

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Amjad Ali Sahito.

Criminal Rev. Application No.25 of 2023

Applicant : Bashir Akbar Ali through Sardar Sher Afzal Khan, Advocate.

Respondents : Through Aamir Mansoob Qureshi, Advocate

The State
Through Mr. Gul Faraz Khattak, Assistant Attorney General.

Date of hearing : 17.03.2025

Date of order : 07.04.2025

ORDER

AMJAD ALI SAHITO, J - The Applicant has filed the present Criminal Revision Application, challenging the order dated 26.01.2023, passed by the learned Additional District & Sessions Judge-VI, Karachi-South, in Criminal Complaint No. 2592/2022, instituted under Sections 3 and 4 of the Illegal Dispossession Act, 2005 (IDC). Through the impugned order, the learned trial court dismissed the complaint filed by the Applicant. Aggrieved by the said order, the Applicant has preferred the instant Criminal Revision Application.

2. The instant application was presented in the office on 04.02.2023 and same was fixed before the court on 08.02.2023. The notices were issued to the respondents, meanwhile they were directed no coercive action shall be taken against Applicant by the PSO officials or by police. In pursuance of the notice the parawise comments were filed through Additional Attorney General same were taken on the record.

3. The Instant Direct Complaint (IDC) was filed by the Applicant/Complainant ("**Applicant/Complainant**") under Sections 3 and 4 of the IDC before the District & Sessions Judge, Karachi South. In the said complaint, the Applicant alleged that in May 2001, Pakistan State Oil (PSO) granted him a license to operate a diesel and petrol retail business. Subsequently, the Applicant was granted an additional license agreement permitting the establishment of a Compressed Natural Gas (CNG) station. The Applicant duly obtained all requisite approvals from the relevant government authorities and installed the CNG facility at the same premises.

4. On **12.10.2022**, at approximately **08:00 PM**, the Applicant, along with his employees, servants, and official staff, was present at the petrol pump and CNG station, engaged in routine business operations. At that time, Respondents No. 1 to 7, accompanied by 20 to 30 unidentified armed guards, unlawfully and forcibly trespassed onto the petrol pump premises situated at the aforementioned plot. The Respondents illegally dispossessed the Applicant and his employees/servants from the premises and, during the course of dispossession, began dismantling the petrol pump accessories. The unlawful attack and forcible dispossession were immediately reported to Police Helpline 15 and were witnessed by several employees and servants.

The submissions on behalf of the applicant/ complainant.

5. Sardar Sher Afzal, learned counsel for the Applicant argued that the Ministry of Works Rehabilitation & Works Division, Government of Pakistan allocated a portion of the premises located at Tugluq House Compound for the establishment of a Petrol Pump by the Staff Welfare Organization through an allotment dated February 20, 1963. He submits that the allotment was made for 30 years, and in November 1973, the premises were leased for the same duration. In compliance with the order dated September 8, 2023, the rights to the premises were transferred to PSO, which entered into

an agreement with the Applicant on May 4, 2001, for the sale and marketing of oil products on the premises.

6. Learned counsel argued that the Applicant also obtained a license for the filling and distribution of CNG dated January 25, 2003, and received all necessary approvals and NOCs; that the Applicant subsequently installed an additional CNG unit worth over Rs.60 million; that during the operation of the CNG and petroleum business, some PSO officials threatened to revoke both license agreements without notice. In response, the Applicant filed CP No. D-3415/2020, which was later withdrawn and with observation of this Court that no adverse action could be taken against the Petitioner (Applicant/complainant) without following the law, and this order was communicated to all PSO and Welfare Organization staff.

