

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Criminal Revision Application No.S-25 of 2023

Applicant	:	Abdul Khalique, through M/s Alam Sher Khan Bozdar and Riaz Ali Shaikh, Advocates.
The State & official respondents No.1 to 3.	:	Through Mr. Imran Mobeen Khan, Assistant PG for the State
Respondents No.4 to 6	:	Bangul and 02 others Nemo
Private respondent No.7	:	Pandhi through Mr. Asif Aman Shaikh, Advocate
Date of hearing	:	24.08.2026
Date of judgment	:	24.08.2026

ORDER

TASNEEM SULTANA, J.— Through this Criminal Revision Application, the applicant/complainant Abdul Khalique has assailed the order dated 04.03.2023 passed by the learned IV-Additional Sessions Judge/Hudood, Sukkur, in Direct Complaint No.01 of 2023 under Sections 3, 4 and 5 of the Illegal Dispossession Act, 2005, whereby the learned trial Court declined cognizance and dismissed the complaint.

2. Brief facts of the case are that the applicant/complainant claims ownership and possession of agricultural land measuring 41-30 acres situated in Deh Chak No.4, Tapa Sheruja, Taluka Rohri, District Sukkur, comprising, inter alia, Survey Nos.824 to 828. It was alleged that on 23.12.2022, when he visited the land along with his witnesses, he found the proposed accused in occupation of approximately 8-00 acres on the southern side, where they had constructed huts and ploughed the land. On being questioned, they allegedly refused to vacate the land and extended threats to him. The applicant thereafter approached the revenue authorities and ultimately filed the subject complaint under Sections 3, 4 and 5 of the Illegal Dispossession Act, 2005.

3. The learned trial Court, before taking cognizance, examined the material placed before it, including the relevant revenue entries and the report of the concerned Mukhtiarkar. The record reflects Entry No.496 in favour of the applicant in respect of 41-30 acres. It further reflects subsequent transfers out of the said holding, including 20-00 acres through Entry No.128 in favour of his son Abdul Malik and another 11-30 acres through Entry No.138 in favour of members of his family. The material also discloses separate claims and possession over different portions of the larger holding. Upon appraisal of the complaint, revenue record and report available before it, the learned trial Court declined cognizance and dismissed the complaint vide impugned order dated 04.03.2023.

4. Learned counsel for the applicant contends that the impugned order is contrary to the material available on record; that the applicant's ownership and possession stood supported by the relevant revenue entries; that the Mukhtiarkar in his report dated 09.01.2023 had specifically reported illegal occupation of the applicant's land and advised him to seek remedy under the Illegal Dispossession Act, 2005; that the complaint disclosed the relevant survey numbers, approximate area and identity of the persons occupying the land; and that the learned trial Court travelled beyond the scope of scrutiny permissible at the stage of taking cognizance. Learned counsel further contends that the learned trial Court misread Entry No.573 dated 15.12.2022 by connecting its beneficiary with proposed accused No.1, whereas the said entry related to a different person, and therefore the impugned order suffers from misreading and non-reading of the material available on record.

5. Conversely, learned counsel for the private respondents, assisted by learned Deputy Prosecutor General, supports the impugned order and submits that the alleged 8-00 acres form part of a much larger holding in respect whereof several revenue entries, transfers and possession claims exist; that the applicant himself had transferred substantial portions of the original holding; that the particular eight acres allegedly occupied by the proposed accused were not separately identified or demarcated; and that the material available before the learned trial Court did not disclose the essential ingredients of an offence under Section 3 of the Illegal Dispossession Act, 2005.

6. Heard. Record perused.

7. The Illegal Dispossession Act, 2005 is a special enactment providing summary and speedy remedy against illegal and forcible dispossession from immovable property. For constituting an offence under Section 3 of the Act, the

complainant is required to establish: (i) that he is the actual owner or occupier in lawful possession of the property; (ii) that the accused entered upon the property; (iii) that such entry was without lawful authority; and (iv) that such entry was with intent to dispossess, grab or control the property. It is well-settled that unless all the ingredients co-exist, no offence under the Act is made out. In the case of Mst. Naseem Aziz v. The State and others (2016 P Cr. L J 786 Sindh), it has been held that if even one ingredient is missing, the offence cannot be said to be established.

8. At the stage of taking cognizance, the Court is not required to determine the accusation on the standard applicable after recording evidence; nevertheless, the complaint and the material produced in its support must disclose a prima facie offence under the Act. In the case of Waqar Ali and others v. The State through Prosecutor/Advocate-General, Peshawar and others (PLD 2011 Supreme Court 181), the Honourable Supreme Court held that:

“The power to direct an investigation under section 5 ibid is to be exercised judicially and not as an unconsidered or mechanical action undertaken on every complaint filed under the Act, regardless of the merits of the same. The purpose of the investigation under the aforesaid statute is to ascertain prima facie, the authenticity of what has been stated in the complaint. The complaint itself has to show that an offence cognizable by the Court has been committed by the accused person(s) named therein. In the present case, from the order of the learned trial Court dated 15-7-2009 it is obvious that the matter was sent to the police "on the lodging of the complaint". If the learned trial Court had gone through the complaint, in particular, paragraphs 3 and 4 thereof it would have become apparent to it that the dispute between the parties was not of a criminal nature, and as such cognizance was not required to be taken.”

