

IN THE HIGH COURT OF SINDH AT KARACHI

Present

Mr. Justice Dr. Syed Fiaz ul Hassan Shah

Criminal Appeal No.551 of 2024

Appellant : Hamood Baig son of Abdul Hameed Baig
through Mr. Muhammad Iqbal Chaudhry, Advocate

Respondents : For Respondents No.1 & 2:
Mr. Ahmed Hussain Jokhio, Advocate

For State:
Mr. Qamaruddin Nohri, D.P.G.

Date of Hearing : 07.07.2025

Date of Judgment : ____ .07.2025

J U D G M E N T

Dr. Syed Fiaz ul Hasan Shah, J – The Appellant has assailed the impugned order dated 29.06.2024 passed by IInd Addl. Sessions Judge, Thatta (**Trial Court**) in Criminal Complaint No. Nil/2024 (Hamood Baig vs. Ali Asghar & another) filed under section 3 of the Illegal Dispossession Act, 2005; whereby the said Complaint was summarily dismissed.

2. Brief facts of the case are that appellant claims that he is the lawful owner of the agriculture land bearing Survey Nos. 1406, 1407, 1408 and 1409 situated in Deh Gharo, Taluka Mirpur Sakro, District Thatta (**said land**). The said land was originally allotted in the name of one Nabi Bux in the year 1993 under the Land Grant Policy which was later transferred to Shams Abbas. Subsequently the said land was transferred in favour of the Appellant through Order dated 22.07.2004 passed by District Officer (Revenue & Estate), Thatta and the said lease grant was converted into proprietary rights on usual terms and condition from Rabi 2004-2005 by

Order dated 09.09.2004. Thereafter, the appellant spent a huge amount on the said land and approached the District Officer for issuance of survey numbers. His case was forwarded to Director, Settlement, Survey and Land Records, Hyderabad and after completion of joint survey a report was submitted to District Officer showing the exact location of the said land with Survey Nos. 1406 to 1409; however, when fresh demarcation of the said survey numbers was conducted by Mukhtiarkar (Estate), Thatta, four persons namely Mir Wajid Ali, Taufeeq Feroze, Naik Muhammad and Feroz Baloch were found in possession of the said land. Hence, the appellant initially filed Private Complainant No.11/2012 which was ended into Compromise. Subsequently, after further dispossession, he has preferred the instant Crl. Appeal challenging the aforesaid impugned order.

3. Learned counsel for the appellant contends that the Appellant is a lawful owner of said agriculture land but Respondents No.1&2 are in illegal possession of the said land, therefore, the Appellant has filed the Complaint; however, the trial Court has summarily dismissed the same without providing opportunity of hearing to the Appellant and has erred in holding that previously Appellant filed a Criminal Complaint No.07/2020 against Mitho Khan and another which was dismissed vide Judgment dated 06.01.2024 against which he has filed an appeal which is pending for adjudication before this Court. He submits that the said Complaint No.7/2020 was related to Survey No.1408 and 1409 which was filed against two Respondents and they have no connection or concerned with the present Respondents or the said land in question.
4. On the other hand, learned counsel for Respondents No.1 & 2 submits that complainant/appellant is repeatedly filing criminal complaints and present complaint is also without lawful authority. He further submits that the appellant has no title documents and Director Settlement, Survey and Land

Records, Hyderabad had confirmed that lease has been cancelled. He further states that Form-A attached with the Order dated 09.09.2024 shows that the subject land is un-survey land, besides, the complaint does not show any mens rea or actu rea which are necessary for criminal complaint. He further submits that in internal Complaint No.11/2012, compromise was effected between the father of Respondents No.1 & 2 and the appellant and prior filing of the present Complaint No.Nil/2024, the complainant had also filed a contempt of Court application which was dismissed by the IInd Addl. Sessions Judge, Thatta vide order dated 12.08.2017 for the compromise order dated 14.04.2017. Lastly, he submits that the trial Court in the impugned order has referred complaint No.07/2020 which is in probatry of Complaint No.11/2012 and refers to Paragraph-5 of the said Complaint wherein it was stated that the appellant was dispossessed in August, 2005 in relation to a dispute; however, Illegal Dispossession Act, 2005 was not enacted; as such, it is settled law the criminal enactment cannot apply retrospectively, therefore the complaint should be dismissed.

