

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

Cr. Revision Appl: No.S- 98 of 2018

<u>DATE</u>	<u>ORDER WITH SIGNATURE OF JUDGE</u>
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For hearing of main case.

11.02.2019

Mr. Muhammad Hashim Bajeer, Advocate for applicant.

Mr. Dhiraumal D. M. Madhwani, Advocate for respondent No.1.

Ms. Sobia Bhatti, A.P.G. for the State.

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ZULFIQAR AHMAD KHAN, J:- Through instant Criminal Revision Application, the applicant challenges order dated 20.04.2018, passed by the learned Sessions Judge, Tharparkar at Mithi in I.D Complaint No.05 of 2018, whereby the Court dismissed the complaint filed by the present applicant / complainant.

2. It is the case of applicant that he purchased the subject plot through registered sale deed from one Mir Waqar against the sale consideration of Rs.50,000/- in presence of witnesses and was enjoying the peaceful possession however, on 27.02.2018 at about 8-00 a.m, the respondent No.1 made construction over the plot and illegally occupied the plot of the applicant.

3. Learned Counsel for the applicant by referring to the impugned order at length stated that admittedly the applicant / complainant has shown his title to the subject property by producing the title documents in his favour but he was forcibly dispossessed by the respondent No.1; that the learned trial Court has failed to consider that the respondent No.1 being a land grabber has no any title document in his name; that the learned trial Court has failed to consider that the Illegal Dispossession Act is a special enactment and meant to protect

the rights of the lawful owners of the property. He has also contended that in fact this is a fit case which may be remanded back to the trial Court for deciding afresh as the complainant was not even examined and the matter has been decided solely on the report of the SHO concerned and the Mukhtiarkar. Learned counsel for the applicant has lastly contended that the impugned order may be set aside, applicant may be put into possession of the subject property and the matter may be remanded back to the trial Court for deciding afresh after recording the statements of all concerned. In support of his contentions, learned counsel has placed reliance on the cases reported as 2013 YLR 781(1), 2000 CLC 1204, SBLR 2012 Sindh 781 and 2012 SCMR 229.

4. Conversely, learned counsel for the respondent No.1 contended that the learned trial Court has passed a speaking and well reasoned order by seeking reports from the concerned SHO and the Mukhtiarkar; that the respondent No.1 filed T.C. Suit No.01/2017 before the learned Civil Judge & Judicial Magistrate, Mithi and during pendency of that suit, both the parties agreed to appoint an arbitrator who visited site in presence of both the parties and submitted his report. He further contended that in the said suit, the applicant Mst. Zeenat filed a statement that neither they have occupied the plot of respondent No.1 nor they intend to occupy and therefore, the suit was withdrawn. It is stated that the entire area belongs to Mir's and the entry in the record of the rights in favour of the applicant is illegal and infact the applicant / complainant was never in possession of the subject property. He lastly contended that the reports of concerned SHO and Mukhtiarkar are in favour of the respondent No.1 and instant revision being not maintainable be dismissed. Learned counsel has placed reliance on the case reported as 2012 SCMR 1533.

5. Learned A.P.G. appearing for the State adopted the arguments advanced by learned counsel for respondent No.1.

6. I have heard learned counsel for the applicant, learned counsel for respondent No.1 as well as learned A.P.G. for the State and perused the entire material available on record.

7. Admittedly, from perusal of the impugned order, it reflects that the learned trial Court after calling report from the concerned SHO and Mukhtiarkar, disposed of the matter solely relying on their statements. Even otherwise, the complainant was not even examined nor the statement of proposed accused has been recorded by the learned trial Judge. Moreover, in the case in hand, applicant has stated that the reports of concerned SHO and the Mukhtiarkar are not impartial as the same have been prepared without examining the complainant and her witnesses hence could not be relied upon. Furthermore, the lower Courts are justified not only in the facts and circumstances of the case but also have to be consistent with the view taken by the Superior Court that the statutory functionaries are required to apply independent mind before passing any adverse order against any person and to pass a speaking order and not to act merely on a note/report. The Illegal Dispossession Act is a special law has been promulgated to protect the lawful owners and occupiers of immoveable properties from their illegal or forcible dispossession of the property grabbers. In this regard I am fortified with the case of **DAIM ALI KHAN v. MUSHTAQUE ALI alias FAROOQ and 4 others (2017 Y L R 1456)**, wherein it has been held as under:-

“Bare perusal of impugned order reflects that learned trial Court did not adjudge the reports submitted by SHO and Mukhtiarkar prudently, which ostensibly were not submitted as envisaged in terms of section 5 of Illegal Dispossession Act, 2005, whereas SHO was bound to conduct a concrete inquiry to examine the allegations of illegal dispossession by the aggrieved party and furnish a comprehensive report flashing the true facts to assist the Court in reaching to correct conclusion, hence such vague reports do not hold any field and Court should not take

such incomplete reports in consideration. Learned trial Court while passing the impugned order was absolutely influenced from the reports submitted by authorities emphasizing the execution of sale agreement, and the Court has not appreciated the entire involved circumstances and available material judiciously.”

The question of illegal dispossession is absolutely different from the civil liabilities, and learned trial Court was bound to ascertain as to whether the allegations levelled by the applicant constituted an offence under Illegal Dispossession Act, 2005, or otherwise. Trial Court, in circumstance, had failed to exercise the jurisdiction vested in it in appropriate manner and committed material illegality and gross irregularity, while dismissing the complaint without recording the evidence of the parties and affording them opportunity to produce their documents during the trial.”

Whereas the case law cited by learned counsel for respondent No.1 i.e. 2012 SCMR 1533, appears to be distinguishable and on different footings as in that case there was a dispute between the tenant and landlord over some monthly rent and arrears of the rent which is not in the case in hand hence cannot be relied upon.

8. In the circumstances at hand, I am of the humble view that the contention of the learned counsel for the applicant for remanding the matter carries weight. Accordingly, the impugned order is set aside and the case is remanded back to the trial Court with direction that the impartial investigation be conducted in the issues which are the subject matter of complaint. The statement of complainant and the proposed accused/respondent No.1 may also be recorded and thereafter, by considering the entire material available on record, the trial Court may pass a speaking order in accordance with law.

9. The observations made supra are tentative in nature and learned trial Court shall decide the case strictly on merits.

JUDGE

Tufail/PA