7. He further contended that during course of lawful operation and during validity of both agreements i.e. CNG and petrol products the Respondents were serving in PSO department as well as Staff Welfare Organization made a plan to dispossess the Applicant/Complainant forcibly, illegally and without adopting due course of law at the behest of a politician, thus, in order to implement their plan Respondents on 22nd October, 2022 at about 8:00 p.m. with their armed persons attacked and they forcibly and illegally dispossessed the Applicant; that during course of such attack the Applicant and his son including staff were dispossessed while all articles containing diesel and petrol were taken in their custody alongwith CNG installation thereby Applicant has filed complaint under section 3 /4 of Illegal Dispossession Act before District & Sessions Judge, Karachi South which was assigned to the Court of VIth Additional Sessions Judge, South Karachi and vide order dated 26.1.2023, the same was dismissed without taking cognizance which has been impugned.

8. He submits that observation in the impugned order was only to the effect that as per police enquiry report, the Officials of Respondent's have dispossessed the Applicant by exercising their rights under clause 12(b) of agreement but did not consider clause 20 of the said agreement which provides that if any question or objections took place between the Applicant and Respondents, the matter shall be referred for arbitration as well as Article 17 of the CNG license agreement provides similar clause for arbitration upon any dispute inspite of facts that both agreements were validated by the Respondents which is also evident from their own letter dated 28.7.2021 for further period up to 30.3.2026 which is undisputed and un-rebutted and the Applicant was operating such business as lawful by virtue of both agreements and was lawful occupier as provided under section 2(c) of Illegal Dispossession Act, 2005 thereby no illegality or irregularity has ever been committed and the Applicant has forcibly been dispossessed/occupied on the day of incident i.e. 12th October, 2022.

9. Lastly prayed that the impugned order may be set aside and learned trial court may be directed to take the cognizance of offence and physical possession of the business premises i.e. petrol pump are liable to be restored as interim relief to save continuously losses as provided under section 7 of Illegal Dispossession Act. In support of his contention learned counsel for the Applicant produced USB and states that the video is available in the USB, which can confirm the PSO officials forcefully, occupied the PSO fuel station. He has also produced Photographs and has relied upon the following case laws:

- i. 2005 CLC 1602
- ii. 2016 SCMR 2039
- iii. 2019 P.Cr.L.J 1023

The submission on behalf of PSO/Respondents.

10. Mr. Aamir Mansoob Qureshi, entered appearance on behalf of Respondents/PSO and argued the maintainability of the instant

criminal revision application on the ground that Staff Welfare Organization (SWO) an attached Department of Establishment division Government of Pakistan, is responsible to look after the welfare needs of Federal Government Employees; that SWO leased out the said plot to ESSO (Present PSO) for period of 30 years from 15.03.1963 to 14.03.1993. Thereafter, two more lease agreements from 1993 to 2003 and from 2003 to 2013 were signed with PSO by the local SWO officers of Karachi which were later on declared as illegal/void ab-initio by Ministry of Law & Justice. Accordingly, SWO issued vacation notice to PSO and stopped receiving the rent of petrol pump.

11. He further argued that the complainant/applicant peacefully handed over the vacant physical possession of the retail outlet through its authorized representatives Mr. Muhammad Shahzad Magsi, Deputy Secretary (Administration) Establishment Division & Mr. Abdul Jabbar Director General Staff (WO) in terms of inventory. In support of his contention he has produced handing over/taking over letter dated 12.10.2022.

12. In rebuttal learned counsel for the complainant/ Applicant submits that the Officials Respondents have taken plea that physical possession was willingly handed over by the complainant/applicant which have no substance while such incident provides that neither any consent was given by the Applicant nor document was signed by the complainant/Applicant or his son with Official Respondents and officials Respondent have occupied illegally and forcibly dispossessed the Applicant from his lawful business; that such incident was also witnessed by the numbers' shopkeepers as well as employee/servants of the Applicant as well as Applicant himself alongwith his son were available at spot at the time of their forcibly dispossession. He further submits that concerned Enquiry Officer did not bother to record statement of any neighborhood nor has taken statement of any employee/servant either of Applicant, such report was disputed before learned trial Court by way of filing

application under section 5 of Illegal Dispossession Act but that application was not considered by the learned trial Court.

