

THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No.500 of 2024

Present: Mr. Justice Jan Ali Junejo

For Appellant:	Mr. Muhammad Daud Narejo
For Respondent No.1:	Mr. Mian Haad A.M Paggawala
For State:	Mr. Mumtaz Ali Shah, learned APG
Date of hearing:	20-03-2025
Date of Judgment:	15-04-2025

JUDGMENT

Jan Ali Junejo, J.— This Criminal Acquittal Appeal is directed against the Judgment dated 08-07-2024 (hereinafter referred to as the “Impugned Judgment”) passed by the Court of learned Xth Additional Sessions Judge, Karachi East (hereinafter referred to as the “Trial Court”) in Complaint I.D. No. 64 of 2018, whereby the trial Court acquitted Respondent No. 1, Nazim Ali Panhwar, under Section 265-H(1) Cr.P.C., and directed the appellant to return possession of the disputed property to the accused.

2. The essential details of the case involve Muhammad Qaiser Mirza, the rightful owner of a 160-square-yard industrial property situated at Plot No. AK-568, Sector 6/B, Mehran Town, Korangi Industrial Area, Karachi. Mirza had legally acquired the property from Ghulam Mustafa through a transfer order (KDA/AD(IND)/2017/347) dated April 18, 2017. However, a dispute emerged in April 2018 when Nazim Ali Panhwar, Respondent No. 1, allegedly intimidated and forcibly took possession of the property from Mirza. In response, Mirza filed a criminal complaint under Sections 3 and 4 of the Illegal Dispossession Act, 2005. Following a trial, the learned Trial

Court initially found the accused guilty on March 20, 2021. Nevertheless, upon revision, the court ordered a retrial, requiring the recording of the Inquiry Officer's evidence and a rewritten judgment. During the trial, the following witnesses provided testimony:

1. PW-1: Muhammad Qaiser Mirza (Complainant) – Exhibit-3

The complainant, Muhammad Qaiser Mirza, was examined as PW-1 and presented documentary evidence to establish his ownership of Plot No. AK-568, Sector 6/B, Mehran Town, Korangi Industrial Area, Karachi. He produced the following exhibits:

- Ex.3/B – Transfer/Mutation Order dated 18.04.2017 (verifying that the property was transferred to him).
- Ex.3/C – Challan No. 20 (showing payment details related to the property).
- Ex.3/D – Allotment Order dated 25-10-1989 (original allotment document).
- Ex.3/E – Challan issued dated 17.11.2016 (payment for mutation).
- Ex.3/F – KDA Application Form (Pre-lease Transfer by Joint Declaration No.30030) (legal record of the property transaction).
- Ex.3/G – Transfer Order dated 05.12.2016 (previous transfer document).
- Ex.3/H – KDA Application (Pre-lease Transfer by Joint Declaration No.2263) (confirming lawful ownership).
- Ex.3/I – KDA Challan dated 14.04.2017 (additional payment confirmation).
- Ex.3/J – KDA Letter for Verification of Ownership dated 21.04.2017 (confirming that KDA verified his ownership).

2. Inquiry Officer: SIP Muhammad Arif – Court Witness (CW-1) – Exhibit-8. SIP Muhammad Arif, the Inquiry Officer, was examined as CW-1 and played a crucial role in verifying the ownership documents and dispossession allegations. His testimony and report at Ex.8/A supported the complainant's claim, as he confirmed:

- The KDA verified that the title documents submitted by the complainant were genuine.
- Local vicinity witnesses confirmed that the accused had taken illegal possession of the property.
- The accused failed to produce any ownership documents when asked.

(iii) Other Court Witnesses

1. CW-2: Shabbir Ahmed – Exhibit-9
2. CW-3: Muhammad Hanif – Exhibit-10
3. CW-4: ASI Imtiaz Ali Shah (Process Server) – Exhibit-12

Under Section 342 of the Code of Criminal Procedure (Cr.P.C.), the accused, Nazim Ali Panhwar, was examined to explain the allegations against him. However, his statement was evasive and failed to provide a credible defense. The Respondents denied all allegations, claiming they were never in illegal possession of the property but failed to provide any evidence of their ownership or lawful possession. Despite being given the opportunity under Section 340(2), Cr.P.C., to testify on oath in his defense, the accused chose not to do so. Upon remand, the learned Trial Court re-evaluated the evidence and acquitted the Respondents vide Impugned Judgment dated 08.07.2024, giving rise to this appeal.

