per acre. It was their case that once the evidence produced by them regarding the land's location, potential value and surrounding development was accepted, the proper compensation ought to have been assessed at Rs.300/- per square foot, and that the learned Judge assigned no reason whatsoever for fixing the compensation at Rs.10,00,000/- per acre. In this regard, reliance was placed by them on paragraph 46 of the judgment, wherein the learned Judge observed that the Land Acquisition Officer had not assessed compensation in accordance with the principles laid down by the superior Courts and that the Award passed by him was inadequate and unjustified.

35. The report of the Mukhtiarkar, Tando Adam, exhibited at Exh-31 and Exh-141, read together with the oral evidence of Assistant Mukhtiarkar Zulfiqar Ali (Exh-29), Tapedar Imdad Ali (Exh-32), Tarique Hussain (Exh-25), and Muhammad Humayon Khan (Exh-60), cumulatively establishes, with sufficient clarity and consistency, that the compensation awarded by the learned Reference Court was grossly inadequate and fell short of the legally recognised standard. It is by now a well-settled principle, consistently reiterated by the superior Courts, that fair compensation must reflect the price which a willing purchaser would pay to a willing seller, having due regard to the nature, location, and potentiality of the acquired land. In the present case, the record is replete with evidence demonstrating that similarly situated adjacent land was being transacted in the open market in the form of plots at rates ranging between Rs.500/- to Rs.600/- per square foot, whereas even the official assessment made by the Mukhtiarkar placed the entitlement of the appellants at Rs.150/- per square foot. It is further significant that the said Mukhtiarkar's report dated 13-02-2003 (Exh-31 and Exh-141) was not a self-generated document, but was prepared upon a specific requisition made by the Land Acquisition Officer through letter dated 07-02-2003 (Exh-138), followed by a reminder dated 08-05-2003 (Exh-30 and Exh-139), thereby lending it official sanctity and evidentiary weight. Not only this,

the Mukhtiarkar, in his official capacity, duly verified the supporting documents forming part of the record and also carried out and reported upon the site inspection, thereby affirming both the authenticity of the material relied upon and the physical characteristics and location of the land in question.

36. There was a plethora of documentary and oral evidence on record to show that the acquired land was situated at a location enjoying high potential value. The learned Judge himself admitted in paragraph 52 of the impugned judgment that the suit land was surrounded by industrial, residential and commercial areas. In other words, the high potential value of the land stood judicially acknowledged. Yet, despite such acknowledgement and despite the criteria settled by the superior Courts, the learned Judge awarded compensation at a very low rate. The landowners thus relied on paragraph 52 of the judgment, wherein the learned Judge recorded that from the oral as well as documentary evidence, it had been unequivocally established that the suit land was surrounded by commercial, industrial and residential areas and was situated near Tando Adam town, and that in view of the criteria settled by the Honourable superior Courts, the applicants/plaintiffs were entitled to compensation at the rate of Rs.10,00,000/- per acre with all benefits under Sections 23(2), 28-A and 34 of the Land Acquisition Act. It is the grievance of the landowners that even there, while entitlement was accepted on the basis of potentiality and surrounding development, no reason was assigned for fixing compensation at Rs.10,00,000/- per acre.

37. The Reference was not effectively contested by the Secretary, Works & Services Department (Provincial Highways), on behalf of the Government of Sindh, although mandatory notices under Section 20 of the Land Acquisition Act had been issued and duly served, and although their advocate did appear and contest the matter. No written statement was filed by the proper governmental authority under the Land Acquisition Act, nor did any person competent to represent the Government enter the witness box or lead evidence. Ultimately, the side of the respondents was closed by making statements on 19-02-2010 and

again on 28-05-2010. In these circumstances, the landowners had filed a statement on 19-02-2010 at Exh-122 praying that respondent No.2 be declared ex parte.

