

IN THE HIGH COURT OF SINDH AT KARACHI**Crl. Rev. Application No. 114 of 2017**

Applicant : **Chetan Das**
through Mr. Nadir Khan Burdi, Advocate

Respondents : **J.M. Jamali & others**
through Mr. Raj Ali Wahid Kunwar, Advocate

: **The State**
through Ms. Rahat Ahsan, Addl.P.G.

Date of announcement: **29th October, 2018**

ORDER

Omar Sial, J.: The Applicant has impugned an order dated 14-4-2017 passed by the Learned First Additional Sessions Judge in Thatta. In terms of the said order the Learned Trial Court dismissed a Private Complaint filed u/s 3 and 4 and 8 of the Illegal Dispossession Act, 2005.

2. Brief facts of the case are that one Chetan Das stated in his complaint that he is the owner of a particular piece of land in District Thatta and that on 15-6-2016 at about 8:30 a.m., the respondents (in this Criminal Revision Application) along with members of the Anti Encroachment Force and a member of the revenue staff came upon his land and attempted to demolish the structures built on the land, however, due to intervention of the respectables of the area, they were not able to achieve their objective. The next day i.e. 16-6-2016 the respondents with members of the lady Police and the Anti Encroachment Force once again arrived on the scene and harassed the farmers and watchmen of the complainant. The complainant approached the Deputy Commissioner Thatta, S.S.P. Thatta, Assistant Commissioner Mirpur Sakro and the S.H.O. P.S. Dhabeji but to no avail. On 11-7-2016 the respondents and the Anti Encroachment Force once again came and occupied the land.

3. The Learned Trial Court called for reports from the Mukhtiarkar and the S.H.O. P.S. Dhabeji. Both the S.H.O. and Mukhtiarkar reported that the land in issue, according to the revenue records, was in the name of the complainant and that he was in possession of the said land on 11-7-2016. It appears from the reports, however, that the record pertaining to the land was burnt at the time of the assassination of a political

leader and that the record was being reconstructed. The Learned Trial Court dismissed the complaint on the ground that the demarcation of the land had not been carried out and that it was not believable that the Anti Encroachment Force would play a part in the dispossession.

4. I have heard the Learned Counsel for the Applicant as well as the respondents and the Learned D.P.G. The Learned Counsel for the respondents agreed that even though the reports of the S.H.O. and Mukhtiarkar revealed that the Applicant was the owner of the land and was in possession of the same on 11-7-2016. The reports according to the Learned Counsel were false. He also argued that it cannot be believed that the Anti Encroachment Force would take part in the dispossession and that there are civil suits pending adjudication in respect of the land. On a query as to the applicability of the judgment of the Honorable Supreme Court in Sheikh Muhammad Naseem v Farida Gul reported at 2016 SCMR 1931 to the present situation. The Learned Counsel without giving reasons simply submitted that the judgment will not apply.

5. The Honorable Supreme Court in the afore-mentioned case has very clearly laid down that “once the offence reported in the complaint stands proved against the accused within the confines of the provisions of the Illegal Dispossessions Act 2005, then he cannot escape punishment on the ground that some civil litigation on the same issue is pending adjudication between the parties.”

6. The reports of both the Mukhtiarkar and S.H.O clearly state that the owner of the property in the revenue records was the complainant. The only grey area in the reports is that according to them the possession of the land was intact with the complainant on 11-7-2016, when it is alleged that the dispossession took place. This aspect requires clarification.

7. In view of the above, the order dated 14-4-2017 is set aside. The case is remanded back to the Learned Trial Court to decide afresh in light of the principles laid down by the Honorable Supreme Court in the afore mentioned case. The Learned Trial Court is to conclude this exercise within two months from the date of receipt of this order and after notices to both parties.

JUDGE