

ORDER SHEET  
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Revision Application No.S-94 of 2024  
(Muhammad Ishaque Kalhoro Vs. The State & 3 others)

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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**Hearing of case (priority)**

- 1. For orders on MA No. 63/2024 (Stay).
- 2. For hearing of bail application.

**ORDER.**  
08-05-2025.

Mr. Shabbir Ali Bozdar advocate for the applicant.  
Mr. Ghulam Mujtaba Soomro, advocate for Respondent No.2  
Mr. Mansoor Ahmed Shaikh, Deputy P.G for the State.

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*Ali Haider ‘Ada’J;* Through this Criminal Revision Application, the applicant has challenged the Order Dated 14.11.2024, passed by the learned Sessions Judge, Naushahro Feroze, (trial Court) in a complaint filed under Sections 3 and 4 of the Illegal Dispossession Act, 2005, by Respondent No. 2, whereby the complaint was taken on record and non-bailable warrants were issued against the applicant.

2. The brief facts of the case are that Respondent No.2, as complainant before the learned trial Court, initiated a Criminal Complaint under Sections 3 and 4 of the Illegal Dispossession Act, 2005. The essence of the complaint was that agricultural land bearing Survey No. 258 A.B, ad measuring 2-01 acres, situated at Deh Serhal, Taluka Naushahro Feroze (land in question), originally belonged to her late husband. It was alleged that, following his death, the applicant and others forcibly dispossessed the complainant and unlawfully occupied the said land. The learned trial Court called for reports from the concerned Station House Officer and the Mukhtiarkar, who submitted that the land in question is a joint property of both the applicant and the complainant parties. Thereafter, the learned trial Court passed the impugned order, the operative part of which is reproduced as under:"

“In the light of above case law, there is no embargo in the Act of cases of co-owners of joint immovable property, therefore, prima facie case under the illegal dispossession Act 2005 has been made out against the accused persons, thus, the complaint is brought on

regular file and register the case against accused for the offences punishable under section 3& 4 of Illegal Dispossession Act 2005. Since the offence is not summon case but warrant case as per FOURTH Column of "Offence against other laws" of schedule -II Cr.P.C and the nature of warrant is not bailable as per FIFTH Column of Cr.P.C R/W S.4(1) (b) of Cr.P.C and 1(2) & 5(2) of Cr.P.C and Section 9 of illegal dispossession Act 2005, hence keeping the Article 5(2) of Constitution of Islamic Republic of Pakistan 1973, let NBW be issued against all accused persons. Case is fixed on 29.11.2024."

3. The applicant has challenged the aforementioned order through the instant Revision Application. During the pendency of these proceedings, reports were called from the concerned Mukhtiarkar as well as the Station House Officer, both of whom have now submitted their respective reports. The crux of the reports is that the accused party had purchased their share in the land in question from the co-owners through a registered sale deed executed in the year 1974. It is further noted that the complainant's husband had already alienated his entire share in the said property through a registered sale deed prior to the alleged incident.

4. Learned counsel for the applicant contends that no case of illegal dispossession is made out, as the dispute pertains to co-owners or, at most, co-sharers in the property. He submits that such matters are to be resolved through civil litigation and even the learned trial court, in the impugned order, admitted that the land in question is joint property. Despite this, the trial Court fell into legal error by issuing non-bailable warrants based on a complaint under Sections 3 and 4 of the Illegal Dispossession Act, 2005. Learned Counsel further draws attention to page 43 of the Court file, which contains a registered sale deed executed in 1974, wherein the father of applicant is mentioned as a co-owner of the land in question. He submits that since then, the applicant and others have been in lawful possession. He alleges that Respondent No.02, is attempting to dramatize the situation to gain sympathy and unlawfully reclaim possession. It is argued that the proceedings before the trial Court amount to an abuse of process and the impugned order is liable to be set aside. In support of his arguments, learned counsel places reliance on the cases of *Barkat Ali and 2 others vs. The State* (2025 P.Cr.L.J 41), *Nadeem Waqar Khan vs. Javed Masood Ahmed Khan* (PLD 2020 Sindh 8), and *Mohammad Ismail and 9 others vs. Abdul Jabbar and another* (2018 MLD 1462).