38. In continuation thereof, it is of pivotal importance to advert to the true import and mandate of Section 20 of the Land Acquisition Act, 1894, which regulates the issuance of notice by the Reference Court upon receipt of a reference. A plain reading of the provision makes it manifest that the Court is under a statutory obligation to cause notice of the proceedings, specifying the date fixed for determination, to be served upon (i) the applicant, (ii) all persons interested in the objection—except those who have accepted compensation without protest—and (iii) the Collector as well as the department of Government, local authority, or Company for whose benefit the land is acquired. The legislative object underlying Section 20 is to ensure that all necessary and interested stakeholders, particularly the acquiring authority and the Government, are afforded a full, fair, and effective opportunity to contest the reference, place their stance on record, and adduce evidence with respect to valuation, measurement, and apportionment of compensation. It is now a settled principle of interpretation that where the language of a statute is clear and unambiguous, the same must be construed as it stands without adding to or subtracting from its contents. In this regard, reliance is placed upon *Qamar ul Islam v. District and Sessions Judge (PLD 2005 Karachi 591)*, wherein it was authoritatively held that, “*Courts, while interpreting the law will not read anything, which is not provided in the section—law has to be interpreted as it stands on the statute book.*” Applying the above dictum, Section 20 must be given its natural and plain meaning, which is confined to ensuring service of notice upon the concerned parties. The provision neither contemplates nor mandates any further indulgence once such notice has been duly effected. Therefore, upon due service, the burden squarely shifts upon the notified parties to avail the opportunity so granted. It has consistently been held in the jurisprudence relating to land acquisition that where the acquiring authority or the Government, despite due service under Section 20, fails to file pleadings, produce evidence, or examine witnesses, it cannot

subsequently complain of denial of opportunity. Such conduct amounts to a conscious waiver of the right to contest. The proceedings before the Reference Court cannot be rendered hostage to the inaction or negligence of a party who, having been afforded due notice, elects not to participate effectively. In the present case, the record unequivocally reflects that notices under Section 20 were duly issued and served upon Government of Sindh through Secretary, Highways Department, Sindh Secretariat, Karachi, and even appearance through special counsel on behalf of Government was entered vide Order No. SLR/09-Sanghar/2005/4689 Karachi, issued by Solicitor Government of Sindh dated 01-11-2005. However, no written statement was filed by a competent authority, nor was any evidence led or witness produced on behalf of the respondents. In such circumstances, the learned Reference Court was fully justified in closing the side of the respondents and proceeding further in accordance with law, including treating them as *ex parte* where warranted. Thus, in view of the statutory mandate of Section 20, read in light of the principle that the law must be interpreted as it stands, and the authoritative pronouncement in PLD 2005 Karachi 591 (*supra*), the respondents, having failed to avail the opportunity afforded to them, are precluded from assailing the proceedings on the ground of alleged lack of opportunity. Their omission constitutes not merely a procedural lapse but a failure to discharge a statutory obligation, the consequences whereof must follow in accordance with law.

39. It was then the landowners' case that the documents produced by them on oath during evidence were not confronted by the respondents in cross-examination. Although opportunities were granted twice to the respondents to produce evidence, no witness was examined except the Land Acquisition Officer. Thereafter, the respondents closed their side by making statements recorded as Exh-122 and Exh-158, each to the effect that there was no other witness and that the side of the opponents was closed. According to the appellants, this conduct shows that their documentary and oral evidence remained substantially unchallenged. The landowners also raised a legal objection to the written statement filed by the Executive Engineer, Provincial Highways Division,

Sanghar. According to them, such written statement was not permissible in law. Their contention is that under the Land Acquisition Act, the Highways Department was merely the beneficiary department and had no independent right to contest the matter unless duly authorised. They pointed out that after the Sindh amendment made in the Land Acquisition Act in 1992, the Government through its Secretary alone could contest the matter, as the expression "Department of Government" had been deleted through the Land Acquisition (Sindh Amendment) Act, 1992. It was their case that the Executive Engineer had neither been called by the Court, nor had any notice been issued to him, nor had the Government authorised him to appear, depose, contest or file written statement in the Reference. Accordingly, the appellants asserted that in the eyes of law respondent No.2 had not truly contested the matter, and it was only the Land Acquisition Officer, who had passed the Award, who had attempted to contest it.

