

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No.67/2016

DATE

ORDER WITH SIGNATURE(S) OF JUDGE(S)

Present: Mr. Justice Nazar Akbar

Aleemuddin

Applicant through

:

Mr. Sami Ahsan, Advocate

Baldan Hameed

Respondent No.2.

:

Present in person.

Muhammad Imran Rajput

Respondent No.2.

:

Nemo for Respondent No.2.

The State

:

Ms. Rahat Ahsan, D.P.G.

Date of hearing

:

27.03.2017

Date of announcement

:

18.04.2017

ORDER

Nazar Akbar, J. This Cr. Revision Application is directed against the order passed by Sessions Judge Malir, Karachi, whereby **Complaint No.38/2005** under Section 3 /4 of the Illegal Dispossession Act 2005, filed by the applicant was dismissed.

2. Brief facts of the case are that on **12.6.2015** applicant lodged complaint against the respondents for an alleged offence under **Section 3(2)** of Illegal Dispossession Act, 2005 (hereinafter the Act, 2005) on the pretext that he is absolute and exclusive owner of a Plot No.A-385, situated in Sector No.4, Ahsanabad Town in KDA Scheme No.33, Karachi **admeasuring 200 sq.yards**, which was purchased by him through attorney of Zohra Bi, on payment of only **Rs.8000/-** (Eight thousand) by registered sale deed on **09.01.1985**. The proposed respondents / accused without having lawful authority belonging to land mafia had encroached upon it, therefore, he filed the said complaint before the Session Judge, Malir with the following prayer that:-

A) Possession of the said property be restored to the complainant.

- B) Investigation into this matter be directed through the concerned SHO, however, parallel investigation in the matter may kindly be carried out through the Nazir or any other Office of this Hon'ble Court as the concerned area Police is actively supporting and favoring the culprits/respondents/land grabbers.
- C) Conviction and punishment be awarded to the accused persons/respondents above named under the provisions of the law.
- D) Any other better relief/relieves which this Hon'ble Court may deem fit and proper under the circumstances of this case.

3. Learned Sessions Judge in pursuance of **Section 5(1)** of the Act, 2005 directed SHO concerned to conduct investigation into the matter and submit report. Ahsanabad Society was also directed to submit a detailed report regarding plot bearing No.A-384 and A-385. The society submitted an undated report. However in the first line of the report it is stated that it was submitted in compliance of an order dated **21.01.2016**. According to report plot bearing No.A-384 was originally allotted to one Fazal-ur-Rehman, who subsequently executed General Power of Attorney in favour of Imdad Khado on **27.12.2003**. Then it was sold out in favour of one Ameer Ahmed through registered documents dated **04.08.2004**, however, no mutation took place, therefore, plot remains stands in the name of Fazal-ur-Rehman and for plot No.A-385, stands in the name of complainant Aleemuddin. It was further stated that physical demarcation was not possible at the site, except without proper support/assistance of area police.

4. The Session Judge, Malir in the impugned order observed that main controversy between the parties is regarding the demarcation of two plot bearing No.A-385 & A-384, one claimed by the complainant and other by Abdul Sattar respectively; therefore, he held that dispute is of civil nature and it can be resolved after affording opportunity of being heard to the parties in Civil Court and declined to take cognizance against the respondents.

5. I have gone through the impugned order as well as complaint and its annexures, I have heard the learned counsel for the applicant. Respondent No.2, is also present in person.

6. Learned counsel for the applicant has vehemently contended that the **complaint No.38/2015** filed by him under **Section 3/4** of the Act, 2005 should not have been disposed of by the trial Court in his absence. He has further argued that his application under **Section 7(1)** of the Act, 2005 for interim relief was also pending and pending application for interim relief the main case should not have been disposed of by the Court. However, he has not disputed the main question that the actual owner viz; Ahsanabad Society has not demarcated the property in dispute. The reported case laws referred by him even in the memo of revision are all from the civil jurisdiction of the Court and not from the cases in which Courts have exercised jurisdiction under the provisions of the **Code of Criminal Procedure, 1898**. His contention that pending an application under **Section 7(1)** of the Act, 2005 the court was not competent to decide whether cognizance could be taken or not for the offence complained by the applicant is misconceived. The parameters of deciding a civil dispute and criminal prosecution are entirely different from each other. Therefore, the case law referred by the applicant is not relevant.

7. The perusal of complaint has made it clear that even the complaint itself was not maintainable at all. The complaint was filed on **12.6.2015** and interestingly enough the police inquiry which is supposed to be ordered by the District Judge in terms of **Section 5** of the Act, 2005 after receiving the complaint was already annexed by the applicant himself with his complaint. The applicant in para-2 of the complaint has annexed police report dated **18.4.2015** alongwith his complaint which he has filed in **June, 2015**. The perusal of documents annexed **A/8 to A/14** with the instant Cr. Revision

against the respondents are copies of documents from an earlier **Complaint No.26 of 2015** filed by him which was dismissed on **08.5.2015**.

8. Besides the above, basic ingredients of a complaint in terms of **Section 3** of the Act, 2005 are also missing. The allegation of use of force for dispossession of the applicant from the premises in question is not mentioned anywhere in the complaint. Even date of dispossession is not given in the memo of **Misc. Appln. No.38/2015**. The applicant had purchased the disputed plot in 1985 for just Rs.8000/- from the attorney of original owner who had registered lease in her favour since **28.01.1976**. Power of attorney is not on the record. If in **1985**, the value of 200 sq. yards plot was just Rs.8000/-. I am afraid 11 years prior i.e in **1976** it must have been free. The complainant was not in possession of suit plot for over twenty 20 years as the plot was not demarcated. His earlier complaint was dismissed. If the applicant (complainant) was aggrieved by the disposal of his earlier **complaint No.26/2015** by orders dated **08.05.2015**, he should have preferred an appeal / revision. There is no concept of filing a fresh complaint on the same facts in terms of **Section 3/4** of the Act, 2005.

9. In view of the above facts and discussing the findings of the learned Session Judge, Malir that there is a civil dispute between the parties was just and proper and need no interference. Consequently this Crl. Rev. Application is dismissed.

JUDGE

Karachi
Dated: .4.2017