5. On the other hand, learned counsel for respondent No.02/complainant contends that the applicant, along with other co-accused, forcibly took possession of the land in question. He supports the action of the learned trial Court in taking cognizance under the Illegal Dispossession Act, asserting that the sale deed relied upon by the applicant and the Mukhtiarkar is a forged document. However, when specifically queried during proceedings as to whether any legal action or declaratory suit had been instituted to challenge the said registered document as forged, the response was in the negative. Finally prays for dismissal of this Revision.

6. Conversely, the learned State Counsel supports the impugned order on the ground that the trial Court after approved that the land in question is joint in nature and took cognizance on the point of dispossession. He further submits that in such circumstances, proper course to file application under section 265-K Cr.P.C instead to challenge the order.

7. Heard the arguments of the learned counsel and perused the material available on record with utmost care and caution.

8. At the outset, it is essential to understand the legislative intent behind the promulgation of the Illegal Dispossession Act, 2005. The primary object of this Special Statute is to provide effective protection against land grabbing and to safeguard the rights of lawful owners and occupants who are illegally or unlawfully dispossessed from their immovable properties. Prior to the enactment of this law, aggrieved parties were typically left with the option of pursuing civil remedies under Sections 8 and 9 of the Specific Relief Act, or registering criminal cases under general provisions of the Pakistan Penal Code such as criminal trespass (Section 441 PPC) or house-trespass (Section 442 PPC). Recognizing this legal aspect, the legislature introduced the Illegal Dispossession Act as a Special Law to address such grievances through a more summary procedure, ensuring fast relief to rightful owners and occupants, while simultaneously prescribing stringent punishment upto ten years imprisonment and compensation for those found guilty. However, this statute is not to be applied in a mechanical or superficial manner. Courts are expected to exercise due diligence, caution, and

judicial prudence before taking cognizance under the Act. It is, therefore, the duty of the Courts to carefully examine all factual and legal aspects of such complaints and to ensure that the jurisdiction conferred by the Illegal Dispossession Act, 2005, is exercised strictly within its intended scope and is not invoked in matters that fall outside the purview of the Act.

9. It is also a settled procedure that before initiating any proceedings under the Illegal Dispossession Act, 2005, it is incumbent upon the learned trial Court to seek reports from the concerned functionaries, to reach a just and proper conclusion. Even, the proviso to Section 5 of the Illegal Dispossession Act, 2005, empowers the trial Court to direct the Magistrate to conduct an inquiry prior to taking cognizance of the offence, ensuring that the complaint is thoroughly examined and verified before judicial proceedings are initiated. This procedural safeguard ensures that the complaint is not entertained blindly and that a prima facie case of illegal dispossession by a stranger or land grabber and not a co-owner or lawful occupant, is made out.

10. The rationale behind this requirement is to prevent the misuse of judicial process and to ensure that no person is prejudiced by the act of the Court based on unverified allegations. The legal maxim *Actus curiae neminem gravabit* is an important legal principle that means *An act of the Court shall prejudice no one.*

11. The object of the Act is to provide expeditious relief to genuinely aggrieved persons; however, such protection must not be extended to those seeking to exploit the process of law for ulterior motives or to settle personal scores. Therefore, it is the duty of the Court to thoroughly examine the contents of the complaint with a judicial mind, in light of the reports from relevant authorities and not to proceed mechanically. Any deviation from this approach may result in miscarriage of justice, especially in cases where the dispute is civil in nature or relates to co-ownership.

12. Now, in this context, if the present case is examined in light of the law, it becomes evidently clear that the accused, who have been nominated in the complaint under Sections 3 and 4 of the Illegal Dispossession Act, 2005, are in fact co-owners of the land in question.

Their claim is based on a registered sale deed bearing Jaryan No. 1219, dated 15-08-1974. The applicant Muhammad Ishaque is the son of one of the co-owners, namely Darya Khan. As per the said Sale Deed, the land in question was jointly purchased and owned by Hayat, Darya Khan, and Kubher (accused). The complainant/ Respondent No.2 is the widow of Muhammad Hayat, while the applicant is her nephew by relation, being the son of Darya Khan, (co-owner), the real brother of Hayat.