40. There was hardly any evidence produced by the respondents in rebuttal of the appellants' evidence. The landowners pointed out that the learned Judge himself had criticized the evidence of DW-1 Gada Hussain, Land Acquisition Officer, recorded at Exh-107, and had treated the same as contradictory, unreliable, untrustworthy and beyond the pleadings. In support, reliance was placed upon paragraphs 26, 27 and 28 of the impugned judgment. In paragraph 26, the learned Judge observed that Gada Hussain had deposed that as per office record the plaintiffs were present at the time of passing of the Award, that after issuance of notice no objection had been filed by them or by their attorney, and that no request had been made for reference to Court for enhancement of compensation; but the learned Judge found that such statement was contrary to the record produced in the case. In paragraph 27, it was noted that the Reference under Section 18 at Exh-147 and Exh-148, had in fact been made by the Land Acquisition Officer under Section 19 of the Act vide letter No.234 dated 09-08-2004, at Exh-146, through his Senior Clerk Jaswant Rai, and that P.W.4 Imdad Ali Kutrio, the then Land Acquisition Officer, had deposed that objections to notice under Section 9 had indeed been filed by plaintiff Muhammad Humayon Khan on his own behalf and

in capacity as general attorney of others, and had been adopted by Abdul Shakoor and Muhammad Shabrati, being produced at Exh-51. In paragraph 28, the learned Judge further recorded that Gada Hussain had alleged that Deh Form-II produced at Exh-33 to Exh-40 were fake and fabricated, but in cross-examination admitted that such documents had not been got verified from the Mukhtiarkar and that the Mukhtiarkar had not been summoned to verify the same. The learned Judge further observed that no reason had been disclosed as to how official record produced by official witnesses could be termed fake or fabricated, and concluded that either DW-1 was unaware of his own office record or had intentionally suppressed facts, in either case rendering his evidence unreliable and untrustworthy. It was also observed that his evidence was beyond pleadings as his written statement could not be treated as proper pleadings in view of Sections 9, 11, 18 and 21 of the Land Acquisition Act and the law laid down in Muhammad Sharif v. Afsar Textile Ltd. and another, reported in 1985 SCMR 1181 and 1987 CLC 1844.

Accordingly, the Court essentially exercises only three core powers under Section 18, which are tabulated below:

Sr. No.	Power of Reference Court	Explanation
1.	To determine measurement of land	The Court can examine whether the area, boundaries, or identity of acquired land have been correctly determined by the Collector.
2.	To determine compensation	The Court reassesses the adequacy of compensation, including market value and statutory benefits under Sections 23 & 24.
3.	To determine entitlement / apportionment	The Court decides who is entitled to receive compensation and how it is to be apportioned among claimants.

41. The appellants then referred to the evidence relating to the surrounding development of the land. They asserted that Sindh Small Industrial Estate, Tando Adam, was situated on about 15 acres, as shown through Exh-25 and the evidence of P.W.1 Tariq Hussain; that Tando Adam Green City Housing Scheme was situated on 76 acres, supported by the sanction letter issued by Town Planning Government of Sindh at

Exh-145, layout plan at Exh-125 and brochure at Exh-127; and that several other housing schemes, industries and cotton ginning factories were situated adjoining the acquired land and road. According to the landowners, these facts proved beyond any doubt that the documents produced by them in evidence on oath had not been contradicted by the respondents in cross-examination. On issue No.2, the landowners had claimed compensation at the rate of Rs.2/- per cubic foot in respect of earth filling. Their case was that the beneficiary department did not contest this claim and did not adduce any rebuttal evidence. According to them, the evidence led by the landowners remained unchallenged, but without assigning any reason, the learned Judge reduced the claim from Rs.2/- to Rs.1/- per cubic foot. This, according to the appellants, was unfair and unjust, there being no lawful basis for such reduction. They maintained that they were entitled to damages at the rate of Rs.2/- per cubic foot, as claimed by them, such damages being part of compensation under Section 23, clause secondly/thirdly, of the Land Acquisition Act. In that regard, they stressed that the order of the learned Judge, insofar as it related to compensation under this head, was not based on pragmatic reasoning but on conjecture and arbitrariness. They also reproduced the relevant statutory provision, namely "thirdly, the damage (if any) sustained by the person interested, at the time of the District Officer (Revenue)'s taking possession of the land, by reason of severing such land from his other land."

42. On issue No.3, it was the Landowners' case that they had built houses for Haris upon the land, which houses were destroyed by the beneficiary department/respondent No.2 during the course of construction of the road. According to them, this fact was not denied by the beneficiary department, nor had any objection been filed before the Land Acquisition Officer at the time of enquiry under Section 11 of the Act pursuant to notices under Section 9. The appellants argued that under the law, what is not denied is deemed to have been admitted, and no further proof is then necessary for admitted facts. They further stated that appellant No.6 had given evidence to prove that such houses existed and were destroyed by respondent No.2, yet no damages were allowed by the

learned Judge under this head. According to the appellants, this was illegal, and they were entitled to damages as part of compensation under Section 23 of the Land Acquisition Act. Their case is that even under this head, the order of the learned Judge was not based on pragmatic reasoning but rested upon conjecture and arbitrariness.

