

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No. 179 of 2022

Applicant : Muhammad Siddique son of Munsif Khan,
Through Mr. Muhammad Safdar, Advocate

Respondents : The State
Mr. Muhammad Mohsin Mangi, DPG duly
assisted by Mr. Syed Samiullah, advocate

Date of hearing : 25.04.2025

Date of order : 25.04.2025

ORDER

KHALID HUSSAIN SHAHANI, J. – The Applicant, being aggrieved and dissatisfied with the impugned order dated 21.07.2022, passed by the learned Additional Sessions Judge-VI, South Karachi, invokes the Revisional Jurisdiction of this Court through the instant Revision Application, seeking interference with the said order, whereby the Applicant's Direct Complaint under Section 3(2) of the Illegal Dispossession Act, 2005, was dismissed.

2. The Applicant claims to be the lawful allottee, tenant, and occupant of Shop No. 303, situated at Loco Colony, Kala Pul, Cantonment, Karachi (hereinafter referred to as the "subject property"). The subject property was allegedly allotted to the Applicant on 12.12.2004, against an annual rent of Rs. 9,130/-, which the Applicant duly paid up to the year 2023. The Applicant alleges that Respondents No. 2 and 3, acting with mala fide intent, presented inflated and incorrect rent figures, compelling the Applicant to institute Civil Suit No. 1113 of 2006 against them. The suit was decreed in favor of the Applicant vide judgment dated 13.02.2018. Consequently, the Applicant filed Execution Application No. 08 of 2018, which was allowed by order dated 24.09.2021. Despite the decree and execution proceedings, Respondents No. 2 and 3 failed to comply with the same and, in disregard of due process, forcibly dispossessed the Applicant from the subject property without settling the accounts and unlawfully sealed the shop premises. The Applicant alleges that he lodged a formal complaint with the said Respondents; however, no action was taken, and his request for the restoration of possession was refused. Furthermore,

despite repeated approaches to Respondents No. 2 and 3, they failed to restore possession of the subject property. As a result, the Applicant filed the Direct Complaint, which was subsequently dismissed by the learned trial Court through the impugned order.

3. Learned counsel for the Applicant submits that the learned trial Court committed a grave error in dismissing the Applicant's Direct Complaint under Section 3(2) of the Illegal Dispossession Act, 2005, despite the presence of clear and unambiguous material on record establishing the fact of illegal dispossession. It was contended that the Applicant is the lawful tenant of Shop No. 303, situated at Loco Colony, Kala Pul, Cantonment, Karachi, which had been rented to him on 12.12.2004, against an annual rent of Rs. 9,130/-, duly paid up to the year 2023. The Applicant's ownership and continuous possession over the subject premises stood duly recognized through civil proceedings culminating in the judgment dated 13.02.2018, in Suit No. 1113 of 2006, followed by the allowance of Execution Application No. 08 of 2018 vide order dated 24.09.2021. Learned counsel further argued that despite the passing of the decree and execution order, Respondents No. 2 and 3, acting in defiance of due process of law and without settling the accounts or adhering to lawful procedure, forcibly dispossessed the Applicant and unlawfully sealed the subject premises. Such an act, it was contended, constituted a blatant violation of the Applicant's lawful rights and was affected without any lawful authority, notice, or adjudicatory process. It was further contended that the Applicant lodged a formal complaint with the concerned authorities; however, the same was met with complete inaction, and repeated requests for restoration of possession were ignored. Learned counsel emphasized that the learned trial Court failed to appreciate that the essence of Section 3 of the Illegal Dispossession Act, 2005, is to protect lawful owners and occupiers from illegal and forcible eviction, even by influential persons or public functionaries acting under the garb of authority. It was argued that Respondents No. 2 and 3, being public functionaries, were not immune from the rigors of the Act, particularly when their conduct reflected a colorable exercise of power in defiance of binding judicial orders. In support of his contentions, reliance was placed on the principles laid down in 2016 SCMR 2039 and 2019 P.Cr.L.J 1023, wherein it was held that forcible dispossession, even by

public authorities, without adherence to due process of law, falls within the mischief of the Act if the occupant was in lawful possession. Learned counsel further submitted that the learned trial Court fell into error by treating the matter as a mere civil dispute, without properly appreciating the distinction between the availability of civil remedies and the independent criminal culpability created under the Illegal Dispossession Act. It was further argued that the learned trial Court failed to conduct a preliminary inquiry or summon the Respondents to ascertain the factual position, as mandated under Section 5 of the Act, before declining cognizance, thereby violating the minimum procedural threshold required by law. On the strength of his said arguments learned counsel submits that the impugned order may be set aside and the learned trial Court be directed to entertain the Applicant's complaint in accordance with law by taking cognizance of the offence and issuing process against the Respondents under the Illegal Dispossession Act, 2005.