3. The learned counsel for the appellant argued that the impugned judgment dated 08.07.2024 is illegal, perverse, and contrary to the evidence on record, as the learned trial court failed to appreciate the verified title documents of the appellant, including KDA transfer orders, allotment orders, and verification letters, all of which substantiate his lawful ownership of Plot No. AK-568, Sector 6/B, Mehran Town, Korangi Industrial Area, Karachi. It was contended that the Inquiry Officer

categorically confirmed the genuineness of the appellant's documents, and multiple complaints had been lodged regarding the illegal occupation by the accused. The learned trial court misapplied the Illegal Dispossession Act, 2005, by erroneously holding that it applies only to organized land grabbers, whereas any person who unlawfully occupies another's property falls within its purview. Further, the accused failed to produce any ownership document or utility bills proving his lawful possession, whereas the appellant presented overwhelming evidence of his title. The order directing the return of possession to the accused is beyond jurisdiction, as the accused has no legal claim over the property. Therefore, it is prayed that this Hon'ble Court may graciously allow this appeal, set aside the impugned judgment dated 08.07.2024, convict the accused under Sections 3 and 4 of the Illegal Dispossession Act, 2005, and uphold the appellant's lawful possession.

4. Conversely, the learned counsel for the respondents argued that the appellant failed to establish the exact date and time of his alleged dispossession, raising doubts about the credibility of his claim. It was asserted that the original allottee of the property was Muhammad Ikram, and the appellant failed to present a complete chain of sale transactions, thereby creating uncertainty regarding his ownership. The learned counsel contended that the one-year delay in filing the complaint weakens the appellant's case, suggesting it was an afterthought. Moreover, no independent witnesses were produced to confirm the alleged dispossession, and even the tenants presented as witnesses failed to provide tenancy agreements or documentary proof to support their claims. The respondents further argued that the Illegal Dispossession Act, 2005, applies only to

professional land grabbers and not to individual possession disputes, making the case a civil matter rather than a criminal one. Based on these grounds, the learned counsel for the respondents prayed for dismissal of the appeal and affirmation of the impugned judgment dated 08.07.2024. The learned counsel has relied upon the case laws i.e. PLD 2010 SC 661; 2021 MLD 395; 2020 YLR 2331; 2018 P.Cr.L.J. 1341; 2017 YLR Note 64; and 2017 YLR Note 201.

5. After carefully considering the arguments presented by the learned counsel for both parties and thoroughly examining the material on record, it is evident that the title documents submitted by the appellant were duly verified by the Karachi Development Authority (KDA) and remained uncontested during cross-examination. Conversely, Respondent No.1 failed to produce any documentary evidence establishing his ownership, thereby rendering his claim legally untenable and devoid of merit. During the trial, the complainant Muhammad Qaiser Mirza (PW-1) produced multiple documents and exhibits to establish his lawful ownership and possession of Plot No. AK-568, Sector 6/B, Mehran Town, Korangi Industrial Area, Karachi. The key documents exhibited during his evidence are as follows:

Exhibit No.	Document Description	Purpose
Ex.3/B	Transfer/Mutation Order dated 18.04.2017	Confirms the transfer of the subject property to the complainant from the previous owner Ghulam Mustafa .
Ex.3/C	Challan No. 20	Shows payment details related to the subject property.
Ex.3/D	Allotment Order dated 25.10.1989	Original allotment order of the subject property.
Ex.3/E	Challan issued dated	Payment receipt showing

Exhibit No.	Document Description	Purpose
	17.11.2016	compliance with property transfer requirements.
Ex.3/F	KDA Application Form (Pre-lease Transfer by Joint Declaration No.30030)	Legal document required for processing ownership transfer.
Ex.3/G	Transfer Order dated 05.12.2016	Previous transfer document proving chain of ownership.
Ex.3/H	KDA Application (Pre-lease Transfer by Joint Declaration No.2263)	Further supports the complainant's legal ownership claim.
Ex.3/I	KDA Challan dated 14.04.2017	Another payment receipt confirming ownership transaction.
Ex.3/J	KDA Letter for Verification of Ownership dated 21.04.2017	Official verification from the Karachi Development Authority (KDA) confirming the authenticity of the complainant's ownership documents.