43. For the reasons recorded above, the appellants' grievance in essence is that although the learned Reference Court correctly found the Award made by the Land Acquisition Officer to be inadequate and unjustified, and also accepted that the acquired land possessed substantial potential value owing to its location amidst commercial, industrial and residential development, yet the Court failed to apply settled legal principles in a consistent and reasoned manner. According to the appellants, once the evidence led by them was accepted, and once the respondent side had failed to properly rebut the same, the compensation ought to have been determined in accordance with the actual market indicators, the Mukhtiarkar's report, the surrounding development, the prevailing sale prices of adjacent plots, and the future potential of the land, rather than on an arbitrary figure unsupported by any discernible valuation method. Their case is further that the learned Court failed to grant full and proper compensation under all heads claimed by them, including earth filling and destruction of houses, despite lack of effective denial and despite supporting oral and documentary evidence. Thus, according to the appellants, the impugned judgment, insofar as it fixed compensation at Rs.10,00,000/- per acre and reduced or denied other heads of claim, is liable to be interfered with for being arbitrary, inadequately reasoned, contrary to the evidence on record, and not in consonance with Section 23 of the Land Acquisition Act and the settled principles laid down by the superior Courts.

44. A considerable part of the defence sought to be projected on behalf of the Government before the learned Reference Court rested upon a so-called written statement dated 30-04-2005 filed by an Executive Engineer (XEN). Upon examination of the statutory scheme of the Land Acquisition Act, 1894, this Court is constrained to hold that the said document had no legal sanctity and could not, in the eyes of law, be

treated as a valid written statement. The proceedings under Sections 18 and 19 of the Act are not governed by conventional pleadings under the Code of Civil Procedure but are founded upon objections invited under Section 9 and transmitted by the Collector. Thus, any independent pleading introduced by a departmental officer, not forming part of the statutory record, is wholly alien to the scheme of the Act. The Executive Engineer was neither a party to the proceedings in the legal sense nor was any lawful authority or sanction produced enabling him to file such a pleading on behalf of the Government. A pleading filed without lawful authority is procedurally non est and carries no binding effect. Even otherwise, the said document was devoid of evidentiary value, as it was never proved in accordance with law.

45. It is a settled principle that pleadings are not evidence. In *Federation of Pakistan through Secretary, Ministry of Defence and another v. Jaffar Khan and others* (PLD 2010 SC 604), the Honourable Supreme Court held that a written statement cannot be treated as substantive evidence unless the person who filed it appears before the Court, proves it, and is subjected to cross-examination. Likewise, in *Muhammad Bashir and others v. Iftikhar Ali and another* (PLD 2004 SC 465), it was reiterated that a written statement per se does not constitute evidence. Similarly, in *Farrukh Saeed Khan v. Anis-ur-Rehman Bhatti* (2006 CLC 440 Karachi), after relying upon earlier authorities including *Messrs Shalimar Ltd. Karachi v. Raisuddin Siddiqui and others* (1979 CLC 338), *Messrs Society Oil Dealers, Karachi v. District Judge, Karachi and another* (2003 MLD 2005), *Saeed-ur-Rehman and others v. Assistant Commissioner/Collector Acquisition, Swabi* (2004 CLC 378), and *State Life Insurance Corporation v. Mamoor Khan* (1993 CLC 790), it was held that where a party files a written statement but does not enter the witness box, the contents thereof are liable to be ignored and carry no evidentiary weight. In view of the above authoritative pronouncements, the so-called written statement dated 30-04-2005, having neither been filed by a competent person nor proved through evidence, was rightly treated as a nullity. The learned Reference Court

committed no error in discarding the same, and this Court finds no reason to take a different view.

46. The record establishes that the landowners produced official documents through lawful process, which, being public documents, carry a presumption of correctness and regularity. Such record cannot be discarded on the basis of evasive denials, particularly when the opposing party, despite being custodian thereof, fails to produce the best evidence. In such circumstances, an adverse inference is warranted, as held in *Muhammad Luqman v. Bashir Ahmed* (PLD 1994 Karachi 492) and *Muhammad Yusuf v. Talia* (1998 CLC 1104 Lahore). The testimony of DW-1, wherein official record was denied despite emanating from the same governmental machinery, reflects lack of candour and renders such evidence unreliable to the extent of contradiction with documentary record.