9. In the same case, while examining a controversy concerning the exact location of the respective parcels of land, the Honourable Supreme Court further observed:

“In view of the allegations and circumstances considered above, it is apparent that even if it is ultimately established that the appellants are in occupation of an area owned by the respondent-complainant, there is no indication that they also had the necessary criminal intent. On the contrary, the averments in the complaint point in the opposite direction and show at best, that there is a dispute of a purely civil nature between the parties as to the exact location of their respective parcels of land.”

10. It is also settled that the jurisdiction under the Illegal Dispossession Act is confined to examining the alleged illegal dispossession and is not meant for final adjudication of competing title to immovable property. In the case of Gulzar Ali and

another v. Station House Officer, P.S. Kandiaro and others (PLD 2012 Sindh 390), it was held that:

“Under Illegal Dispossession Act, it is not the function or domain of the court to decide or adjudicate upon the title of the property in question.”

11. Keeping the above principles in mind, the core question in the present revision is whether the material available before the learned trial Court disclosed a prima facie case that the particular 8-00 acres mentioned in the complaint constituted property lawfully owned or occupied by the applicant and that the proposed accused had unlawfully entered upon or occupied that very parcel with the requisite intention contemplated by Section 3 of the Act.

12. It appears from the material available on record that the controversy was not confined to the applicant and the four proposed accused over one separately identified parcel. Entry No.496 relates to 41-30 acres standing in the applicant's favour; however, the same revenue record reflects subsequent transfers out of that holding. Entry No.128 relates to 20-00 acres transferred in favour of his son Abdul Malik, while Entry No.138 relates to another 11-30 acres transferred in favour of members of his family. The learned trial Court also referred to possession of Bangul and Abdul Haque over 06-00 acres from Survey No.824 and other survey numbers from an earlier period. Thus, the material available on record reflects different interests and possession claims concerning portions of the larger holding.

13. The complaint, however, alleged illegal occupation of approximately 8-00 acres from Survey Nos.824 to 828 on the southern side. Those eight acres were not separately identifiable from the material accompanying the complaint by distinct boundaries, demarcation or corresponding revenue description so as to distinguish them from the remaining land. In view of the transfers and possession claims appearing from the record, it was necessary to identify the particular eight acres allegedly occupied by the proposed accused and to show that the said portion formed part of the applicant's lawful ownership or occupation. The material placed before the learned trial Court did not provide sufficient clarity in this regard.

14. The report of the Mukhtiarkar dated 09.01.2023 does not materially alter this position. Though it referred to the applicant's revenue interest and expressed the view that he had suffered illegal occupation of his land, it did not separately identify or demarcate the 8-00 acres forming the subject matter of the complaint. The report also referred to earlier material concerning possession over 05-00 acres. The opinion expressed by the revenue officer could not, by itself, substitute the judicial scrutiny required before taking cognizance. As explained in Waqar Ali (supra), the

complaint and the material accompanying it must disclose the unlawful act as well as the requisite criminal intent. In the present case, however, the allegation of illegal occupation could not properly be examined unless the particular portion alleged to have been occupied was first identified.

15. In the present case, determination of the allegation would first require identification of the particular 8-00 acres and ascertainment of the possession and revenue claims relating to that portion. The material before the learned trial Court did not disclose a case of dispossession from one independently identified property; rather, it disclosed a larger holding involving different transfers and possession claims. The criminal Court exercising jurisdiction under the Illegal Dispossession Act could not first determine the exact parcel and the competing possessory and revenue claims and thereafter treat that determination as the basis for criminal liability against the proposed accused. The complaint and the material produced in support thereof, therefore, did not prima facie disclose the essential ingredients of an offence under Section 3 of the Illegal Dispossession Act, 2005, and the learned trial Court was justified in declining cognizance.

16. The scope of revisional jurisdiction is limited. In the case of Khadija Siddiqui and another v. Shah Hussain and another (PLD 2019 Supreme Court 261), the Honourable Supreme Court, while explaining the scope of revisional jurisdiction, observed that:

“18. Apart from that the High Court ought to have appreciated that it was only seized of revision petitions and not an appeal and in exercise of its revisional jurisdiction the High Court ought to have confined itself to correctness, legality, regularity or propriety of the proceedings of the courts below rather than embarking upon a full-fledged reappraisal of the evidence, an exercise fit for appellate jurisdiction.”

17. In view of the above facts and circumstances, the impugned order does not suffer from any illegality, material irregularity or jurisdictional defect warranting interference in revisional jurisdiction. Consequently, this Criminal Revision Application along with all pending applications, if any, is dismissed and the order dated 04.03.2023 passed by the learned IV-Additional Sessions Judge/Hudood, Sukkur, in Direct Complaint No.01 of 2023 is maintained.

JUDGE