13. It has been contended by Learned Counsel for the respondents that SWO has nothing to do with dealership and license agreement between PSO and complainant/applicant that the complainant/applicant made investment over the plot without verifying the fact that the land is the property of Federation of Pakistan. Lastly prayed for dismissal of the instant application.

14. Learned Assistant Attorney General supported the arguments advance by learned counsel for Respondents/PSO and supported the impugned order and prayed that the instant application may be dismissed.

15. I have heard the learned counsel for the respective parties and have gone through the material available on the record.

16. Upon examination of the record, it is evident that Respondents No. 1 to 5 are employees and executives of Pakistan State Oil Company and are currently posted at Pakistan State Oil (P.S.O.) House, Khayaban-e-Iqbal, Clifton, Karachi. In this capacity, they are discharging their official duties on behalf of Pakistan State Oil Company. Furthermore, Respondents No. 6 and 7 hold the positions of Executive Officers within the Staff Welfare Organization and are serving under the Ministry of Works, carrying out their official responsibilities at the Staff Welfare Department, situated at Block No. 66/A, Pakistan Secretariat, Karachi.

17. The commercial plot, identified as Survey No. 50, measuring 1584 square yards and located at Court Road, adjacent to the Sindh Secretariat Building, Karachi, was acquired by Pakistan State Oil Company Ltd. pursuant to a lease deed executed in the year 1963. The said plot remained under the management, control, and ownership of Pakistan State Oil Company Ltd. and was designated

for the establishment of an oil and petrol pump for the sale of diesel and petrol.

18. Subsequently, through a lease agreement dated May 4, 2001, the aforementioned commercial plot was transferred to the complainant by the then-management of Pakistan State Oil Company (P.S.O.). The complainant lawfully took possession and managed the premises as a bona fide and legally recognized dealer in accordance with the terms of a license agreement.

19. The Applicant was engaged in the business of selling petroleum products and had also installed a Compressed Natural Gas (CNG) station on the subject plot. The Applicant remained in full compliance with the terms and conditions of the license agreement and did not commit any breach thereof. However, the access to the petrol pump from the main entrance roads was obstructed by law enforcement agencies, thereby preventing customers from reaching the premises.

20. As a result, the complainant filed Constitutional Petition No. D-3372/2010 before this Court. Upon adjudication, this Court was pleased to direct the removal of all obstructions and blockages on the road, further directing the relevant authorities that the Applicant's petrol pump shall not be removed without due processes of law.

21. The Applicant, after complying with all requisite legal formalities and obtaining the necessary approval from the Sindh Building Control Authority (SBCA), subsequently executed a license agreement with Pakistan State Oil Company. Pursuant to the said agreement, the Applicant lawfully installed a Compressed Natural Gas (CNG) filling station on a portion of the subject plot, making a substantial investment of Rs. 60.0 million for its installation.

22. During the course of operating the petrol pump and CNG station, the Respondents exerted undue oral pressure on the

Applicant, coercing the termination of the agreement, vacating the premises, and surrendering physical possession of the petrol pump and CNG installation. It is evident that such actions were driven by *malafide* intent and dishonest motives to transfer possession to their associates. However, the Applicant consistently refused to terminate the license agreement, as the business was being operated in full compliance with the terms and conditions set forth in both license agreements.

23. Furthermore, Respondents No. 1 to 7 persistently created unnecessary obstacles in the lawful operation of the business and sought to interfere with the Applicant's physical possession of the premises. In response, the complainant instituted Constitutional Petition No. D-3415/2020 before this Honourable Court. Upon adjudication, the petition was disposed of with directions to the Applicant to file a civil suit against Pakistan State Oil Company, while the Staff Welfare Organization was specifically instructed not to take any adverse action against the Applicant.

24. That on **12.10.2022**, at approximately **08:00 PM**, the Applicant, along with his employees, servants, and official staff, was present at the petrol pump and CNG station, conducting routine business operations. At that time, Respondents No. 1 to 7, accompanied by 20 to 30 unknown armed guards, unlawfully and forcibly attacked the petrol pump situated on the aforementioned plot and illegally dispossessed the Applicant and his staff from the premises.