It is further settled that where a material assertion remains unchallenged in cross-examination, it is deemed to have been accepted. This principle has been consistently affirmed in *Sheraz Tufail v. The State* (2007 SCMR 518), *Muhammad Akhtar v. Mst. Manna and others* (2001 SCMR 1700), and *Mst. Nur Jehan Begum v. Syed Mujtaba Ali Naqvi* (1991 SCMR 2300). In the present case, the landowners' evidence regarding location, surrounding development, potential value, earthwork loss, and demolition of structures remained largely unrebutted, as the respondents neither effectively challenged the same nor produced cogent evidence in rebuttal.

It is also settled that proceedings under Section 18 of the Land Acquisition Act are civil in nature and are to be decided on the standard of preponderance of evidence, as held in *Mst. Zainab v. Majeed Ali* (1993 SCMR 356).

47. Applying these settled principles, the documentary and oral evidence produced by the landowners, supported by surrounding circumstances, clearly outweighs the weak and unsupported denial of the Government, and the balance of probabilities tilts in favour of the landowners. The Government's belated objections to admissibility of documents are legally untenable, as it is a settled principle that objections

to mode of proof must be taken at the earliest stage; once documents are admitted and exhibited, such objections cannot be raised subsequently, particularly at the appellate stage. A party cannot be permitted to approbate and reprobate by accepting documents when convenient and challenging them when adverse findings follow.

48. On the substantive issue, the law is firmly settled that compensation under the Land Acquisition Act is not confined to mere market value but is a broader concept encompassing all elements of loss, including potential value and future prospects. In *Province of Sindh and others v. Ramzan and others* (PLD 2004 SC 512), the Honourable Supreme Court held that compensation is the mandatory return and is wider than market value, as contemplated under Section 23. This principle is further reinforced PLD 2023 SC 277, wherein it was observed that compensation must be “gold for gold and not copper for gold.” It is equally settled that classification of land in revenue record is not determinative. In *Land Acquisition Collector and others v. Mst. Iqbal Begum and others* (PLD 2010 SC 719), the Supreme Court held that location, potentiality, surrounding development and future prospects are decisive factors, and market value alone is not an absolute yardstick. Similarly, in *Fazal Haq College v. Said Rasan* (PLD 2003 SC 480), it was held that market value is what a willing purchaser would pay to a willing seller, considering location, potentiality and comparable transactions.

49. Further, in *Muhammad Saeed and others v. Collector, Land Acquisition and others* (2002 SCMR 407), the Court reiterated that potential value and future prospects must be considered along with market value. In *Land Acquisition Collector, Rawalpindi and others v. Dina and others* (1999 SCMR 1615), read with *Land Acquisition Collector, Rawalpindi v. Lieut. General Wajid Ali Khan Burki* (PLD 1960 (W.P.) Lahore 469), the “prudent man test” was affirmed, requiring holistic evaluation of evidence to determine the price a willing buyer would pay to a willing seller. The same principle is supported in *Pakistan v. Din Muhammad* (1983 CLC 1281), *Fazalur Rahman v. General Manager, S.I.D.B.* (PLD 1986 SC 158), and *Province of West Pakistan v. M. Salim Ullah* (PLD 1966 SC 547), where it was held that compensation must include all losses including severance

and injurious affection. The principle that present use alone is not determinative has further been affirmed in *Province of Punjab and others v. Col. Abdul Majeed and others* (1997 SCMR 1692), holding that future use and surrounding development must be considered. Applying these settled principles, the Government's attempt to confine valuation within rigid agricultural, acre-based classification is contrary to law. The acquired land, being situated in proximity to developed and developing urban areas and acquired for an urban infrastructure project, possessed clear commercial and developmental potential; therefore, valuation cannot be restricted to revenue classifications such as barani or banjar, agriculture or non-agriculture.