13. It is further confirmed through the revenue record and is even acknowledged in the impugned order that the land in question is joint property between the complainant and the accused party. Given these admitted facts, the matter squarely falls within the domain of a property dispute among co-owners. Therefore, it does not attract the application of the Illegal Dispossession Act, 2005, as such provisions are intended to protect lawful owners or occupants from forcible dispossession by persons having no lawful entitlement and not to regulate inter se possession among co-sharers.

14. In this regard, guidance can be drawn from a consistent line of judgments delivered by the Honourable Superior Courts of Pakistan, wherein complaints under Sections 3 and 4 of the Illegal Dispossession Act, 2005 were dismissed or the accused were acquitted on the specific ground that the parties were co-owners, co-sharers, or had a civil relationship such as partnership in the property. The Courts have categorically held that where the title or possession is claimed by co-owners or where civil rights are involved, the proper remedy lies in the civil forum and not by invoking criminal jurisdiction under the Act. The intent of the Act is to prevent illegal dispossession by land grabbers and not to regulate possession among lawful co-owners. Reliance is placed on the following authorities:

*Nadeem Waqar Khan Vs Javed Masood Ahmed Khan, P L D 2020 Sindh 8, it has been held that:*

*4. There is no cavil to the proposition that complaint under the Illegal Dispossession Act 2005 is maintainable against any person who forcibly dispossesses the occupier or owner but such remedy is never meant to settle civil dispute or a substitute for civil suit. Here in this case the applicant himself admits the status of respondent (accused) as that of 'partner' though alleged to be sleeping. The rights and liabilities of a 'partner' are controlled by the terms and conditions of partnership deed 'however what the term 'partner' refers to is a:*

"business by two or more individuals who share management and profits'. Prima facie, the each partner would be presumed to be in possession or control of such business, hence legally the remedy of Illegal Dispossession Act would not be available for a partner against other partner even if allegation is that of dispossession. Perusal of impugned order shows that same is on reasonable grounds and with regard to removal of documents and accounts from the property as well dispossession if any, applicant is at liberty to approach civil court. This Criminal Revision Application is dismissed.

**Haji Abdul Karim Memon and another Vs The State and another, 2019 YLR2376, [Sindh]** it has been held that:

10. There appears to be a case of civil nature between the parties and in my view, the record shows that the subject property in fact is a Municipal land and both parties are falsely claiming their right to such public land. The Honourable Supreme Court time and again has issued directions that all public lands should be removed from encroachments and should be used only for public purposes.

**Nawabzada Muhammad Usman Khan Vs Nawabzada Muhammad Fateh Khan and Another 2013 Y L R 1001 [Peshawar]**, it has been held that:

5. According to contents of the complaint it is an admitted fact that the petitioner and respondent No.1 are the real brothers being the sons of Nawabzada Muhammad Khalid Khan who in his life time partitioned his land amongst three sons i.e. petitioner, respondent No.1 and Changez Khan. It is also an admitted fact that there is a dispute between the co-owners over possession of the property and to this effect the petitioner/complainant has filed civil suit under section 9 of the Specific Relief Act, which is pending adjudication and simultaneously registered a criminal case vide F.I.R. No.749 dated 28-8-2011 under sections 379, 447, 427, 148 and 149 against respondent No.1 and during the pendency of the above matter, the petitioner also filed the instant complaint so it was a dispute between the two brothers over the property left by their predecessor-in-interest, furthermore, respondent No.1 neither belongs to a class of property grabbers nor Qabza Group, hence no case under section 3 of Illegal Dispossession Act has been made out. Reference is made to the judgment of a Full Bench of the Lahore High Court in Zahoor Ahmad and others v. The State and others (PLD 2007 Lahore 231) wherein it has been held that the Illegal Dispossession Act, 2005 was restricted in immovable property which has allegedly come about through the hands of a class or group of persons who could qualify as property grabbers/Qabza Groups/land mafia and the said Act was being invoked and utilized by the aggrieved persons against those who have credentials of antecedents being members of the Qabza Groups or land mafia. It was further held that the Illegal Dispossession Act, 2005 has been found to be completely nugatory to its contents as well as objectives. Reliance is also placed on "Mobashir Ahmad v. The State (PLD 2010 SC 665) and "Habib Ullah v. Abdul Manan" (2012 SCMR 1533).

