

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

Criminal Revision Application No.S-39 of 2023

---

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
-------------	--------------------------------------

---

1. For order on office objection.
2. For hearing of main case.
3. For hearing of MA No.3413/2021.

Applicant: Qazi Muhammad Ayoub through Mr. Shahab Sarki, Advocate along with Mr. Wahaj Ali Khan, advocate

Respondents No.1,3&4: Through Ms. Rameshan Oad, Assistant Prosecutor General Sindh.

Respondent No.2: Muhammad Ali Qazi through Mr. Muhammad Hashim Leghari, Advocate.

Date of hearing: 08.05.2023 & 29.05.2023.

Date of Decision: 02.06.2023.

**ORDER**

**AMJAD ALI SAHITO, J.** Through this Criminal Revision Application, the applicant Qazi Muhammad Ayoub has impugned the order dated 10.03.2023 wherein learned 8<sup>th</sup> Additional Sessions Judge, Hyderabad allowed the application under section 7 of Illegal Dispossession Act, 2005 (hereinafter referred to as Act of 2005) in Criminal I.D. Complaint No.78/2020 filed by the respondent No.2/complainant Muhammad Ali Qazi, with direction to SHO of concerned Police Station to put the respondent No.2/complainant in possession of disputed property viz. Bungalow No.7 constructed on plot area 8355 square feet Cantonment S.R No.145 Tando Mai Mahan Deh Foujgah Taluka City Hyderabad. Through the impugned order, the application

filed by the applicant in terms of section 265-K Cr.P.C. for his premature acquittal in the said complaint was also dismissed.

**2.** Relevant facts of the case are that the applicant and respondent No.2 are real brothers. It has been alleged that the respondent No.2 is the duly constituted attorney of Arif Pasha s/o Khursheed Muhammad Khan, who is the owner of the subject property; therefore, the respondent No.2 was enjoying the possession of the subject property. On 27.09.2020 at 09.00 p.m, the applicant along with four armed unknown persons came at the subject property. The watchman (Chowkidar) of the respondent No.2 namely Mr. Arab Ali s/o Muhammad Usman Dasti was present at the subject property who resisted but the unknown persons by showing weapons threatened the watchman and directed him to inform the respondent No.2 not to step inside the subject property otherwise, there would be dire consequences. The watchmen informed the respondent No.2 that the applicant along with his unknown armed men have occupied the subject property and dispossessed the watchman. The respondent No.2 on the next day came to Hyderabad from Karachi and approached the concerned police station reporting the matter to the respondent No.4 to lodge a complaint, but the respondent No.4 failed to lodge a complaint; therefore, the respondent No.2 submitted an application to the Senior Superintendent of Police Hyderabad, who vide letter dated 23.10.2020 constituted an inquiry committee comprising of four police personnel. The said members of the committee concluded in their report that the subject property was in possession of the respondent No.2 and the applicant has wrongfully occupied the same.

**3.** Per learned counsel for the applicant, there is a dispute between him and the respondent No.2 and the matter is purely of civil nature; that the applicant has also filed a suit being F.C. Suit No.1241 of 2021 for declaration, partition, separate possession, cancellation and injunction before the learned VIII<sup>th</sup> Senior Civil Judge, Hyderabad and respondent also filed a Suit No.1122 of 2020; that the learned trial Court without due