50. Compensation under the Land Acquisition Act extends not only to land but also to structures and improvements thereon, as mandated by Section 23, which requires the Court to account for all losses including damages, injurious affection, and deprivation caused by acquisition. In *Province of Balochistan v. Haji Muhammad Akber Kanshi* (PLD 2004 SC 855), the Honourable Supreme Court reaffirmed that statutory benefits, including additional compensation, are mandatory in nature. This principle has also been applied in *Soda and others v. Province of Sindh and others* (PLD 2005 Karachi 37), *Shoukat Ali v. Deputy District Officer* (PLD 2005 47), and unreported C.P No. D-939 of 2011 (High Court of Sindh, Sukkur Bench), maintained by the Supreme Court in *C.P No. 01-K of 2022*.

In the present case, the demolition of houses by the acquiring authority stands established, and the landowners' claim of Rs.10,00,000/- is reasonable, particularly in the absence of any rebuttal valuation by the Government. Where structures are destroyed and no contrary evidence is produced, denial of compensation would amount to sanctioning injustice. Accordingly, compensation of Rs.10,00,000/- for demolished houses is justified.

51. With regard to Section 28-A, the legal position has undergone a marked transformation owing to its omission through the Land Acquisition (Sindh Amendment) Act, 2009 (Sindh Act No. XVI of 2010), whereby the provision was declared to be deemed never to have existed.

In this backdrop, the distinction between substantive and procedural law assumes pivotal importance. It is now well settled, as held in *Muslim Commercial Bank Limited v. Punjab Labour Appellate Authority*, that procedural laws ordinarily operate retrospectively, whereas substantive rights are prospective in nature unless expressly taken away by clear legislative intent. The effect of repeal of Section 28-A stands authoritatively settled by the Honourable Supreme Court in *Dilawar Hussain v. Province of Sindh*, wherein it was held that the legislature, by employing deeming language, intended to render Section 28-A non est, with the consequence that no benefit can ordinarily be claimed thereunder, particularly in view of the settled principle that an appeal is a continuation of the original proceedings. Furthermore, in the said judgment of *Dilawar Hussain v. Province of Sindh*, it was clarified that Section 28-A was not a substantive head of compensation but merely a limited compensatory mechanism designed to address delay in disbursement. It does not confer any additional premium or enhancement over the entirety of compensation, but is confined strictly to the **unpaid or outstanding portion**. Even in cases where a right is asserted on the basis of pre-repeal accrual, such entitlement, if at all sustainable, remains restricted to delayed, outstanding or unpaid amounts and cannot extend to sums already received. It is also pertinent to observe that, in the present context, the landowners' claims had not attained finality and their transaction, in the legal sense, remained incomplete, as their claims for compensation were still pending adjudication and had not been conclusively settled. Accordingly, the settled legal position emerging from *Dilawar Hussain v. Province of Sindh* is twofold: firstly, that Section 28-A is compensatory in nature and not a source of enrichment; and secondly, that even where it is invoked, it applies only to outstanding amounts and does not enlarge or reopen payments already made. This interpretation maintains a careful balance between compensating landowners for delay and safeguarding the State from duplication of financial liability.

52. The above proposition finds consistent support in academic legal jurisprudence, which draws a clear distinction between procedural

law and vested (substantive) rights, particularly in the context of retrospective operation. It is recognised that *“the reviewing court will not...allow a change in the law to affect vested rights”* (Corpus Juris Secundum, Vol. 5B), thereby affirming that accrued rights cannot ordinarily be impaired by subsequent legal changes. Conversely, where a statute relates merely to procedure, *“it will be held to apply...to all...pending as well as future”* proceedings, since *“no person has a vested right in any course of procedure”* (M. Mahmood, *Canon of Construction*, with reference to PLD 1965 SC 681; PLD 1966 SC 362). The distinction is further elucidated in academic texts, which describe procedural law as *“the mode of proceeding... the machinery as distinguished from the product”* (N.S. Bindra, *Interpretation of Statutes*), thereby emphasising that it regulates only the manner of enforcement of rights. In the same vein, it is observed that *“legislation which relates solely to procedure or to legal remedies...may affect...pending...as well as...future actions”* (Earl T. Crawford, *Construction of Statutes*). However, a clear limitation is consistently maintained, namely that *“retrospective operation cannot deprive a person of a right possessed by him”* (PLD 1966 SC 362), and that there exists a *“well-settled principle against interference with vested rights...unless...made retrospective expressly or by necessary implication”* (S.C. Sarkar, *Statutory Interpretation*). Thus, the cumulative effect of the above authorities is that procedural laws operate retrospectively as part of the judicial machinery, whereas vested rights remain protected from retrospective impairment unless expressly or impliedly taken away by the legislature.

