

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 321 of 2025

Appellant : Mst. Razia Parveen through
Mr. Muhammad Ayoub Awan,
Advocate.

Respondents No.1 to 5 : Zreshan, Jawad, Qasim, Ameer Jan &
Ali Raza: Nemo

Respondent No.6 : SHO PS Site Super Highway / State
through Ms. Rubina Qadir, Addl. P.G.

Date of Hearing : 23-10-2025.

Date of short order : 23.10.2025.

Date of reasons : 02.12.2025

JUDGMENT

TASNEEM SULTANA, J: The appellant, Mst. Razia Parveen, has preferred the listed Criminal Appeal assailing the order dated 06.03.2025 passed by the learned Additional Sessions Judge-VII, Malir, Karachi ("the Trial Court"), whereby her complaint filed under Sections 3 and 4 of the *Illegal Dispossession Act, 2005* ("the Act") was dismissed, and the learned Trial Court declined to take cognizance of the allegations made therein.

The brief facts , as asserted in complaint are that the applicant is lawful owner of Plot/House No. R-22, Block-C, Haji Allah Bukhsh Goth, Opp. Masjid Atwa, Scheme-33, Karachi, which she purchased from respondent No.2 namely Jawad for a consideration of Rs.750,000/-. It is stated that she initiated construction on the said property and was residing there. According to her, Respondent No2 Jawad avoided handing over the file of the property and instead attempted to persuade her to vacate the premises in exchange for money. The applicant alleges that respondents broke open the lock, illegally occupied the premises, demolished the constructed structure, and issued threats of murder and dire consequences when she demanded restoration of possession. She claims to have filed a Criminal Miscellaneous Application, upon which direction was issued for registration of FIR. She further asserts that respondents are using her K-Electric and gas utilities without

payment and continue to retain illegal possession of the property despite her complaints to the concerned SHO. It is further stated that the inquiry officer acted with bias and submitted a report in favour of the accused, resulting in dismissal of her complaint No. 103 of 2024 by the learned Trial Court through the impugned order dated 06.03.2025, which she has now assailed through this appeal.

3. Learned counsel for the appellant contended that the impugned order is illegal, without jurisdiction and passed in disregard of law; that the complaint was dismissed summarily without affording the appellant an opportunity to lead evidence, thereby causing miscarriage of justice. He argued that the appellant was in lawful possession of the property and produced documents establishing her ownership and possession, yet the learned Trial Court failed to consider them. It was further contended that respondents unlawfully entered and occupied the premises and that the inquiry report was tainted with bias.

4. Conversely, the learned Addl. P.G. supported the impugned order, submitting that the appellant was never in lawful possession and that no material had been produced to substantiate the alleged illegal dispossession; hence, the complaint was rightly dismissed for want of substance.

5. I have heard the learned counsel for the parties and examined the available record with their assistance.

6. At the outset, it appears that the learned Trial Court dismissed the complaint before taking cognizance of the offence. Upon obtaining the inquiry report under Section 5 of the Act, the learned Court concluded that the complainant had failed to specify the date and time of the alleged occurrence and had not produced any documentary proof establishing that respondent No. 2 was the lawful owner of the property at the time of sale. Consequently, the Court found no material to show that the appellant was ever in lawful possession of the subject premises.

7. The purpose of the *Illegal Dispossession Act, 2005* is not to provide a shortcut or substitute for civil remedies concerning possession disputes. The Act is intended to protect lawful owners or occupiers from being unlawfully dispossessed and to penalize those who resort to illegal means to take over another's property.

To validly invoke the provisions of the Act, the complainant must establish that:

- (i) she was in lawful, physical or constructive possession of the property;
- (ii) she was dispossessed by the person or his agent against whom the complaint is made; and
- (iii) such dispossession was unlawful, by use of force, deceit, or coercion.

Only when these essential ingredients are satisfied can a complaint under the Act be said to be maintainable.

8. In the present case, although the appellant alleged that the respondents broke the locks and occupied the premises, she neither specified any date or time of such alleged dispossession nor produced any credible proof of prior possession. It also stands admitted that she purchased the property from respondent No. 2, who, being merely the son-in-law of the original allottee, possessed no title or lawful authority to sell it. On the other hand, the record reflects that respondent Muhammad Zeeshan holds a *Special Power of Attorney* from the original owner, who is stated to have re-purchased the property from Makhdoom Jawad Hussain. In these circumstances, the determination of ownership or title necessarily requires recording of evidence, which falls within the exclusive domain of the competent civil court rather than the criminal jurisdiction envisaged under the *Illegal Dispossession Act, 2005*.