4. Learned counsel for Respondent No. 2, Deputy Director, Property & Land, Pakistan, submitted that the impugned order passed by the learned trial Court does not suffer from any illegality, infirmity, or perversity and has rightly dismissed the complaint filed under Section 3(2) of the Act. It was contended that the grievance raised by the Complainant, on the face of it, pertains to a monetary dispute arising from a prior contractual relationship involving claims for recovery of advance rent and expenses allegedly incurred by the Complainant on the construction of shops. Such claims, as rightly observed by the learned trial Court, are purely civil in nature and do not fall within the ambit of the penal provisions of the Act. He further submits that it is not denied that the Complainant was a licensee and that the subject property is admittedly owned by the answering Respondents. The ownership and title of the Respondents remain undisputed, and the record reflects that possession of the subject property was lawfully held by the Respondents at all relevant times. In the absence of any allegation or proof demonstrating that the Respondents were not entitled to possession, the foundational requirement for invoking an offence under the Act is lacking. The statute is intended to protect lawful owners or lawful occupants from dispossession by third parties or land grabbers, not to provide a substitute criminal forum for resolving civil disputes arising

between Licensor and licensee. Learned counsel further contends that the Complainant failed to plead any specific date, time, or circumstance of the alleged dispossession. No eyewitness account or corroborative material was produced to establish that the Complainant was forcibly or unlawfully dispossessed. In the absence of these essential particulars, the Complainant has failed to make out even a prima facie case under Section 3(2) of the Act. It was further submitted that the Complainant has already availed the civil forum by instituting Suit No. 1113 of 2006, which culminated in a decree in his favor, followed by execution proceedings. However, instead of pursuing execution through proper legal channels, the Complainant has sought to invoke criminal jurisdiction in a matter essentially involving the settlement of accounts and monetary claims. Such conduct amounts to an abuse of the process of law and an impermissible attempt to convert a civil dispute into a criminal prosecution. On the strength of foregoing arguments he submitted that the learned trial Court committed no error in holding that no offence under Section 3(2) of the Act was made out against the Respondents. The Complainant has been left at liberty to pursue appropriate civil remedies, and no interference in the well-reasoned order of the learned trial Court is warranted. Accordingly, he submitted that the instant Revision Application, being devoid of merit, may be dismissed.

5. Record reveals that the Applicant has asserted tenancy rights in respect of the subject property. However, upon a specific and pointed query posed by this Court, the Applicant produced a document titled as a "Licensing Agreement" executed between the parties. Upon examination of the said document, it became evident that the relationship between the parties was governed by a licensing arrangement rather than a tenancy. At this juncture, it is pertinent to refer to the statutory definition of "license" as encapsulated under Section 52 of the Easements Act, 1882, which provides as follows:

"Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license."

6. The aforesaid definition sets forth a narrow and precise legal scope. A license is characterized by the grant of a personal right to do or

continue to do something on the immovable property of the grantor, which, without such permission, would otherwise be unlawful. The essential feature of a license is that it does not create any interest or title in the property itself, nor does it amount to an easement. A license merely confers a lawful authority to perform specific acts on another's property. The owner retains full legal possession and dominion over the property at all times. A license is personal to the licensee and typically revocable at the will of the licensor, unless coupled with a grant or made irrevocable by express agreement. The licensee cannot assign or transfer this permission unless the terms of the license expressly allow it. Section 52 of the Easement Act, 1882 expressly clarifies that a license is distinct from an easement, which involves a right attached to land, and distinct from tenancy, which confers a proprietary possessory interest. A licensee holds no enforceable interest in rem but only a contractual or personal privilege.

7. Learned counsel for the Applicant contended that a declaratory suit had been filed asserting tenancy rights in respect of the subject property. However, a bare perusal of the record unequivocally belies such contention. No declaratory relief seeking recognition or affirmation of tenancy rights has been sought by the Applicant in the earlier civil proceedings. Rather, the plaint and decree in Civil Suit No. 1113 of 2006 reveal that the subject matter of dispute pertains exclusively to claims of excessive or inflated charges allegedly levied by the Respondents, and the relief sought therein was confined to monetary redress. Furthermore, Civil Execution Application No. 08 of 2018, arising out of the aforementioned suit, remains pending adjudication. However, it is settled law that the mere pendency of civil execution proceedings concerning monetary claims, particularly claims of overpayment or refund, has no nexus with the invocation of the penal provisions of Section 3(2) of the Illegal Dispossession Act, 2005. It is well-established that proceedings under the Illegal Dispossession Act are criminal in nature and require strict compliance with the statutory ingredients laid down therein. The offence under Section 3(2) mandates proof of unlawful and forcible dispossession of a lawful owner or occupier from immovable property by persons acting without lawful authority. The criminal forum cannot be invoked merely to settle civil disputes over monetary claims or contractual liabilities,

especially where no independent or concurrent right to possession or proprietary status is shown.