53. In view of Article 189 of the Constitution, this Court is bound by the law declared by the Honourable Supreme Court. Accordingly, after the Sindh Amendment omitting Section 28-A with retrospective effect, and in light of *Dilawar Hussain v. Province of Sindh* (PLD 2016 SC 514), no additional compensation under Section 28-A can be claimed in pending proceedings under the Act. However, this does not absolve the State from other statutory obligations. Solatium under Section 23(2) and interest under Section 28 remain payable, as these are distinct and unaffected by the omission of Section 28-A. Thus, while relief under Section 28-A is barred, all other statutory incidents of compensation

continue to apply. The learned Reference Court rightly rejected the Collector's undervaluation and recognised potentiality, though the quantum required adjustment. The Government has failed to show any jurisdictional defect, whereas the landowners are entitled to enhanced compensation within the statutory framework, except to the extent barred under Section 28-A. It is settled through *Province of Sindh v. Ramzan* (PLD 2004 SC 512), *Land Acquisition Collector v. Mst. Iqbal Begum* (PLD 2010 SC 719), *Fazal Haq College v. Said Rasan* (PLD 2003 SC 480), *Land Acquisition Collector v. Dina* (1999 SCMR 1615), and *Province of Punjab v. Col. Abdul Majeed* (1997 SCMR 1692) that compensation must reflect true value considering location, potentiality and future prospects, and is not confined to market value alone but includes all losses under Section 23, assessed on the prudent man and willing buyer-seller test. Applying these principles, the compensation determined herein is fair, lawful, and in consonance with binding precedent.

54. The objections raised by the learned Assistant Advocate General with regard to the admissibility and evidentiary value of the material produced by the landowners do not merit acceptance. A careful examination of the record demonstrates that the entire body of documentary evidence was brought on record through duly examined witnesses on oath, exhibited without objection, and supported, in large measure, by attestation and verification from the office of the Land Acquisition Officer itself. Once such documents were tendered in evidence and exhibited without any contemporaneous objection as to mode of proof, the respondents cannot, at the appellate stage, be permitted to assail their admissibility on technical grounds. The law is well settled that objection to mode of proof must be taken at the earliest opportunity; failure to do so amounts to waiver. More significantly, the record reflects that the witnesses through whom these documents were produced were not confronted on material particulars during cross-examination. The inevitable consequence of such omission is that the contents of those documents, as well as the assertions made by the witnesses, stand admitted and uncontroverted. It further transpires that a substantial portion of the documentary evidence comprises official record

emanating from public offices, including revenue authorities and the Land Acquisition Officer. Such documents, being attested and forming part of official record, carry a presumption of correctness and regularity attached to official acts. It is not open to the respondents, who themselves are custodians of such record, to casually dispute their authenticity without producing primary record in rebuttal. The plea of “secondary evidence” raised by the learned AAG, therefore, is devoid of substance, particularly when the best evidence lay within the exclusive domain of the Government, yet was not produced. As regards the contention relating to Standing Order No.4 and the alleged non-conversion of land, the same is equally misconceived. The acquisition proceedings, by their very nature, are not dependent upon the classification of land as agricultural or non-agricultural. In this regard, reference to Board of Revenue Circular No. KB-I/MISC/20040/1981 dated 16.08.1981 (Exh.47) clearly manifests that land, irrespective of its classification—including Kabuli or agricultural land—can be acquired for a public purpose. The emphasis, therefore, is not upon rigid classification but upon determination of just compensation having regard to the nature, location, and potentiality of the land. Once the title of the landowners stands verified and undisputed, and the acquisition itself is admitted, the question of classification loses its determinative significance and cannot be invoked to defeat or dilute lawful entitlement to compensation. It is also of considerable importance that the learned AAG has failed to place reliance upon any authoritative precedent or binding principle which may advance or sustain the objections raised. On the contrary, the settled principles governing appreciation of evidence, burden of proof, and effect of non-cross-examination operate against the respondents and in favour of the landowners. The attempt to challenge duly exhibited and uncontroverted evidence, without any supporting legal foundation, cannot be countenanced. Equally significant is the conduct of the respondents in relation to the Civil Miscellaneous Application filed under Order XLI Rule 27 CPC. The record unmistakably reflects that no objection was raised by the learned AAG at the time of its consideration, and the application was allowed accordingly. Having acquiesced to the