**Khadim Ali Vs Hakim Ali and Another, 2021 Y L R 1556 [Sindh]**, it has been held that

11. In view of what has been stated above, I am of the view that the parties are disputing over the subject property and the respondent Hakim Ali claimed to be in possession of the disputed property prior to the alleged date of dispossession shown by the complainant, who has not substantiated his case as set out in his ID complaint by any evidence worth consideration and no case attracting the provisions of Illegal Dispossession Act, 2005 has been made out by the complainant and the matter is purely of civil nature, as the claim of the parties regarding ownership and possession over the disputed property can only be sifted by adducing evidence of the nature before the Court of plenary jurisdiction with consequential relief of possession in appropriate proceedings. I have seen the impugned judgment dated 28.03.2017, passed by the learned trial Court acquitting the respondent on failure of the complainant to prove his case against the respondent beyond a reasonable doubt.

*Patently the impugned acquittal judgment is apt to the facts and circumstances of the case, which suffering from no illegality or misreading or non-reading of the evidence does not call for any interference in criminal acquittal appeal under the provisions of section 417, Cr.P.C. In the case of Muhammad Shafi v. Muhammad Raza and another (2008 SCMR 329), the Hon'ble Supreme Court of Pakistan has held that:-*

*"An accused is presumed to be innocent in law and if after regular trial he is acquitted he earns a double presumption of innocence and there is a heavy onus on the prosecution to rebut the said presumption. In view of the discrepant and inconsistent evidence led, the guilt of accused is not free from doubt, we are therefore, of the view that the prosecution has failed to discharge the onus and the finding of acquittal is neither arbitrary nor capricious to warrant interference. The petition having no merit is dismissed and leave is refused."*

***Bashir Ahmad Vs Additional Sessions Judge, Faisalabad And 4 Others, P L D 2010 Supreme Court 661, the precedent dictates that:***

*4. After hearing the learned counsel for the petitioner and going through the documents appended with this petition it has been noticed by us that while recording the acquittal of respondents Nos. 2 to 4 upon acceptance of their application submitted under section 265-K, Cr.P.C. the learned Additional Sessions Judge, Faisalabad had observed that the claim of respondents Nos. 2 to 4 regarding ownership and possession of the relevant parcel of land was based upon a sale-deed manifesting alienation in their favour, a Jamabandi showing the said respondents as owners in possession of the disputed land and a Khasra Girdawari reflecting that the said respondents were in possession of the land in issue. The learned Additional Sessions -Judge had also observed in his order dated 6-3-2006 that a private complaint already stood instituted in respect of commission of some criminal offences and a suit for possession as well as a suit for partition pertaining to the same land were already pending before different Courts between the same parties and, thus, the dispute between the parties over the relevant parcel of land was a bona fide dispute which was already sub judice before the civil and criminal Courts. The relevant sale deed being relied upon by respondents Nos. 2 to 4 had ostensibly made the said respondents co-sharers of the petitioner and co-owners of the land in issue and the pending suit for partition went a long way in supporting the case of respondents Nos. 2 to 4 in that respect. It had been held by a Full Bench of the Lahore High Court, Lahore in the case of Zahoor Ahmad and 5 others v. The State and 3 others PLD 2007 Lah. 231 that the Illegal Dispossession Act, 2005 has no application to cases of dispossession between co-owners and co-sharers and also that the said Act is not relevant to bona fide civil disputes which are already sub judice before civil or revenue Courts. It had also been declared by the Full Bench of the Lahore High Court, Lahore in that case that the Illegal Dispossession Act, 2005 was introduced in order to curb the activities of Qabza groups/property grabbers and land mafia. It has been conceded before us by the learned counsel for the petitioner that no material is available with the petitioner to establish that respondents Nos. 2 to 4 belonged to any Qabza group or land mafia or that they had the credentials or antecedents of being property grabbers. In view of the discussion made above the impugned acquittal of respondents Nos. 2 to 4 recorded by the learned Additional Sessions Judge, Faisalabad upon acceptance of their application submitted under section 265-K, Cr. P. C. has been found by us to be entirely justified and dismissal of the petitioner's writ petition by the learned Judge of the Lahore high Court, Lahore has also been found by us to be unexceptionable. In the circumstances of this case mentioned above we have entertained an irresistible impression that through filing of his complaint under the Illegal Dispossession Act, 2005 the petitioner had tried to transform a bona fide civil dispute between the parties into a criminal case so as to bring the weight of criminal law and process to bear upon respondents Nos. 2 to 4 in order to extract concessions from them. Such utilization of the criminal law and process by the petitioner has been found by us to be an abuse of the process of law which cannot be allowed to be perpetuated.*