consideration of the facts, circumstances and merit of the case dismissed the application under section 265-K Cr.P.C. filed by the applicant and ordered the respondent No.4 to put the respondent No.2 in possession of the subject property through impugned order. Learned counsel has contended that there were litigations between the father of applicant against the Cantonment Board Hyderabad, the subject property is ancestral property and since the respondent N.2 decided to participate in the elections of 2018, he got a portion for the subject land regularized by the Cantonment in 2017 by paying a regularization fee, who used the portion of 900 sq. yards as an electoral office; however, the respondent No.2 was not declared as returned candidate; now since the respondent No.2 had a portion regularized filed instant complaint to deprive the applicant and his brother Qazi Muhammad Aslam of the shares; that since the alleged incident did not take place, as the applicant never disposed the respondent No.2 from the Bungalow No.7 and the applicant is an elderly person who cannot even walk without support; that at the time of alleged incident, the applicant was not present in the city and was in Karachi for his treatment; that the land claimed by the respondent No.2 alleging to be Bungalow No.7 does not exist separately, which is the part of ancestral house of the applicant and respondent No.2; that the subject property as alleged by respondent No.2 is a part of Bungalow No.2; that both the applicant and respondent No.2 are not denying that the plot bearing No.B-2 admeasuring 2700 sq. yards is an ancestral property and both are joint owners of the same; that the property claimed by the respondent No.2 is separate from the 2700 sq. yards; therefore, a demarcation may be done to determine the said area of plot bearing B-2, the applicant is willing to hand over the same; that when both the parties accept the fact that the area 2700 sq. yards of plot bearing B-2 is a joint property, as such, the Act of 2005 is not applicable to co-owners; that respondent No.2 is relying on the sale deed of Arif Pasha which is not a registered sale deed and claims to be the attorney of Arif Pasha and that the respondent No.2 is relying upon is fake/fabricated power of

attorney which is not registered and on knowing this fact, the applicant has filed a civil suit that the purported power of attorney may be cancelled. Learned counsel has further contended that the subject property is being used as an office of the Daily Kawish; therefore, the question of respondent No.2 residing within the said property does not arise and the police report basis the claim of the respondent No.2 to be the owner of plot No.07 based on the fact that he paid the regularization fee and has the electricity bills in his name; however, it is well settled principle of law that utility bills do not amount to ownership of the property. Learned counsel also pointed out that the respondent No.2 used office of Kawish into a political office for the time being with the consent of other family members; however, since he did not win the elections, as such the political office was converted into the office of Kawish again. Learned counsel has further contended that respondent never had an exclusive ownership of the subject property. Lastly he prayed that instant criminal revision may be allowed and the complaint of the respondent No.2 be dismissed as it is not maintainable as per law. In support of his contentions, he has relied upon copies of the suits filed by the applicant as well as respondent No.2.

**4.** On the other land, learned counsel for respondent No.2 has contended that the impugned order passed by the learned trial Court is legal, valid, in accordance with law and proper appreciation of the evidence available on record; that the wisdom behind section 7 of the Act of 2005 is to provide interim relief to the owners or legal occupier of the disputed property, who is stated to have been illegally dispossessed; that the material made available on record including the report of Joint Investigation Team formed on the orders of SSP Hyderabad, report submitted by Executive Officer, Cantonment Board dated 16.12.2020 and report of Mukhtiarkar *prima facie* establish and strengthen the version of the respondent No.2 that he was dispossessed from the property in question; that the applicant has misguided this Court by merging two properties i.e. Bungalow No.B-2 (admeasuring 2700 sq. yards) and B-7 (admeasuring 8355 sq. ft.) as one

property; that the S.No.145 is admeasuring 4.30 acres whereas approximately 15 houses and one mosque exists in the said survey number; that Bungalow No.B-2 (admeasuring 2700 sq. yards) is inherited property of the respondent No.2/complainant and applicant/accused whereas the Bungalow No.B-7 admeasuring 8355 sq. ft. (subject property of complaint) is the exclusive property of the respondent No.2/complainant. Learned counsel has pointed out that the applicant had also challenged the cognizance taken by the learned trial Court in I.D. Complaint before this Court by filing criminal revision application No.S-161 of 2021, which was dismissed vide order dated 25.11.2022. Lastly, he has prayed for dismissal of instant criminal revision application. In support of his contention, he has relied upon the cases reported in 2007 PCr.L.J 224, 2019 PCr.L.J 1023, 2016 MLD 1018, PLD 2016 SC 769, 2011 YLR 979, 2015 YLR 1609 and 2020 YLD 1.

