JUDGMENT SHEET
THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Criminal Appeal No.S-338 of 2012
Meer Muhammad Khoso & another v. Syed Hassan Iqbal & another

Appellants:	Meer Mohammad and Dost Ali present in person on bail.
Respondent No.1:	Syed Hassan Iqbal through Mr. Abdul Hameed Bajwa.
Respondent No.2:	The State through Mr. Irfan Ali Talpur, Deputy Prosecutor General, Sindh.
Date of Hearing:	28.10.2026
Date of Judgment:	28.10.2026

JUDGMENT

MUHAMMAD HUMAYON KHAN, J: - Appellants Meer Mohammad son of Ali Ghulam Khoso and Dost Ali Khaskheli have questioned the judgment dated 10.11.2012 passed by the learned Additional Sessions Judge, Kotri, in Complaint/Sessions Case No.44 of 2011, instituted under sections 3 and 4 of the Illegal Dispossession Act, 2005. They were convicted under section 3(2) thereof and sentenced to seven years' rigorous imprisonment with payment of Rs.300,000/- each under section 544-A, Cr.P.C., and six months' simple imprisonment in default. Delivery of possession was also directed under section 8 (2) of the Act.

2. Briefly, respondent No.1, lessee of 492 acres of mining land at Mujheri Nala, District Dadu alleged that on or about 30.11.2011 the appellants and others occupied 60/70 acres near Shakeel Petrol Pump, Jamshoro, using heavy machinery and raising houses and shops. He sought their punishment and restoration of possession. Proceedings against co-accused Allah Dino abated upon his death.

3. The appellants, present in person, maintain that the evidence is contradictory and the alleged encroachment was not precisely identified. Meer Mohammad claims longstanding residence, while Dost Ali denies possession or residence there. They seek acquittal by extending benefit of doubt.

4. Learned counsel for Respondent No.1, Syed Hassan Iqbal, raises no objection to acquittal of the appellants.

5. Learned D.P.G. Sindh for the State supports the impugned judgment.

6. Heard and the record has been examined. The decisive infirmity lies in the prosecution's own evidence. Complainant Hassan Iqbal (Ex.03) places the occurrence on or about 30.11.2011 and admits that he learnt of the encroachment from his manager. PW Vikio (Ex.04), however, places it in the first month of 2011. More importantly, in cross-examination he expressly states that the accused had been residing there since 1997 and had also obtained sanads. This admission materially qualifies his assertion of recent encroachment, yet finds no consideration in the impugned judgment. Long residence would not itself legalize an encroachment, but the prosecution was required to reconcile its own conflicting accounts of the alleged entry and occupation.

7. The complainant further admits that the exact location of the encroached site was not stated in the complaint. The mining lease and general site plans establish his asserted mining entitlement; they do not, by themselves, identify the particular occupation attributable to each appellant or prove the alleged unlawful entry. None of the labourers allegedly ousted or deprived of tools was examined. In the face of the manager's admission and the conflicting dates, their absence leaves the occurrence without the available direct corroboration. These deficiencies concern the substance of the accusation.

8. The trial Court relied upon photographs (Ex.03/N) and the inspection report (Ex.06). Neither was specifically put to either appellant in his examination under section 342, Cr.P.C.; only a general allegation of occupation and construction was put. In *MUHAMMAD SHAH v. THE STATE* (2010 SCMR 1009) and *QADDAN and others v. The STATE* (2017 SCMR 148), the Supreme Court requires incriminating circumstances to be put to the accused before they can be used against him. Those materials cannot cure the deficiencies here. Independently, proof of construction at a later inspection does not resolve when, how and by whom the alleged criminal entry occurred. The trial Court also treated the failure to rebut the alleged dumping of chalk and construction as an admission. This reverses the burden of proof.

Weakness in the defence documents cannot supply missing proof of guilt. Dost Ali's denial of possession, in particular, required separate appraisal; Meer Mohammad's claim of residence could not be treated as Dost Ali's admission. The Act is not confined to organized land-grabbers, nor does a civil dispute alone exclude its operation: *Shaikh MUHAMMAD NASEEM v. Mst. FARIDA GUL* (2016 SCMR 1931). The acquittal rests upon failure of proof, not either of those propositions.

9. The foregoing defects, taken together, create reasonable doubt regarding both appellants. In *TARIQ PERVEZ v. The STATE* (1995 SCMR 1345) and *MUHAMMAD MANSHA v. The STATE* (2018 SCMR 772), the Supreme Court holds that even one circumstance creating reasonable doubt entitles an accused to its benefit as of right. Respondent No.1's no-objection is noted, but the conclusion rests independently upon appraisal of the evidence.

10. Consequently, the appeal is **allowed**. The impugned judgment dated 10.11.2012, is **set aside**. Both appellants are acquitted of the charge by extending benefit of doubt. They are present on bail; their bail bonds stand cancelled and their sureties discharged. Office to return surety papers after proper verification and identification. This judgment does not adjudicate competing civil or revenue titles, which remain open to determination by the competent forum.

JUDGE

Abdullahchanna/PS