6. The Inquiry Officer (CW-1, SIP Muhammad Arif) unequivocally testified that upon conducting an investigation at the Karachi Development Authority (KDA) office at Civic Centre, he verified the authenticity of the ownership documents submitted by the appellant, confirming them to be genuine and lawful. It is a matter of record that the accused failed to challenge the legitimacy of these documents during cross-examination, thereby strengthening the appellant's claim. Furthermore, the chain of title establishes a clear and lawful transfer of ownership from previous owners to the appellant, reinforcing his lawful possession of the subject property. Conversely, Respondent No.1 presented an unregistered Agreement to Sell dated 10-05-2006, purportedly executed by one Muhammad Ramzan Almani. However, this document lacks any evidence establishing how the alleged seller acquired ownership of the property or had the legal authority to transfer it to Respondent No.1. Moreover, as per settled law, an

unregistered Agreement to Sell does not confer any legal right, title, or interest over immovable property, rendering it of no evidentiary value. The testimony of Inquiry Officer SIP Muhammad Arif further solidified the Appellant's case, as he categorically stated that his inquiry confirmed the appellant's lawful ownership, while Respondent No.1 failed to produce any valid title documents to substantiate his possession claim. The trial court initially convicted Respondent No. 1 based on the evidence presented. However, upon the case being remanded for reconsideration, the same Court acquitted Respondent No. 1, despite the documentary evidence on record remaining unchanged throughout the proceedings. Furthermore, the testimony of the Inquiry Officer, which corroborated the Appellant's claims, further reinforced the strength of the Appellant's case. This raises questions about the rationale behind the acquittal, given that the evidentiary foundation remained intact and even gained additional support from the Inquiry Officer's findings. It is appropriate to reproduce Paragraph No.6 of the Complaint as under:-

“That, after purchase of the said property which is in the shape of an open plot and issuance of Transfer Order in favour of the Complainant, the Complainant used to visit the said property regularly. That in the month of May 2017 when the Complainant reached to the said property, the Respondent No. 1 above named came over the said property and told the Complainant that the said plot belongs to Respondent No. 2 and demanded an amount of Rs.3,000,000/- (Rupees three million only) as extortion money to start the construction work else the Complainant has to bear huge losses.”

The Complainant has also deposed during his examination-in-chief as under:-

“On 19-05-2017 when I visited the plot in question, where accused No.1 came there and claimed the owner ship of plot in question. He also deposed that accused No.2 is owner of plot in

question and he used to look after the plot in question. He demanded Rs.30,00,000/- for vacating the plot in question. So I proceeded at P.S. and filed the application. Police called him and he gave same statement which he deposed to me.....”

7. The Complainant has also stated in the Complaint that the dispute arose, and Respondent No.1 took possession of the subject property in April 2018. Despite this, the trial Court erroneously placed undue emphasis on the alleged lack of a specific date of dispossession in the appellant's Complaint. However, since the month of dispossession was clearly specified, the mere absence of an exact date should not have led to any adverse inference. Under similar circumstances in the case of **Nazir Ali v. The State (PLD 1974 Karachi 369)**, this Court observed that: *“The argument of the learned Advocate proceeds on the assumption that if a person enters upon the property of another at a time when the latter is absent, no criminal offence would be committed; for the reason that there was no person available to be subjected to annoyance, intimidation or any other offence. This argument is completely fallacious because the criterion is the intention of an accused person and not the physical presence or absence of the person whose property is subjected to trespass. A person may enter with a view to annoy another, but for the absence of the person in occupation, the effect of intention to annoy may not be instantaneously manifest; nevertheless the intention to annoy under such circumstances can be reasonably inferred, more so in cases where the accused does not have any right to the property”*. The recorded evidence unequivocally proves that the appellant is the lawful owner, whereas Respondent No.1 is an illegal occupant without any lawful title to justify his possession. Consequently, the trial Court's directive to restore possession of the subject property to Respondent No.1 is legally flawed and contrary to established legal principles. It is a well-settled principle of law that in order to invoke

Sections 3 and 4 of the Illegal Dispossession Act, 2005, a complainant must prima facie establish before the Court that:

1. He is the lawful owner or lawful occupier of the subject property.
2. The accused unlawfully entered upon the property without legal authority.
3. The accused's entry was with the intent to dispossess, grab, control, or unlawfully occupy the property.