***Syed Abdul Wahab Vs VIIIth Additional District And Session Judge, Karachi And 6 Others, 2021 M L D 395 [Sindh], it has been held that:***

8. It reveals from the record that four (4) civil suits for declaration, permanent injunction and possession were filed before this Court with regard to same subject property and these suits were filed prior to institution of direct complaint. Thus, the dispute between the parties over the subject property was bona fide civil dispute, which was already subjudice before this Court in different suits. It has been held by the Full Bench of the Lahore High Court, Lahore in the case of Zahoor Ahmad and 5 others v. The State reported in PLD 2007 Lah. 231 that the Illegal Dispossession Act, 2005 has no application to cases of dispossession between co-owners and co-sharers and also that the said act is not relevant to bona fide civil disputes, which are already subjudice before civil or revenue Courts. It has also been declared by the Full Bench of the Lahore High Court, Lahore in that case that the Illegal Dispossession Act, 2005 was introduced in order to curb the activities of Qabza groups/property grabbers and land mafia. During the course of arguments, it has been conceded by the learned counsel for the appellant that no material is available with the appellant to establish that respondents belonged to any Qabza group or land mafia or that they had the credentials or antecedents of being property grabbers.

9. In the circumstances of this case mentioned above, I have entertained an irresistible impression that through filing of his complaint under the Illegal Dispossession Act, 2005, the appellant has tried to transform a bona fide civil dispute between the parties into a criminal case so as to bring the weight of criminal law and process to bear upon respondents in order to extract concessions from them. Such utilization of the criminal law and process by the appellant has been found by this Court to be an abuse of the process of law which cannot be allowed to be perpetuated.

**Muhammad Aslam Vs Imamuddin Ahmed And 7 Others, 2013 M L D 1444 [Sindh]**, it has been held that:

9. Accordingly, it would be proper to examine the case in hand on the above touch-stone. Applicant himself admits that the subject matter property is undivided one hence in such like event it is legally presumed that every shareholder of a joint holding would be deemed to be in joint possession, therefore, co-sharer Mohammad Siddique, brother of applicant, cannot be legally presumed to be out of possession of such joint holding, who undisputedly sold out the share to accused/respondent through register sale deed, hence the accused / respondent, legally to be presumed, to be standing in the same position of such co-sharer. Without prejudice to this the complainant/applicant has further admitted in his complaint that the possession was handed over to the respondent by the Seller who was co-sharer with the applicants. Since the complainant/ applicant himself admits about delivery of possession to the accused/ respondent by an admitted co-sharer then the complainant/applicant is not legally justified to allege that the accused/respondents dispossess the applicant. Further, it is also a matter of record that suit for Specific Performance was filed before this complaint and no criminal case regarding the criminal assault, if any committed by respondents/accused was lodged. Thus what becomes evident on record is that accused/ respondent was put in possession by an owner (co-sharer), accused/ respondent possessing subject matter under a register document and that applicant / complainant was not in possession of the subject matter at the time of alleged dispossession because admittedly prior to such date the possession of the subject matter stood delivered to accused / respondent by brother of applicant / complainant, namely Mohammad Siddique, a co-sharer in joint holding. Moreover, under Illegal Dispossession Act, trial court is not competent to determine the legal character and make partition of the landed property, as same is not vested in its jurisdiction thus only civil court revenue fora are competent to resolve such controversies.

10. Thus keeping in view the guide-lines, provided by the honourable Supreme Court of Pakistan in the dictum, referred above, I am of the considered view that provision of section 3 of the Act is not applicable to the instant case and learned trial Court was well justified in dismissing the complaint of the complainant/applicant.

9(sic.) Regarding the contention of applicant counsel that trial judge has misapplied section, while passing impugned order, in that respect it would suffice to say that mere mentioning the wrong section in order, will not prejudice the either



party, important aspect is that, under law, it has to be seen that whether reasons assigned by the concerned court while delivering any order are justified and within the parameters of relevant law, if the same are within the law, such order cannot be annulled merely on the basis of application of wrong section.

