

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No.224 of 2025

Applicant : Muhammad Paryal, Through:
Mr. Hamza Ali Chaudhry,
advocate

Respondent No.1 : Muhammad Arif present in person

For State : Ms. Seema Zaidi, Addl. P.G. Sindh,

Date of hearing : 08.04.2026

Date of Order : 22.04.2026

ORDER

Jan Ali Junejo, J:-- Through the instant Criminal Revision Application, filed under Sections 435 & 439 Cr.P.C., the Applicant/Revisionist has called in question the legality and propriety of the orders dated 31.07.2025 and 02.09.2025 (hereinafter after referred to as the "*Impugned Orders*"), passed by the learned 1st Additional District & Sessions Judge, Malir, Karachi (hereafter referred to as the "*Trial Court*"), in I.D. Complaint No.22 of 2024, whereby application under Section 7 of the Illegal Dispossession Act, 2005 filed by Respondent No.1 was allowed and possession of the subject property was handed over to the complainant, and subsequently, the application for recall moved by the present applicant was disposed of without granting substantive relief.

2. Briefly stated, the controversy arises out of an I.D. Complaint No.22 of 2024 filed by Respondent No.1, Muhammad Arif, under the Illegal Dispossession Act, 2005, claiming ownership and prior possession of land measuring about 4 acres situated in Deh Khar Kharo, Tappo Konkar, Gadap Town, District Malir, Karachi, on the

basis of allotment and subsequent transfer in his favour, and alleging that his chowkidar was forcibly dispossessed by unknown persons in March 2023. Upon inquiry reports and absence of any contesting party, the learned 1st Additional District & Sessions Judge, Malir, vide order dated 31.07.2025, allowed the application under Section 7 of the Act and directed restoration of possession to the complainant, which was executed through the Nazir with police assistance. Thereafter, the present applicant/revisionist, Muhammad Paryal, claiming to be the lawful owner and in possession of the same property on the strength of revenue record and subsequent transfer in his favour, filed an application for recall of the said order, asserting that he was neither impleaded nor heard; however, the said application was disposed of vide order dated 02.09.2025 on the ground that he was not a party to the proceedings, hence the instant criminal revision application.

3. Learned counsel for the Applicant contended that the impugned orders are patently illegal, arbitrary and passed in violation of settled principles of law and natural justice. It was argued that the applicant is the lawful owner and in possession of the subject property, as established through revenue record including Form-VII and reports submitted by the Mukhtiarkar and Deputy Commissioner, which were ignored by the learned trial Court. He further submitted that the order under Section 7 of the Illegal Dispossession Act, 2005 was passed without affording an opportunity of hearing to the applicant, thereby offending the doctrine of audi alteram partem. It was also contended that interim

possession could not have been granted without proper adjudication of title and possession, and that the learned Court exceeded its jurisdiction by deciding disputed questions of ownership, which fall within the domain of civil courts. Learned counsel emphasized that the recall application was disposed of in a mechanical manner without judicial application of mind, despite material evidence favoring the applicant being placed on record. He prayed that the impugned orders be set aside and status quo ante be restored.

4. Conversely, Respondent No.1 as well as learned Additional Prosecutor General for the State supported the impugned orders and contended that the same are well-reasoned and based on material available on record. It was argued that the complainant had established his prima facie ownership and possession through documentary evidence and inquiry reports, including the report of the Mukhtiarkar, which confirmed the property in his name. They further submitted that despite due process, including affixation of notices at the property, no one, including the present applicant, appeared before the trial Court at the relevant time, and therefore, the Court was justified in proceeding ex parte. It was contended that the applicant surfaced only after execution of the order and cannot claim prejudice at this stage. Learned counsel further argued that the scope of revisional jurisdiction is limited and does not permit re-appraisal of evidence unless there is gross illegality or jurisdictional defect, which is absent in the present case. They prayed for dismissal of the revision application.