9. The inquiries conducted by the police as well as the revenue authorities further support the conclusion drawn by the Trial Court. The record reflects that the disputed property Plot No. C-284, Sector-I, Ahsanabad Co-operative Housing Society stands mutated in the name of the deceased allottee, Mst. Ghulam Fatima, whose legal heirs duly executed a Sub-General Power of Attorney in favour of Muhammad Zeeshan son of Muhammad Aslam, registered on 16.12.2022 and verified by the Board of Revenue Sindh as well as the Society itself. The inquiry reports further reveal that Muhammad Zeeshan constructed a boundary wall and two rooms on the said plot and leased it to one Ameer Ali Solangi at a monthly rent of Rs. 14,000/-, who continues to occupy the premises as tenant. The Station House Officer, in his verification report dated

25.10.2024, categorically stated that no woman by the name of Razia Parveen was residing at the site and that possession of the property was in the hands of the proposed accused through his tenant. The Mukhtiarkar's field report also confirmed that the complainant failed to produce any ownership or possession document at the relevant time. These consistent and un-rebutted findings from independent authorities clearly negate the allegation of illegal dispossession and demonstrate that the controversy essentially pertains to ownership and title, which is triable by the competent civil court rather than under the penal provisions of the *Illegal Dispossession Act, 2005*.

10. It would now be appropriate to examine the scope and object of the *Illegal Dispossession Act, 2005*. The statute was enacted not to supplant ordinary civil remedies but to curb the growing menace of unlawful occupation of property through force, coercion, or deceit. The wording of Section 3(1) expressly restrains any person from entering into or upon property without lawful authority, whether to dispossess or even with the mere intention to dispossess, grab, control, or occupy it. The deliberate use of the words "grab, control, or occupy" signifies that the provision targets unlawful possession or interference with lawful occupation rather than disputes relating to ownership or title. Hence, the essential requirements under the section are:

- (i) that a person enters into or upon property without lawful authority; and
- (ii) that such entry is made in order to or with the intention to dispossess, grab, control, or occupy it.

In *Mst. Gulshan Bibi v. Muhammad Sadiq* (PLD 2016 SC 769 at p. 777), the Honourable Supreme Court held that the decisive question is whether the act complained of was committed without lawful authority and whether it interfered with the possession of a lawful owner or occupier. Thus, the complainant must first establish her own lawful possession or occupation at the time of the alleged interference; a bare claim of ownership, without proof of actual control or possession, cannot bring the case within the ambit of Section 3 of the Act. Furthermore, in *Waqar Ali v. The State* (PLD 2011 SC 181), it was held that for an offence under Section 3 of the Act to be constituted, the complaint must disclose both the unlawful act (*actus reus*) and the criminal intent (*mens rea*); and

if such elements are not apparent from the complaint or accompanying documents, the Court is justified in dismissing the complaint at the threshold. The principle emerging from these judgments is that criminal jurisdiction under the Act is attracted only when unlawful interference with established possession is demonstrated; where ownership or title itself is disputed, the matter properly falls within the jurisdiction of the civil court.

11. Applying the above principles to the present case, it is evident that the appellant has failed to demonstrate that she was in lawful ownership or possession of the property at the time of the alleged dispossession, or that any act of forcible or unlawful interference was committed by the respondents. The inquiry reports, coupled with the documentary record, clearly negate her claim of possession, while the alleged sale transaction itself is disputed and unsupported by any lawful title. The entire controversy thus revolves around ownership and title, which fall within the exclusive domain of the civil court. Consequently, the complaint did not attract the mischief of Section 3 of the *Illegal Dispossession Act, 2005*, and the learned Trial Court rightly declined to take cognizance thereof.

12. In view of foregoing discussion, it is manifest that the impugned order does not suffer from any illegality, irregularity, or perversity warranting interference by this Court. The learned Trial Court has rightly appreciated the material on record and reached a just conclusion. Accordingly, the present appeal, being devoid of merit, is **dismissed**.

JUDGE