8. In the present case, the record discloses no decree or judicial finding recognizing the Applicant as a tenant clothed with protection under rent laws or any tenancy statute. The nature of the original suit, the reliefs claimed, and the execution proceedings all pertain solely to financial disputes prima facie arising from the contractual relationship under the Licensing Agreement and not to any possessory or proprietary interest enforceable under criminal law.

9. It was further contended by learned counsel for the Applicant that the Applicant was forcibly dispossessed by the Railway Administration on 19.04.2022 by sealing the subject premises. However, this assertion is untenable in light of the undisputed facts and the contractual relationship between the parties. The record clearly demonstrates that the Applicant's occupation of the subject property was governed by a Licensing Agreement, executed between the parties on 12.02.2004, for a fixed tenure of ten (10) years, with a conditional provision for extension by mutual consent. No material has been placed on record evidencing that the period was ever formally renewed, extended, or otherwise extended by mutual agreement after the expiry of the original term. In the absence of any extension or renewal of the period of occupation beyond its initial tenure, the Applicant's right to occupy the premises automatically ceased upon expiry of the agreed period. The continuation of possession beyond the license term, without any fresh agreement or express consent from the Licensor, was unauthorized and conferred no further lawful rights upon the Applicant. It is settled law that a license, being a mere permissive right, terminates upon expiry of the agreed term and does not vest any enforceable possessory interest in the licensee thereafter.

10. The learned counsel's assertion that the agreed rent was "annual" in nature does not alter the essential character of the arrangement, particularly where the terms of the Licensing Agreement consistently describe a relationship of a temporary, permissive occupation. The mere labeling of periodic payments as "rent" is immaterial in determining the nature of the relationship, which must be assessed based on the substance and intention of the parties rather than isolated terminology.

11. Thus, in the absence of any subsisting contractual or legal right of occupation, and given that the Applicant's entitlement had extinguished upon expiry of the specified term, the act of resumption of possession by the Railway Administration cannot be characterized as illegal dispossession within the meaning of Section 3(2) of the Illegal Dispossession Act, 2005. The Applicant's remedy, if any, lies in the sphere of civil law and not within the scope of penal proceedings under the said Act.

12. As regards the case law cited by the learned counsel for the applicant, namely *Atta Rasul v. Haji Muhammad Rafiq* (2019 P Cr.L.J. 1023), the factual position therein was that the complainant asserted ownership of the shop on the basis of a registered sale deed and claimed lawful possession thereunder, whereas the accused contended that possession had been obtained pursuant to an agreement to sell, and civil litigation for specific performance thereof was pending adjudication. The complainant obtained interim relief for restoration of possession under Section 7 of the Illegal Dispossession Act, 2005, which was challenged by the accused through a criminal revision but was maintained by the Court with the observation that an agreement to sell does not confer ownership rights; rather, it merely entitles the vendee to sue for specific performance. Consequently, until the final adjudication of the civil proceedings, the vendee cannot deny the title of the registered owner or deprive him of rights and benefits arising from the property. Similarly, reliance was placed upon the case of *Muhammad Ismail Nizami v. Javed Iqbal* (2016 SCMR 2039), wherein the relationship of landlord and tenant between the complainant and the accused was admitted. During the subsistence of the tenancy, the landlord took possession of the shop on the pretext that the tenant had failed to pay utility charges and had deserted the premises. Interim relief restoring possession to the tenant was granted, as goods belonging to the tenant were found inside the shop, thereby substantiating the claim of unlawful dispossession. However, the factual matrix of both cited cases is clearly distinguishable and does not apply to the present case, where, *prima facie*, the dispute arises out of a licensor-licensee relationship, the legal incidents of which are materially distinct from those of a tenancy. Therefore, the precedents relied upon by the learned counsel for the applicant do not advance his case.

13. In view of the foregoing discussion, the instant Criminal Revision Application, being devoid of merit, stands dismissed. Consequently, all pending applications, if any, are also dismissed. No illegality, material irregularity, or jurisdictional defect has been found in the impugned order passed by the learned trial Court, which, being well-reasoned and in accordance with law, is hereby maintained and upheld.

J U D G E