taking on record of additional documents—many of which pertain to updated revenue entries and official corrections—the respondents are now estopped from questioning their relevance or admissibility. This conduct, rather than advancing the case of the Government, exposes a lack of due diligence and coherence in its approach. The cumulative effect of the above circumstances reveals a pattern of omission and neglect on the part of the concerned departments. The revenue authorities, despite repeated requests, failed to undertake site inspection at the relevant stage; the acquiring department did not effectively contest the proceedings before the Reference Court; and even at the appellate stage, the objections raised lack both factual foundation and legal substance. The absence of timely objection, failure to cross-examine, and subsequent attempt to discredit the record, together constitute a serious lapse which cannot be permitted to prejudice the rights of the landowners. In view thereof, this Court holds that the documentary and oral evidence produced by the landowners was rightly relied upon by the learned Reference Court. The objections raised by the learned Assistant Advocate General, being devoid of merit, are hereby repelled.

55. Heard the learned counsel for the parties at considerable length and have meticulously examined the entire record, including the depositions of witnesses, documentary evidence, official record, and the impugned judgment passed by the learned Reference Court. Upon a thorough reappraisal thereof, this Court finds itself in agreement with the well-reasoned findings of the learned Reference Court insofar as the determination of compensation is concerned. The conclusions drawn are fully aligned with the settled principles laid down by the Honourable Supreme Court in *Fazal Haq College v. Said Rasan, Province of Sindh v. Ramzan*, and *Land Acquisition Collector v. Mst. Iqbal Begum*, wherein it has been consistently held that compensation must reflect not only the present market value but also the potentiality, location, and surrounding development of the acquired land. The rate of Rs.300 per square foot, as determined, satisfies the test of a willing buyer and willing seller and cannot be termed excessive, particularly when the Government's award

appears to be arbitrary, unrealistic, and devoid of any credible evidentiary foundation.

56. Similarly, with regard to the claim of earth-filling charges, this Court, upon independent scrutiny of the material on record, finds no infirmity in the conclusions reached by the learned Reference Court. The said claim squarely falls within the ambit of compensation envisaged under Section 23 of the Land Acquisition Act, 1894, as elucidated in *Province of West Pakistan v. M. Salim Ullah*, wherein damages and injurious affection were recognised as integral components of compensation. In the present case, the evidence led by the landowners in support of such claim remained unrebutted, and the Government, despite being in possession of the best possible evidence, failed to produce the same, thereby attracting an adverse inference under settled principles of evidence. Consequently, the award of earth-filling charges up to 5 feet in earthwork for 21,23,550 cubic feet at the rate of Rs.2 per cubic foot is found to be justified, reasonable, and in accordance with law.

57. However, while concurring with the substantive findings of the learned Reference Court, this Court is constrained to observe that the impugned award was not framed and passed in a manner commensurate with the clarity and strength of the evidence available on record, nor does it adequately reflect the settled legal standards governing determination of compensation. In circumstances where the factual and legal position stood unequivocally established, a more precise and structured determination was warranted.

58. Accordingly, for the reasons recorded hereinabove, First Appeal No. D-32 of 2025, filed by the Province of Sindh, being devoid of merit, is hereby **dismissed**, whereas First Appeal No. 33 of 2025, filed by the private appellants, is hereby **allowed**. The private appellants shall be entitled to compensation for the acquired land at the rate of Rs.300/- per square foot, in substitution of the amount awarded by the Reference Court. They shall further be entitled to earth-filling charges up to 5 feet in earthwork for 21,23,550 cubic feet at the rate of Rs.2/- per cubic foot; a total of Rs.4,247,100/-. The private Appellant No. 6 Muhammad

Humayon Khan shall also be entitled to an amount of Rs.10,00,000/- as compensation for the houses and structures demolished by the Government during the execution of the project along with all the benefits under section 23(2), section 28-A, and section 34 of Land Acquisition Act. No order as to costs.

59. Eventually, it is observed that the present appeals have been preferred under Section 54 of the Land Acquisition Act, 1894, which provides for an appeal against the award of the Reference Court. In consequence thereof, the office is hereby directed to draw up a formal decree in terms of this judgment.

The Office is directed to forthwith return the Record and Proceedings to the learned Reference Court concerned.

JUDGE

JUDGE