

Order Sheet

IN THE HIGH COURT OF SINDH KARACHI

Cr. Rev. Appln No.183 of 2025

Date	Order with Signature of Judge
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Priority Case.

1. For hearing of main case.
2. For hearing of MA No.11897 of 2025.

26.12.2025

Mr. Irshad Ali Shar, Advocate for applicant.

Mr. Muhammad Tariq, Advocate for respondent No.1.

Mr. Sharafuddin Kanhar, APG Sindh.

The learned counsel for the applicant contends that the possession of the property bearing Survey No.505, Deh Landhi, Taluka Ibrahim Hyderi, District Malir, Karachi, has been obtained under sale agreement from Indru son of Mool Chand though he has not filed copy of such sale agreement while on the other hand learned counsel for respondent No.1 states that the respondent No.1 / complainant before the trial Court has purchased the disputed property under the registered sale deed and, therefore, the learned trial Court has properly passed order for cognizance in the matter.

Heard the parties and perused the record.

I have noted that while passing the order dated 16.08.2025 whereby the learned trial Court has decided the cognizance in respect of the disputed property in terms of Section 3 of the Illegal Dispossession Act has simultaneously passed a separate order dated 16.08.2025 whereby certain directions were issued while the property was taken into custody through the Nazir while appointing chowkidar holding that the land is not in possession of any party.

The Illegal Dispossession Act Section 2(c)(d) covers and authorizes lawful owner of the property or lawful occupant of the property to seek indulgence of the Court and to punish a person who has committed offence for unlawful dispossession or against grab, control, occupy, or unlawful possession culminate into the legal action under Section 3 of the ibid Act. The paramount question in deciding the complaint is the lawful possession. It is settled law that possession follows title. The Hon'ble Supreme Court of Pakistan (Lager Bench) has already enunciated principle that the pendency of civil suit do not embargo in the criminal complaints under Section 3 of the said Act as held in cases of ***Mst.***

Gulshan Bibi and others vs. Muhammad Sadiq and others (PLD 2016 S.C. 769) and Shaikh Muhammad Naseem Vs. Mst. Farida Gul (2016 SCMR 1931) (Larger Bench), therefore, the trial Court has to form an opinion with regard to the legitimized entry of a lawful owner or lawful occupant. The former based his claim on the basis of legal documents as prescribed under the Transfer of Property Act, Registration Act, 1908, or the Land Revenue Act or the Colonization Act, 1912, or such other laws relating to land or property. The latter recognized status from a (contract) with lawful owner for instance possession passed against the sale consideration is protected under Section 53(A) of the Transfer of Property Act, 1882, or possession passed under tenement against rent is safeguarded under the Sindh Rented Premises Ordinance, 1979. Therefore, the trial Court has to form an opinion in the light of Section 2(c) and (d) of the Act before forming an opinion under Section 3 of the ibid Act independently irrespective of pendency of civil suit and only for the purposes of deciding complaints instituted before him as to whether complainant qualify as eligible within the definitions of Section 2(c) or 2(d) of the Act being “lawful owner” or “lawful occupant” or otherwise. In case, a party has valid title documents he covers within Section 2(d) or in case a party has justified possession from lawful owner he covers within Section 2(e) of the Act.

Both the learned counsel agreed that such legal and factual aspect has not been discussed. Accordingly, both impugned orders dated 16.08.2025 to the extent of taking cognizance by the trial Court are set aside while allowing the instant revision application and the matter is remanded back to the trial Court to decide the fate of complaint as well as possession in the light of above observations and after hearing both the counsel in accordance with law. This criminal revision application is disposed of in the above terms with listed application. The Nazir of District Court shall continue to hold possession of disputed property till the trial Court decide the fate of possession to eligible party.

J U D G E

Asif