

**IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Appeal No. 311 of 2015

Appellants : Bacha Khan & others  
through Syed Hassan Ali, Advocate

Respondent : The State  
through Mr. Talib Ali Memon, A.P.G.

Complainant : Mr. Muhammad Ali Waris & Mrs. Zaibunnisa,  
Advocates

Date of hearing : 21<sup>st</sup> November, 2022

**ORDER**

**Omar Sial, J:** Before arguing the appeal on merits, the parties as well as their respective counsels, submit that the parties have reached a negotiated settlement. The complainant does not want to pursue any further with the complaint which they had filed and have no objection if the appellants are acquitted due to the compromise. For their part, the appellants have undertaken that the complainant's family, which is already in possession of the disputed property, shall continue to remain in possession and that they will not be harassed, intimidated or threatened in any manner nor will they be dispossessed by them illegally or unlawfully. The parties have further agreed that if the appellants continue to allege that they are the owners of the disputed property, they will invoke the jurisdiction of the civil court competent to decide issues regarding ownership of property. The learned APG, after hearing the parties, has no objection if the appellants are acquitted on the basis of the compromise.

2. I have heard the counsels and the learned APG. My findings and observations are as follows.

3. The Illegal Dispossession of Property Act, 2005 is a special legislation. Section 9 of the Act stipulates that the Code of Criminal Procedure, 1898 will be applicable to proceedings unless the Act itself bars such

applicability. The Act is silent on whether the offence can be compounded or not and thus the provisions of the Code will be applicable. Compounding of offences is dealt with by section 345 Cr.P.C. This section identifies the offences which can be compounded. Obviously, it does not include the offences created pursuant to the Act, as the Act was not in force at the time and no amendment was subsequently made either in the Code or the Act to determine the compoundability or otherwise of offences pursuant to the Act. Historically, courts have taken the view that when a legislation is silent on some aspect, an interpretation favourable to the accused may be given. Admittedly, no State land is involved, there is no other known person to date who claims the disputed property apart from the parties to these proceedings and the parties now wish to bury their hatchets as far as the offence of illegal dispossession is concerned.

4. The case of the prosecution is that one Afaq Ahmed had purchased 6 plots of land bearing numbers D-29 to D-34, measuring 250 square yards each in Dost Mohammad Gunjar Goth for a total sale consideration of Rs.945,000. The date of purchase of these plots is not clear from the record however Afaq Ahmed alleged that he had bought the plots in the year 1997 but that it was on 23.03.2012 when he visited the land he saw 10 to 15 persons standing who told Afaq that the plots belonged to them. It appears however from the record that the disputed plots were a part of the Sindh Gothabad Scheme and therefore it is debatable whether title in the said land could have been passed on to anybody by a private party (Times Estate Agency in this case). It is however pertinent to mention that the sanads produced by Afaq showing him as the owner of the disputed plots have been issued by the Mukhtiarkar, Sindh Gothabad Scheme. I am surprised that one person was issued 6 plots through the Gothabad Scheme. Prima facie it appears to be in violation of the Sindh Gothabad (Housing Scheme) Act, 1987. Be that as it may, questions of ownership of property cannot be decided in criminal proceedings. I also notice that the appellants were not confronted with the sanads during their respective section 342 Cr.P.C. statements nor were they confronted with the report of the police officer.

Pieces of evidence not put to an accused in the section 342 Cr.P.C. statement cannot be used as evidence against him.

5. In view of the foregoing lapses of prosecution as well as the fact that the complainant and the State do not want to pursue the complaint any further and have categorically prayed that they be allowed to withdraw it, the appellants are acquitted of the charge against them. The possession of the property will however continue to remain with the complainant's family as far as the dispute between the complainant and the appellants is considered. The appellants have undertaken that they will not bother, harass or intimidate the complainant's family in any manner; however, they will not be precluded from pursuing any legal remedy that they may have in the civil courts regarding ownership of the property. The appellants are on bail. Their bail bonds stand cancelled and surety discharged which may be returned to its depositor upon identification.

JUDGE