

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No.90 of 2025

Applicant : Muhammad Nasir son of Muzahir Ahsan,
Through Mr. Ghulam Shabbir Buledi, Advocate

Date of hearing : 22.04.2025

Date of order : 25.04.2025

ORDER

KHALID HUSSAIN SHAHANI, J. –Applicant Muhammad Nasir invokes the Revisional Jurisdiction of this Court against an order dated 22.03.2025, passed in Complainant No.65/2024 (Re. Muhammad Nasir v. Mst. Ayesha Farooq & 3 others), by the Court of learned Illrd Additional Sessions Judge, Central Karachi, whereby the complaint was dismissed.

2. The facts of the case are that applicant Muhammad Nasir filed the Criminal Complaint under Section 3 of the Illegal Dispossession Act, 2005 against respondents No.1 to 4 on the premise that the private respondents dispossessed him from Flat No.S-02, Second Floor Plot No. 15/7, Block-F Farhan Park View Nazimabad No.3 Karachi; the Court did not take cognizance of the case, by holding that there exist a civil dispute between parties, as the applicant has already filed a Rent Case No. 244/2024 before the competent Court of Law.

3. It is inter alia contended, the applicant has titled documents in his favor as such his complaint ought to have been decided on merit and the cognizance ought to have been taken in the said case. Learned counsel referred to various documents attached with the revision application and submitted that he rented out the premises to one Umair Shaikh under a rent agreement executed on 10.01.2024; however, after expiry of the period, the tenant allegedly failed to fulfil his obligations under the tenancy agreement, prompting the complainant to initiate legal proceedings by filing rent Case no.244/2024. He also submits that in August, 2024 the property was restored to him by the SHO concerned, but when he went to the said property, he found the respondents there, as there was dispute between the spouse i.e. the tenant and his wife. As such the tenant Umair Shaikh expressed his willingness to vacate the said premises and

subsequently handed over the peaceful possession of the property on August, 09th 2024, upon taking possession the complainant secured the property but upon his return on the same day, he found the respondents had gained entry and were involved in a confrontation with him.

4. The pivotal question engaging the attention of this Court in the present proceedings is whether the provisions of the Illegal Dispossession Act, 2005 are attracted in a matter, where the dispute over possession of immovable property arises between a landlord and a tenant or the tenant's family members. The Act in question is a special law, enacted with the specific legislative intent to shield and safeguard lawful owners or lawful occupiers of immovable properties from being ousted unlawfully, forcibly, or through coercive tactics by land grabbers, commonly referred to as the *qabza group* or land mafia. In order to invoke the jurisdiction of a Court under Section 3 of the Illegal Dispossession Act, 2005, it is incumbent upon the complainant to establish, *prima facie*, the following foundational elements: (i) that the subject matter is an immovable property; (ii) that the complainant was either the owner or was in lawful possession of the said property at the time of the alleged incident; (iii) that the accused unlawfully entered into or upon such property; and (iv) that the nature of such entry was to dispossess, oust, evict or remove the complainant from possession against his will, or to grab, control, or occupy the property in an unauthorized manner. The terms "dispossess", "grab", "control" or "occupy" must be examined in their ordinary and legal connotation, as these terms denote not merely physical entry but a manifest intention to interfere with possession contrary to law.

5. Section 4 of the Act stipulates the penal consequences in the event the offence under Section 3 is made out. However, such provisions cannot be mechanically or indiscriminately applied without the existence of the statutory preconditions enumerated above. The legislative scheme of the Act mandates the Court to conduct a threshold scrutiny of the allegations to determine whether they pertain to an actual offence under the Act or merely represent a civil dispute, particularly where possession or title is contested. It is further clarified by subsection (2) of Section 3 that a person found guilty under the Act shall not be absolved of liability under any other law in force at the time. The language of the statute is couched in

mandatory terms and its object is twofold: to alleviate the hardship suffered by lawful owners or possessors and to serve as a deterrent against unlawful encroachments and violent dispossessions. In its design and purpose, the Act leaves little room for abuse or arbitrary application.

6. Nonetheless, it is equally well-settled that the Act does not apply to disputes simpliciter between landlords and tenants, co-owners, co-sharers, heirs, or individuals asserting rights under competing documents of title or agreements. Where the dispute pertains to possession and is already being regulated or adjudicated by a civil or rent tribunal, a complaint under the Illegal Dispossession Act, 2005, cannot be entertained as an alternative or parallel remedy. The law does not countenance multiplicity of proceedings or forum-shopping under the garb of criminal law when the matter is fundamentally civil in nature.

7. In the instant case, the record reveals that the parties are admittedly bound in a landlord-tenant relationship and a rent case pertaining to the very same property was pending adjudication before the competent Rent Controller. The claim of restoration of possession by the applicant is not supported by any order of a competent Court nor is there any credible evidence, oral or documentary, to show that possession was delivered under judicial supervision. The bald assertion of having re-entered the property is insufficient to bring the matter within the contours of the Illegal Dispossession Act, 2005.

8. It is well-recognized that the Courts empowered to entertain complaints under this Act must exercise caution and must summarily reject complaints that do not prima facie disclose the existence of criminal intent or the involvement of professional land grabbers. The law is not intended to criminalize every incident of dispossession, particularly when it arises from a private or tenancy-related dispute and where civil forums provide adequate remedy. In the present case, the learned trial Court has examined the material available on record and has arrived at the conclusion, based on cogent reasons, that the complaint does not fall within the scope of Section 3 of the Illegal Dispossession Act, 2005. The complainant failed to establish that the alleged dispossession was unlawful in the manner contemplated by the statute.

9. Given that the matter is intertwined with tenancy claims and is already sub judice before the Rent Controller, this Court is of the view that the appropriate forum for adjudication is the civil/rent jurisdiction and not the special criminal forum created under the Act of 2005. In view of the foregoing analysis, I find no material irregularity, illegality, misreading or non-reading of the evidence by the learned trial Court which would justify interference in revisional jurisdiction. Accordingly, the present Criminal Miscellaneous Application, being devoid of merit, is dismissed in *limine*, along with all pending application(s).

J U D G E