It is matter of record that the Appellant has fulfilled all the aforesaid essential requirements of law as per evidence available on record. The scope of the Illegal Dispossession Act, 2005, is not restricted to organized land mafia or Qabza groups but extends to all forms of illegal occupation, as reaffirmed in the **case of *Niaz Ahmed and another v. Aijaz Ahmed and others (PLD 2024 Supreme Court 1152)***. Further reliance is placed on the dictum laid down by the Honourable Supreme Court of Pakistan in the case of ***Mst. Gulshan Bibi and others v. Muhammad Sadiq and others (PLD 2016 Supreme Court 769)***, wherein it was observed that: *“Reading of section 3(1) the Illegal Dispossession Act, 2005 shows that terms like dispossess, grab, control or occupy had been used which clearly meant that illegal dispossession in all forms had been made an offence and by the use of the terms 'no one' and 'whoever' in sections 3(1) & (2), anyone and everyone who committed such an offence was made liable for punishment. The very use of the terms like 'no one' and 'whoever' were clearly intended to convey the widest possible meaning for the offenders. Thus without any distinction any person who illegally dispossessed, grabbed, controlled or occupied property of a lawful owner or occupier shall be liable for prosecution under the provisions of the Illegal Dispossession Act, 2005”*. The underlining is supplied.

8. With regard to the observation made by the learned Trial Court stating that *“the Complaint was filed after one year of dispossession”*, it is important to note that there is no statutory limitation for initiating legal proceedings in criminal offences. Furthermore, the Illegal Dispossession Act, 2005 does not prescribe any time restriction for prosecuting the offences enumerated within it. Additionally, in similar circumstances, the Apex Court, in the case of ***Rahim Tahir v. Ahmed Jan and 2 Others*** (PLD 2007 Supreme Court 423), held that: “The respondent admittedly was inducted into the premises by a person, who was neither owner nor a lawfully constituted attorney of the owner to have any authority to enter into an agreement of sale on behalf of the owner or deliver the possession of the property to the respondent and thus apparently, he was an illegal and unauthorized occupant of the premises. The contention that Illegal Dispossession Act, 2005, is not applicable to an illegal occupant, who was in occupation of the premises prior to the date of the promulgation of the Act, has no substance. The purpose of this special law was to protect the right of possession of lawful owner or occupier and not to perpetuate the possession of illegal occupants”. The underlining is supplied. In a similar situation in the case of ***Bashir Ahmad, Line Superintendent I, Lahore v. Water and Power Development Authority*** (1991 SCMR 2093), the Apex Court ruled that the mere delay in initiating prosecution does not, in itself, render the proceedings unlawful. The Apex Court emphasized that unless a specific time limitation is prescribed by the governing law, there is no statutory restriction on the prosecution of criminal cases.

9. The trial Court observed that while the Inquiry Officer cited five witnesses in the report, only two were brought to Court. However, the testimonies of all five witnesses supported the same key point: that the

Complainant is the rightful owner of the property in question and that Respondent No. 1's possession is unlawful. The Inquiry Officer's findings confirmed that the Complainant was the rightful owner of the property in question, while the possession by Respondent No. 1 was deemed unlawful, a fact substantiated by the record. Therefore, the law did not necessitate the production of all five witnesses whose statements were recorded by the Inquiry Officer. It is well established that the prosecution must present the best available evidence to support its case against the accused. However, it is not required to call a large number of witnesses; the prosecution may choose as many witnesses as it deems necessary to effectively establish guilt. This aligns with the legal principle that emphasizes the quality of evidence over quantity. This principle is supported by the ruling of the Honourable Supreme Court of Pakistan in the case of *Mandoos Khan v. The State (2003 SCMR 884)*.

10. In light of the aforementioned reasons, this Court finds that the judgment of the learned trial Court dated 08.07.2024 is legally flawed, perverse, and has resulted in a grave miscarriage of justice. Accordingly, the present Criminal Acquittal Appeal is allowed, and it is hereby ordered as follows:

(a) The Impugned Judgment dated 08.07.2024, passed by the learned Xth Additional Sessions Judge, Karachi East, in Complaint I.D. No. 64 of 2018, is hereby set aside.

(b) Respondent No.1 has been found guilty and is convicted for the offence under Sections 3 and 4 of the Illegal Dispossession Act, 2005, and is sentenced to the duration of imprisonment already served. Additionally, a fine of Rs.100,000/- is imposed in accordance with Section 544-A, of the Code of Criminal Procedure (Cr.P.C.). This amount shall be recovered from Respondent No.1 and awarded to the Appellant. Failure to pay the fine will result in an additional 30 days of simple imprisonment.

(c) The trial Court's order directing the Appellant to return possession of the subject property to Respondent No.1 is declared illegal, null, and void. The Appellant shall continue to retain possession as the rightful and lawful owner. If Respondent No.1 is found to be in possession of the subject property, the same shall be immediately restored to the Appellant through the Nazir, District Court, Karachi-East.

(d) The learned trial Court is directed to ensure strict compliance with the directives and observations set forth herein and to submit a compliance report to this Court through the learned MIT-II within 30 days.

JUDGE