***Sami Ul Haq Khilji vs. Ali Raza Rizvi and 2 others, PLD 2010 Lahore 394***

*It has been held that*

14. Even preamble of the Illegal Dispossession Act provides that the said Act is specific to the extent of the property grabbers. Though respondent No.1 has claimed that the petitioner and other accused are land grabbers but has not given any specific instance of their involvement in such activities and also has not placed on record any documentary evidence in support of his claim. The perusal of the record shows that it is a private dispute between the parties and both the parties are co-sharers in the said portion of the property which was not exclusively owned by respondent No.1 who is owning a very small share as compare to the other co-owners. Moreover, claim of the petitioner is that respondent No.1 had received a total sum of Rs.25,00,000 through cheques and also in cash which is almost equivalent to the value of his share in the said property despite the fact that his name is yet to be incorporated as co-owner in the record held by various Government Departments. The facts of the case revealed that the said dispute which is civil in nature has been converted into criminal offence by the respondent No.1 with mala fide intention in order to pressurize the petitioner and other legal heirs of Mst. Shahida Begum for grabbing further amount in spite of the fact that he had already received a reasonable amount from them. The said issue can be resolved by the civil Court, which is only competent to decide the shares of the parties or that whether any amount was due from the petitioner and other legal heirs of Mst. Shahida Begum towards respondent No.1 in respect of his share in the said property. The special enactment shows that this is exclusively applicable in the case where Qabza groups and land grabbers have taken possession of the property illegally and have a chequered history in this behalf. In the present case, there is no documentary evidence about such previous record of the petitioner and other co-owners but even then the petitioner who is admittedly a co-owner has been implicated as an accused by respondent No.1 in the complaint. So the said Act is not applicable and the complaint filed by respondent No.1 by impleading the petitioner as an accused is not maintainable in view of the law laid down by the superior Courts. In Zahoor Ahmad etc.'s case (PLD 2007 Lahore 231), the Full Bench of this Court observed as under:-

"7. For the purpose of providing guidance to all the Courts of Session in the Province of the Punjab we declared as follows:

(i) The Illegal Dispossession Act, 2005 applies to dispossession from immovable property only by property grabbers/Qabza Group /land mafia. A complaint under the Illegal Dispossession Act, 2005 can be entertained by a Court of Session only if some material exists showing involvement of the persons complained against in some previous activity connected with illegal dispossession from immovable property or the complaint demonstrates an organized or calculated effort by some persons operating individually or in groups to grab by force. or deceit property to which they have no lawful ostensible or justifiable claim. In the case of an individual it must be the manner of execution of his design which may expose him as a property grabber.

(ii) The Illegal Dispossession Act, 2005 does not apply to run of the mill cases of alleged dispossession from immovable properties by ordinary persons having no credentials or antecedents of being property grabbers/Qabza Group/land mafia, i.e. cases of disputes over possession of immovable properties between co-owners or co-sharers, between landlords and tenants, between persons claiming possession on the basis of inheritance, between persons vying for possession on the basis of competing title documents, contractual agreements or Revenue Record or cases with a background of an on-going private dispute over the relevant property.

(iii) A complaint under the Illegal Dispossession Act, 2005 cannot be entertained where the matter of possession of the relevant property is being regulated by a civil or revenue Court.

*All the Courts of Session in the Province of the Punjab are directed to examine all the complaints under the Illegal Dispossession Act, 2005 pending before them and to dismiss all those complaints forthwith which are found to be not maintainable in terms of the interpretation of the said law rendered by us through the present judgment."*

The august Supreme Court of Pakistan in Gul Ahmed and 3 other's case (2000 SCMR 122) has held that in exceptional cases the High Court can quash the F.I.R. without waiting the recourse to the learned trial Court under section 249-A, Cr.P.C. or 265-K, Cr.P.C. the reliance is also placed on 2007 PCr.LJ 1280 (Lahore) and 2007 PCr.LJ 1920 (Kar.).

