

HIGH COURT OF SINDH CIRCUIT COURT MIRPURKHAS

First Appeal No.D-11 of 2024

Present:

**Mr. Justice Shamsuddin Abbasi,
Mr. Justice Muhammad Hasan (Akber).**

Appellants: Province of Sindh through Secretary Irrigation
Karachi and others,
Through Mr. Muhammad Shareef Solangi,
Assistant A.G Sindh.

Respondent: Muhammad Waris S/o Sher Muhammad,
Through, Mr. Shoukat Ali Rahimoon, Advocate.

Date of hearing: 13.10.2025.

Date of Judgment: 03.11.2025.

J U D G M E N T

Muhammad Hasan (Akber), J;- Through the instant appeal, the judgment and decree dated 30.09.2019 passed by learned Additional District Judge, Khipro in Land Acquisition Reference No.02/2016 (*Re-Muhammad Waris vs. Assistant Commissioner, Khipro and others*) has been assailed thereby the respondent was declared entitled for the compensation at the rate of Rs.5,00,000/- per acre with 15% compulsory acquisition charges based on enhanced compensation. The reply to the instant appeal was filed by the respondent.

2. It was contended by the learned Assistant A.G Sindh that the impugned judgment was passed in illegal exercise of jurisdiction; learned judge has failed to consider the objections raised by the appellants; that reference was made patently time barred by seven (07) years; that learned judge failed to consider that the subject land was agricultural land and market value was not so high; that learned judge has also failed to consider that the respondent had already received compensation amount many years back; that no objections were filed by the respondent within time stipulated under the law whereas the award was passed many years back. He prayed that the impugned judgment and decree be set aside.

3. Learned counsel for the respondent argued that the payment was received under protest; that an application for granting the correct compensation was given by the respondents to the Land Acquisition Officer; however, the reference was filed with

substantial delay by LAO after seven years; that compensation has rightly been decreed in favour of the respondent.

4. Heard learned Assistant A.G Sindh, counsel for the respondent and perused the record with their able assistance.

5. The preliminary question to look into in the instant matter is, that whether any application was in reality filed by the respondent with the LAO after passing of the award and after receiving the compensation amount. In this regard, learned AAG has drawn attention towards the application dated 25.07.2009 filed by the respondent, where after the award was passed on 02.09.2009. He then drew attention towards the Affidavit dated 07.09.2009 executed by the Respondent (at pages 103, 104 and 167 of the court file) whereby the Respondent unconditionally accepted the Award and also received his share of the compensation with a clear statement in the Affidavit which he executed without any duress that,

“the Award of my survey No..... was announced by the Deputy District Officer Revenue/Land Acquisition Officer, Project Khipro in my presence.”

“I willfully accept the amount of Rs.28,11,318/- (Rupees twenty eight lacs eleven thousand three hundred eighteen only) pay to me as compensation of land acquired for extension of Makhee Farsh Link Canal Project.”

He further stated in the affidavit that, “I have received cheque No.41315553 dated 07.09.2009 amounting to Rs.28,11,318/- from the land acquisition officer on 07.09.2009 in the presence of witnesses stated below.”

6. Record reflects that the Award was passed without any objection; amount was also received; and the above Affidavit dated 07.09.2009 was executed; and after receipt of the compensation amount and after execution of the affidavit, the Award passed by the LAO was not challenged by the respondent before any forum, and therefore the matter had attained Finality for all practical purposes. Record is completely silent with regard to the fact that from 2009 to 2016, not a single application was filed by the respondent before any forum to complain about the purported pendency of his application. The purported application being claimed by the respondent neither carries any date nor any mark of receiving of the same by the LAO. This fact was further confirmed in the cross-examination of the respondent, that:

“it is correct to suggest that my said application Exhibit 31/A does not bear date, month and year. It is incorrect to suggest that I did not move application to Land Acquisition Officer within six months of passing Award. It is correct to suggest that I signed stamp paper

before land acquisition officer whereby agreed to the award. It is correct to suggest that my application exhibit 31/A. Does not contain the reference regarding sale of land made by Murtaza in favour of Muhammad Sidique at the rate of Rs.500,000 per acre in same day. It is incorrect to suggest that I mala fidely did not mention date, month and year in the verification of my application under section 18 of Land Acquisition Act moved before Land Acquisition Officer.”

7. From the above, it is crystal clear that the respondent admitted that the said purported application neither contains any date nor contains any mark of receipt by the LAO. It must be kept under consideration at this stage that public money is involved in this matter; hence responsibility of utmost care and caution rests upon the public functionaries, the LAO in this case. Learned Assistant AG has also relied upon the case of ‘the love HASAN and others versus province of Sindh and others, PLD 2016 SC 514, wherein the rule of Laches was applied by the honourable Supreme Court when proceedings for additional compensation were initiated many years after passing of the Award. The principles of *laches* were also applied by the Honourable Supreme Court in the case of ‘*Fazli Akbar Khan Vs. Government of KPK*’ (2024 SCMR 2071). Further reliance was placed upon 1991 SCMR 2300 ‘*Noor Jahan Begum Vs. Mujtaba Ali Naqvi*’.

8. After arguing the matter at some length, learned Assistant AG and learned counsel for Respondent state that they have no objection if the matter is referred to the learned Chief Secretary for holding an Inquiry into the matter. Accordingly, the matter is referred to the learned Chief Secretary to find out, as to whether any application was actually filed by the respondent with the LAO after passing of the award, and if so, on which date, and when was the same received by the LAO?; Secondly, if for any reasons, the LAO was responsible for the delay in filing the Reference before the learned Referee Judge after seven long years, then why should the public money/ public exchequer be penalized for the same, and why the LAO should not compensate the same in person?; and Lastly, in case, if the Chief Secretary concludes that such delay occurred due to some *mala fide* act on part of the LAO, then the matter may be referred to the anti-corruption authorities for taking action strictly in accordance with law against all those responsible. This appeal is, therefore, disposed off in the above terms.

JUDGE

JUDGE