5. Learned DPG supported the impugned order and states that the complaint does not make out any criminal offence and it is three version case and civil dispute is already pending between the parties.
6. I have heard learned counsel for the appellant and Respondents No.1& 2 and learned DPG and perused the record with their assistance. The prayer clause of present Complaint No.Nil/2024 is reproduced as under:

*“b) And also direct the Respondents to hand over the possession of the suit property/out of Survey Number 1406, measuring area 1-14 acres along with latterly illegally occupied 5 acres in **Survey No:1406 & 1407** situated in Deh Gharo, taluka Mirpur Sakro, District Thatta.*

*c) To pass an order for restoration of possession of land measuring 1.14 acres in **Survey No: 1406** along with latterly illegally occupied .5 acres in survey no: 1406 & 1407 to*

complainant and direct accused 1&2 to pay compensation for causing loss/ disturbances to complainant and accused may kindly be penalized in accordance with law.”

Emphasized added

7. The description of property involved in previous Complaint No.07/2020 is mentioned at Para-4 of said complaint which is reproduced as under.

4. “That all sudden on 24.2.2016 the accused in the present complaint namely Mitho Khan with some unknown persons having lathies by showing his force entered in the land of complainant being left away by Feroze Baloch, and he with his companion directed the labour to stop development activities and restrained the complainant to enter in the said land. The matter was reported to the trial Court and accordingly notice were issued to said Mitho Khan. During Court proceeding direction was issued to conduct the demarcation of the land of complainant through Director Settlements Survey and Land Records, Hyderabad. After demarcation as on 11.01.2017 it was established that the land measuring 01-32 acres as leftover by Feroz Baloch and taken over by the complainant which is the part of Survey Nos. 1408 and 1409 meant to complainant. On the basis of demarcation report the Honorable trial Court passed comprehensive Order directing SHO Dhabeji Police Station to take over subject land as falling in Survey Nos. 1408 and 1409 and to hand over the same to the complainant.”

Emphasize added

8. Having examined the contents of Complaint No.Nil/2024 and the impugned Order dated 29.06.2024, it appears that the learned Trial Court has summarily dismissed the said complaint by placing reliance on the judgment dated 06.01.2024 passed in Criminal Complaint No.07/2020. However, such reliance is misplaced, as the present complaint involves a distinct set of respondents and pertains to different subject property. The prayer clause in Complaint No.Nil/2024 seeks reliefs that are neither analogous nor overlapping with the previously adjudicated matter. In view thereof, the learned Trial Court was required to apply an independent judicial mind to the merits of the present complaint. The summary

dismissal, without adequate consideration of these material distinctions, renders the impugned Order liable to judicial scrutiny in appeal.

9. Further, I am not persuaded by the submissions of learned counsel for Respondents No.1 & 2 that the Appellant ought to pursue a civil suit for the establishment of his claim. The contention is misconceived in view of the authoritative pronouncement of the Hon'ble Supreme Court of Pakistan in ***Shaikh Muhammad Naseem vs. Mst. Farida Gul (2016 SCMR 1931)***, wherein it was categorically held by a larger bench that the pendency or availability of a civil remedy does not preclude the Trial Court, while adjudicating a complaint under the Illegal Dispossession Act, 2005, from examining the commission of a criminal offence relating to unlawful dispossession or illegal occupation. The relevant portion of dictum is reproduced for better understanding:

“...7. In our view trial of a case is to be relatable to the property which is subject matter of the complainant, pure and simple. Any past history of the accused with regard to his act of dispossession having no nexus with the complaint cannot be taken into consideration in order to decide whether the accused stands qualified to be awarded a sentence under the Act or not. Once the offence reported in the complaint stands proved against the accused then he cannot escape punishment under the Illegal Dispossession Act, 2005.

8. In view of the above discussion we conclude that in any proceedings initiated under Illegal Dispossession Act, 2005, the issues which fall for decision would be whether the offence against a lawful owner of occupier, as described in the complaint, has taken place and whether it is the accused who has committed it without any lawful authority. Anyone found committing the offence described in section 3 would be amenable to prosecution under the provisions of Illegal Dispossession Act, 2005 and no past record of the accused needs to be gone into by the Court.”