5. I have heard the learned counsel for the parties, perused the

record with their able assistance and considered the relevant provisions of law. At the outset, it is an admitted position that the impugned order dated 31.07.2025 was passed under Section 7 of the Illegal Dispossession Act, 2005, whereby possession of the subject property was handed over to Respondent No.1/complainant. The scope of Section 7 *ibid* is limited to providing interim relief in cases of unlawful dispossession; however, such relief is subject to the condition that the Court must be satisfied, *prima facie*, regarding lawful possession and dispossession, and such satisfaction must be based on proper inquiry conducted in accordance with law. The phrase "during trial" used in Section 7 of the Illegal Dispossession Act, 2005 carries decisive legal significance, as a "trial" in criminal jurisprudence commences only after the framing of charge and not before; consequently, the powers of eviction and interim relief under this provision can lawfully be exercised only once the charge has been framed and the trial has formally begun. In the present case, it is an admitted position on record that no material has been brought forth to establish that the charge has been framed or that the trial has commenced; consequently, the impugned orders, purportedly passed under Section 7 of the Illegal Dispossession Act, 2005 prior to this stage, are premature, lacking lawful authority, and therefore unsustainable in the eyes of law. Reliance in this regard may be placed on the judgment of the Honourable Supreme Court of Pakistan in *Niaz Ahmed and another v. Aijaz Ahmed and others (PLD 2024 Supreme Court 1152)*, wherein it was held that: "*Thus, use of word by the legislature "during the trial" in section 7(1) of the IDA, 2005 is of significant importance. There is no cavil to the proposition*

that taking of cognizance is not commencement of the trial. Trial of a case commences with the framing of the charge against the accused. In the case at hand, charge was framed and case was at the stage of recording of evidence”.

6. From the record, it transpires that the learned trial Court primarily relied upon the report of the inquiry officer and certain statements of witnesses, as well as a report of the Mukhtiarkar, to conclude that the complainant was in possession. However, it is equally evident that the present applicant, who claims ownership and possession, was not impleaded as a party nor afforded an opportunity of hearing before passing the impugned order, despite the fact that the order directly affected his alleged possession and proprietary rights. Moreover, the Nazir's report is also ambiguous, as it fails to clarify who was in possession of the subject property when its possession was being transferred to the Respondent No.1 (Complainant). It is a settled principle of law that no adverse order can be passed against a person without providing him an opportunity of being heard, and any deviation from such principle renders the order vulnerable in law.

7. Furthermore, after passing of the order dated 31.07.2025, the applicant promptly approached the trial Court by filing an application for recall, whereupon the learned Court itself called for reports from the Mukhtiarkar and Deputy Commissioner. The record shows that such revenue authorities appeared before the Court and produced documents indicating the claim of the applicant over the subject property. Despite this material, the learned trial

Court, through order dated 02.09.2025, declined to decide the recall application on merits on the ground that the applicant was not a party to the proceedings, thereby leaving the controversy unresolved. Such approach, in the peculiar facts of the case, reflects non-exercise of jurisdiction vested in the Court, particularly when the rights of a third party, allegedly in possession, had already been affected through execution of the earlier order.

8. It is also a settled proposition that proceedings under the Illegal Dispossession Act, 2005 are not meant to adjudicate disputed questions of title, especially where rival claims supported by documentary evidence exist. In the present case, the material placed on record, including revenue documents produced by the applicant, prima facie indicates existence of a bona fide dispute regarding ownership and possession, which required cautious exercise of jurisdiction by the trial Court. Instead, the learned Court proceeded to grant relief of possession in a summary manner and subsequently failed to rectify the position when confronted with contrary material.

9. Moreover, the impugned orders do not reflect proper application of judicial mind to the entire material available on record, particularly the evidence produced by the applicant at the stage of recall application. The order dated 02.09.2025, being non-speaking in nature, does not address the substantive grounds raised by the applicant, nor does it deal with the evidence brought on record through revenue authorities. Such orders cannot be sustained as valid judicial determinations.

10. In view of the above, it can safely be concluded that the impugned orders suffer from material irregularity, non-reading and misreading of evidence, and failure to exercise jurisdiction in accordance with law, thereby causing miscarriage of justice.

11. For the foregoing reasons, this Criminal Revision Application is allowed. The impugned orders dated 31.07.2025 and 02.09.2025, passed by the learned 1st Additional District & Sessions Judge, Malir, Karachi, are hereby set aside. The matter stands remanded to the learned Trial Court with directions to decide the application afresh, strictly in accordance with law. The Court shall afford an opportunity of hearing to all concerned parties, including the present applicant, and shall consider the entire material available on record.

12. Meanwhile, to balance the equities between the parties and to safeguard the subject property from further dispute or multiplicity of proceedings, it is directed that possession of the subject property shall be restored to the present applicant forthwith, who shall, however, not create any third-party interest, alienate, transfer, or change the nature of the property in any manner whatsoever till the final decision of the case by the learned Trial Court.

13. The learned Trial Court is further directed to decide the matter expeditiously, preferably within a period of 90 days, strictly in accordance with law and after providing due opportunity of hearing to all concerned. The revision application stands disposed of in the above terms.

JUDGE