25. During the course of the forcible dispossession, the Respondents began dismantling the petrol pump's accessories and engaged in cutting operations using welding equipment, despite being expressly informed that the petrol and diesel storage tanks contained over 1,300 liters of petrol and 7,000 liters of diesel, and that the gas storage cylinders were filled with CNG. The reckless actions of the Respondents created a grave and imminent risk of a catastrophic explosion, yet they disregarded these warnings and

instead issued threats, demanding immediate vacation of the premises, failing which they threatened to use firearms.

26. Fearing serious harm and potential loss of life, the Applicant and his staff refrained from resisting. Consequently, the Applicant was forcibly and unlawfully dispossessed of the petrol pump and CNG station, which was subsequently occupied by the Respondents and concealed with cloth tents.

27. The unlawful attack and forcible dispossession were immediately reported to police helpline 15, and the incident was witnessed by multiple employees and servants present at the business premises, including but not limited to: (1) Abdul Samad, (2) Adan, (3) Ahmed, (4) Zeeshan, along with more than 15 other employees who were present at the time of the incident.

28. Section 3 of the Illegal Dispossession Act, 2005 provides that *“No one shall enter into or upon any property to dispossess, grab, control or occupy it without having any lawful authority to do so with the intention to dispossess, grab, control or occupy the property from owners or occupier of such property.”* Further, Section 2 (c) provides definition of **“Occupier”** means the person who is in lawful possession of a property. The Illegal Dispossession Act, 2005, is a special enactment promulgated to protect the lawful owners and occupiers of immovable property from illegal and forcible dispossession from the property.

Concept of Illegal Dispossession.

29. Illegal dispossession occurs when a person, without legal authority or justification, forcibly or fraudulently takes possession of land, property, or other assets from someone who has the rightful possession. The dispossession can be achieved through force, deception, intimidation, or any other unlawful means. IDA, 2005 is legislation aimed to safeguarding legitimate owners and occupants of immovable properties from being unlawfully or forcefully deprived of their possessions by illegal occupants or grabbers. This

legislation specifies the category of persons who can approach the Court of competent jurisdiction for seeking relief i.e. **the owner or occupier**

Key Elements of Illegal Dispossession.

- (a) **Lawful Possession** – The victim must have a legal right to possess the property, whether through ownership, lease, or other legal entitlements.
- (b) **Unlawful Act** – The act of dispossession must be illegal, meaning it was done without due legal process.
- (c) **Deprivation of Possession** – The lawful possessor must be deprived of their control over the property.
- (d) **Lack of Legal Justification** – The person taking possession must not have any legal claim, title, or court order justifying their actions.

30. With regard to the plea raised by the Respondents, it has been contended that, by virtue of their official duties, they were legally obligated to vacate the subject plot from the alleged illegal occupation of the dealer/complainant through due legal process. It has further been asserted that the Staff Welfare Organization (**SWO**) issued notices to Pakistan State Oil (PSO) and the complainant for the vacation of the plot with the intention to rent it out.

31. The learned trial Court, while dismissing the instant complaint, observed that the complainant was merely a licensee and, therefore, had no proprietary rights, title, or interest in or over the property. The Court further held that, under the dealership agreement, the complainant was granted only a temporary assignment for the operation of a filling/service station for the purpose of retailing the company's products.

32. It is pertinent to mention that Clause 20 of the said agreement explicitly provides that in the event of any question, dispute, difference, or objection arising in connection with or related to the

agreement including the rights, duties, and liabilities of either party such matters shall be referred for arbitration to the company's General Manager Reseller or his nominee, or to such other officer of the company as may be designated. The decision rendered by the designated arbitrator shall be final and binding on both parties. Furthermore, the arbitration proceedings are to be conducted in Karachi, and the courts at Karachi shall have exclusive jurisdiction over all matters related to the agreement. Similarly, **Article 17 of the CNG License Agreement** contains an identical arbitration clause, stipulating that any dispute shall be resolved through arbitration.