**Muhammad Azeem And 3 Others Vs The State, 2023 M L D 823[Sindh],** it has been held that:

15. The preamble of this Act is only to protect the lawful owners and occupiers from their illegal or forcible dispossession and prevent them from the land grabbers/Qabza group or land mafia. In the instant case, there is the question in respect of the examination of the title of the parties. It is pointed out that it is the sole function of the Civil Court to give an authoritative decision with regard to the title of the property and the Criminal Court is not competent to give any finding qua title of the property. In such like cases, Criminal Court is simply required to examine the material available before it to form an opinion as to whether a prima facie case is made out for holding that the person who has complained about his dispossession was in lawful possession or owner because the words used in section 3 of the Act are "owner" and "occupier" of the property. The word occupier has been defined in section 2(c) of the Act viz. "occupier" means the person who is in lawful possession of a property; the word owner is defined in section 2(d) of the Act viz. "owner" means the person who owns the property at the time of his dispossession, otherwise than through a process of law; and the word property has been defined in section 2(e) of the Act, as "property" means immovable property. Thus to attract the provisions of section 3 of the Act, the Court is required to examine as to whether the property was an immovable property; secondly that the person was the owner of the property or in its lawful possession. Thirdly, that the accused has entered into or upon the property unlawfully. Fourthly, that such entry is with the intention to dispossess i.e. ouster, evict or deriving out of possession against the will of the person in actual possession, or to grab i.e. capture, seize suddenly, take greedily or unfairly, or to control i.e. to exercise power or influence over, regulate or govern or relates to authority over what is not in one's physical possession or to occupy i.e. holding possession, reside in or something. The definitions of the above words have been drawn from Black's Law Dictionary and Concise Oxford Dictionary. Though all the four words carry somewhat similar meaning in general, but individually applicable to different situations, times, places and circumstances, therefore, they cannot be given one and same meaning as by doing that one or more words become redundant, which cannot be attributed to the Legislature.

**BARKAT ALI and 2 others Vs. The STATE and another, 2025 P Cr. L J 41 [Sindh],** it has been held that:

11. In the case of an individual, it must be the manner of execution of his design that may expose him as a property grabber. Additionally, the Illegal Dispossession Act, 2005 does not apply to run-of-the-mill cases of alleged dispossession from immovable properties by ordinary persons having no credentials or antecedents of being property grabbers/Qabza Group/land mafia, i.e. cases of disputes over possession of immovable

*properties between coowners or co-sharers, between landlords and tenants, between persons claiming possession based on inheritance, between persons vying for possession based on competing title documents, contractual agreements or revenue record or cases with a background of an on-going private dispute over the relevant property. Further a complaint under the Illegal Dispossession Act, 2005 cannot be entertained where the matter of possession of the relevant property is being regulated by a civil or revenue Court.*

***Waqar Ali and others Vs The State through Prosecutor/Advocate-General, Peshawar and Others, P L D 2011 Supreme Court 181, the precedent dictates that:***

10. *The above noted observations point to the erroneous approach taken by the trial Court as to the maintainability of the complaint. The Court, it should be noted is not obliged on the filing of each complaint, to direct the police to investigate the matter. Section 5 of the Act is clear that "upon a complaint the Court may direct" the police to investigate the matter. This enabling power of the Court can only be exercised on the basis of and after considering the contents of the complaint. The power to direct an investigation under section 5 ibid is to be exercised judicially and not as an unconsidered or mechanical action undertaken on every complaint filed under the Act, regardless of the merits of the same. The purpose of the investigation under the aforesaid statute is to ascertain prima facie, the authenticity of what has been stated in the complaint. The complaint itself has to show that an offence cognizable by the Court has been committed by the accused person(s) named therein. In the present case, from the order of the learned trial Court dated 15-7-2009 it is obvious that the matter was sent to the police "on the lodging of the complaint". If the learned trial Court had gone through the complaint, in particular, paragraphs 3 and 4 thereof it would have become apparent to it that the dispute between the parties was not of a criminal nature, and as such cognizance was not required to be taken.*

15. Now, on the point of jurisdiction, whether such complaint ought to be entertained and then awaited for disposal through an application under Section 249-A or 265-K Cr.P.C, when it prima facie appears that the process of law has been abused by invoking a complaint under misconceived grounds, this Court is vested with inherent powers under Section 561-A Cr.P.C to prevent the abuse of process and secure the ends of justice. In this regard, reliance is placed upon the case of ***Aurangzaib Alamgir Vs Muhammad Sajid and Others, P L D 2025 Supreme Court 53***, the Precedent dictates that:

7. *In fact, the expression "abuse of process" used under Section 561-A, Cr.P.C., connotes an unwarranted or irrational use of legal proceedings or process which also includes the presence of ulterior motives for activating the process for unjustified arrest or groundless criminal prosecution. The essential purposefulness of this doctrine is to foster and safeguard the judicial system, ensuring that it is not misused or blemished. This terminology can be comprehended as an acuity that if a Court has jurisdiction to hear a case, it may terminate the prosecution if an abuse of process is floating on the surface on record, with logical reason and probability of exasperation, persecution, and unfairness to the opposite side. In the case of Canadian Union of Public Employees v. City of Toronto (2003 SCC 63), the Supreme Court of Canada held that "Judges have an inherent and residual discretion to prevent an abuse of the court's process. This concept of abuse of process was described at common law as proceedings "unfair to the point that they are contrary to the interest of justice" (R. v. Power, [1994] 1 SCR 601, at p. 616), and as "oppressive treatment" (R. v. Conway,*

[1989] 1 SCR 1659, at p. 1667). McLachlin J. (as she then was) expressed it this way in *R. v. Scott*, [1990] 3 SCR 979, at p. 1007. It was further held that abuse of process may be established where: (1) the proceedings are oppressive or vexatious; and, (2) violate the fundamental principles of justice underlying the community's sense of fair play and decency. The concepts of oppressiveness and vexatiousness underline the interest of the accused in a fair trial. But the doctrine evokes as well the public interest in a fair and just trial process and the proper administration of justice" [Ref: <https://criminalcpd.net.au/wp-content/uploads/2017/01/abuse-of-judicial-process-criminal-cle-0117>]. The definition provided in different law lexicons are also quite relevant, which are reproduced as under:-

*Black's Law Dictionary* (Bryan A. Garner, 9th Edition) at Page 11

*Abuse of Process*: The improper and tortious use of a legitimately issued court process to obtain a result that is either unlawful or beyond the process's scope. Also termed abuse of legal process; malicious abuse of process; malicious abuse of legal process; wrongful process; wrongful process of law.

*Words and Phrases* (West Publishing Co., Vol. 11 at Page 355

*Abuse of Process*: The gist of an action for "abuse of process" is the use of court process for purpose not justified by the law. An ulterior purpose and a willful act in use of process not proper in the regular conduct of proceedings are essential elements of "abuse of process".

*Jowitt's Dictionary of Law* (John Burke, Vol. 1) at Page 16

*Abuse of Process*: Actions manifestly frivolous or brought against good faith will be stayed as an abuse of the process of the court (*Edmunds v. Att.-Gen.* (1878) 47 L.J.Ch. 345). Under R.S.C., Ord. 18, r. 19, the court may order to be struck out or amended any pleading or the indorsement of any writ on the ground that it discloses no reasonable cause of action or defence or is scandalous, vexatious or may prejudice a fair trial or is otherwise an abuse of the process of the court and may order the action to be stayed or dismissed or judgment entered accordingly. The rule applies to an originating summons or petition.

*Aiyar's Judicial Dictionary* (1988. 10th Edition, at Page 10

*Abuse of Process*: Improper use of a regular legal process by which an unfair advantage is obtained by a party to a suit.

*Law Lexicon with Legal Maxims* (M.C.Desai, J. Vol. 1) at Page 17)

*Abuse of the process of the Court*: Abusing the process of the Court is a term generally applied to proceeding which is wanting in bona fides and is frivolous, vexatious, or oppressive. Making use of the process of the Court as a device to help the jurisdiction of a Civil Court has been held to amount to an abuse of the process of the Court.

16. In view of the foregoing reasons, as the matter appears to be of a civil nature, this Criminal Revision Application is allowed. Consequently, the impugned Order Dated 14.11.2024, passed by the learned Sessions Judge, Naushahro Feroze, in Complaint No. 57 of 2024, is hereby set aside. The said complaint is accordingly dismissed. However, the parties are at liberty to approach the competent Civil or Revenue Forum for demarcation, partition, or any other appropriate relief available to them under the law.

J U D G E