10. Similarly, in ***Gulshan Bibi v. Muhammad Sadiq & another (PLD 2016 SC 769)***, the Hon'ble Supreme Court, while interpreting the scope of the Illegal Dispossession Act, 2005, authoritatively held that the application of the Act is not confined merely to cases involving the so-called “Ghunda”

element or notorious land grabbers. Instead, its operation extends to all instances where a person has been unlawfully or illegally dispossessed of immovable property, irrespective of the character or background of the dispossessor. The Hon'ble Court emphasized that the protective mechanism enshrined in the Act is meant to be invoked wherever illegal occupation or control and/or forcible dispossession has occurred, thereby reaffirming the broader remedial spirit of the legislation. The relevant portion is reproduced:

"8. In view of the above discussion we conclude that in any proceedings initiated under Illegal Dispossession Act, 2005, the issues which fall for decision would be whether the offence against a lawful owner or occupier, as described in the complaint, has taken place and whether it is the accused who has committed it without any lawful authority. Anyone found committing the offence described in Section 3 would be amenable to prosecution under the provisions of Illegal Dispossession Act, 2005 and no past record of the accused needs to be gone into by the court."

11. I am not persuaded with the argument of the learned Counsel for the Applicant that the as per contents of para 5 of Complaint No.11 of 2012, the Appellant has alleged that he was dispossessed in August 2005 for some issue occurred in July 2005, therefore, the Illegal Dispossession Act, 2005 was enacted subsequently and cannot have retrospective effect being criminal law. In the instant case, the complainant has explicitly narrated in paragraphs 14 and 15 of the complaint the circumstances of his dispossession, which allegedly occurred on 27.11.2024 at 11:00 hours. The detailed contents of the said paragraphs are reproduced hereunder for reference and substantive appreciation.

"...14. That recently on dated 27.04.2024 at 11:00 hrs, the Complainant visited along with his father at suit land that moment, the Respondents along with other their accompanying person

attacked upon complainant and upon his old age father with weapon and dhandas (sticks), but the complainant succeed to skip away from said land in his car, otherwise Respondents were fully prepared with bad intention to create any situation of law and order in respect of piece of land 1-14 acres in survey no; 1406 along with latterly illegally occupied five acres approximately in survey Nos: 1406 & 1407. Therefore, such incident reported to the SHO Dhabeji, but no action has been taken, in this regard, illegal and unlawfully activities of the Respondents are not permissible to the law and complainant has no other remedy except this Complaint.

(Copy of the complaint dated 2-05-2024 and photos of the cutting trees is annexed herewith as annexure A/ to A/)

...15. Therefore, such act of forcibly and illegal possession take over by the Respondents is fall in the meaning of Section 3 of Illegal Dispossession Act, 2005 and same is punishable under the prescribed law.”

12. In view of the authoritative pronouncement by the Larger Bench of the Hon'ble Supreme Court of Pakistan in *Shaikh Muhammad Naseem (supra)*, it is held that the Trial Court is under an obligation to independently examine the commission of a criminal offence relating to **dispossession, illegal occupation, or unlawful possession** under the Illegal Dispossession Act, 2005. The pendency of any civil proceedings cannot be a bar to such an inquiry, nor should it influence the judicial determination of criminal culpability.
13. The learned counsel for the Appellant has also referred to the title documents confirming proprietary rights vide Order dated 09.09.2004 and the Revenue Appeal Order dated 26.02.1996 (page 115 of the Court file), drawing attention to Paragraph-6 wherein the documents relied upon by Respondents No.1 & 2 were declared as forged. However, this Court refrains from rendering any conclusive findings on such disputed factual assertions and leaves it for the Trial Court to adjudicate the matter afresh, strictly in accordance with law and in light of the ratio decidendi of the aforementioned judgment.

14. Consequently, the impugned Order dated 29.06.2024 is set aside, and by allowing this Appeal, the matter is remanded to the Trial Court with direction to register the complaint and decide the same expeditiously—preferably within a period of six months.

JUDGE

Kamran/PS