33. Additionally, it has been clearly stipulated that arbitration proceedings shall be governed by the **Arbitration Act, 1940**, or any subsequent amendment thereof, as applicable at the relevant time. Despite these explicit contractual provisions mandating arbitration, the Respondents willfully disregarded the law, acted in excess of their authority, and unilaterally took the law into their own hands. Instead of adhering to due legal process, they assumed the roles of both judge and jury in their own cause and forcibly dispossessed the Applicant/Complainant from the fuel station in a clear violation of legal principles and due process.

34. In the case of *NIAZ AHMED & others v. AIJAZ AHMED & others* (PLD 2024 SC 1152) Supreme Court has held that;

“11.....No one can be allowed to take law in his own hands and unlawfully dispossess an owner or lawful occupier of an immovable property and then seek to thwart the criminal proceeding initiated against him under the Illegal Dispossession Act, 2005 on the pretext that civil litigation on the issue is pending adjudication between the parties in a court of law. Therefore, irrespective of any civil litigation that may be pending in ant court, where an offence as described in the Illegal Dispossession Act, 2005 has been committed the proceeding under the said act can be initiated as the same would be maintainable in law.”

In another case of *M. GHANI v. M. A. MULLICK & BROTHERS AND 3 OTHERS* (1973 SCMR 90), the Apex Court has held that;

“... .. Until and unless the tenant was ejected in due process of law he had a right to be on the premises, and he could not be

evicted by the Assistant Registrar. The action of the sealing of the premises and the handing over of the premise to the petitioner having been declared to be without lawful authority the consequential order for putting the premises in the possession of the tenant respondent was only logical."

In another case of **ZULFIQAR AHMED KHAN v. STATION COMMANDER, STATION HEADQUARTERS, KARACHI** and another (2010 CLC 354), it is held that;

"No party can be left without any remedy and any person letting property cannot be evicted therefrom without due process of law as the Constitution of Islamic Republic of Pakistan guarantees not only rights of people in respect of properties but also for their livelihood and the facts and circumstances of this case are such which warrant interference of this Court, particularly in view of principles laid down in Waris Meah's case, reported as PLD 1957 SC (Pak) 157."

In the case of **MUHAMMAD JAVED v. VIIIITH ADDITIONAL SESSIONS JUDGE, HYDERABAD** and 2 others (2018 P Cr. L J 1522), it is held that;

32. *It is well settled law that no person may be evicted from a property save in accordance with the due process of the law.*

33. *There is authority to suggest that even a trespasser could not be dispossessed of land without due process of law.*

34. *It was held in the case of Raza Muhammad and others v. The State, reported as PLD 1965 (W.P.) Karachi 637, that a trespasser was entitled to defend his possession even against the rightful owner of the property."*

35. In light of the foregoing discussion and the established legal precedents, the general principle of law dictates that no individual may be dispossessed of their property without due process of law and that no person shall be evicted or deprived of possession except through lawful proceedings.

36. In the case of **M. Ghani [supra]**, the Supreme Court reaffirmed that tenants or lawful possessors of property cannot be arbitrarily removed, and any act of dispossession must strictly adhere to the due process prescribed by law. Furthermore, the fundamental **right to property**, as enshrined in the **Constitution of Pakistan**, has been safeguarded to ensure that no individual is

deprived of their property without legal justification and without following the proper legal procedures.

37. Dispossession Act, 2005, which provides legal remedies for individuals who have been unlawfully dispossessed of their property. The Act underscores that all dispossessions must be carried out strictly in accordance with the law, thereby ensuring the protection of property rights and adherence to due process.

38. In view of the foregoing discussion, the instant Criminal Miscellaneous Application is hereby **allowed**, and the impugned order dated **26.01.2023** passed by learned Additional Session Judge-VI, South Karachi is set aside. Consequently, the matter is remanded to the learned trial Court with the direction to rehear the respective parties and, while taking guidance from the case laws cited herein, render a reasoned and well-articulated order afresh.

JUDGE