**5.** Learned Assistant Prosecutor General, Sindh has supported the impugned order.

**6.** Heard and perused the record.

**7.** In terms of section 3 of the Act of 2005 the remedy can be invoked by the owner or occupier of the property, who is stated to have been dispossessed from immovable property or whose property has been occupied by a person(s) having no lawful authority. In the instant case, the claim of respondent No.2 is that he had an exclusive property in question has been dispossessed by the applicant, as such, the proceedings by filing complaint before the learned trial Court were initiated against the applicant under the provisions of Illegal Dispossession Act, 2005. Although, the applicant's version is that he and respondent No.2/complainant had a joint ancestral property i.e. subject premises but such version is being denied by the respondent No.2 that the applicant is trying to mix up two properties i.e. the ancestral property and the exclusive property of the respondent No.2. In such a situation, it is worthwhile to note here that the Act of 2005 is only meant to safeguard the person(s) who are dispossessed or whose property is being occupied by a person

without due course of law. Such land grabbers under the Act of 2005 are to be discouraged and to protect the right of owner and the lawful occupant but at the same time the provisions of subsection (1) of section 3 of the Act are in the form of preventive provisions. This section begins with the words "no one shall...". This is a prohibitory mandate and there is no restriction as to the class of persons. And, it can be said that through subsection (1) of section 3 of the Act, all persons have been prohibited to commit the offence detailed in this provision.

**8.** In the instant case, an Inquiry Committee comprising of DSP Muhammad Ayoub Patoli SDPO Cantt: Hyderabad (Chairman), DSP Aurangzaib Abbasi SDPO Hali Road Hyderabad, Inspector Sirajuddin Lashari EO to Range Office Hyderabad and Inspector Aijaz Lakho SHO PS Cantt: Hyderabad as Members, was constituted. From perusal of inquiry report submitted by Inquiry Committee to the Senior Superintendent of Police, Hyderabad, it reflects that statements of applicant (respondent No.2 herein) Muhammad Ali Qazi, opponent (applicant herein) Qazi Muhammad Ayoub and Arbab Ali Watchman were recorded. In the report, they have perused the location through Google Earth App: and submitted that;

- a. *The property papers provided by Muhammad Ayoub Qazi, does not support his claim as total area of Kawish Office/Residence including the bungalow in question measures total 4492.51 sq. yards.*
- b. *The area measuring 405.189 sq. yards is situated between the Kawish Office/Residence and the bungalow in question measuring 954.486 sq. yards.*

*Note:- The Google earth measurement variation cannot be ruled out up to 50 to 200 sq: yards (Picture taken through Google earth is enclosed).*

The Inquiry Committee given their findings as under:-

1. *It was established that the bungalow No.07 S.R No.145 Tando Mai Mahan Civil Line Hyderabad had been under possession/use of Muhammad Ali Qazi @ Ali Qazi and his property.*
2. *On 27.09.2020 Mohammad Ayoub Qazi has illegally occupied the bungalow in question through his associates.*
3. *The bungalow in question was declared as Kawish Bureau Office after 27.09.2020.*
4. *Apparently the purpose behind the illegal possession of bungalow in question to pressure the applicant*

*Mohammad Ali @ Ali Qazi (applicant) to withdraw his due share from inherited property and to distract him from starting new T.V Channel & Newspaper.*

5. *The applicant Muhammad Ali @ Ali Qazi and Muhammad Ayoub Qazi are real brothers. Therefore, they (both the parties) may be advised to maintain status quo of bungalow in question and to decide their matter amicably in order to avert any untoward incident.*

9. As far as the claim of the applicant that the subject property is a joint ancestral property and as per respondent No.2 it is his exclusive property, a report submitted by Executive Officer, Hyderabad Catt was submitted before the learned trial Court. Learned counsel for respondent No.2 has also placed the said report before this Court. For the sake convenience, the report is reproduced as under:-

**“Subject: SUBMISSION OF DETAIL REPORT REGARDING BUNGALOW CONSTRUCTED ON PLOT ADMEASURING 8355.00 SQ. FT. FORMED OUT OF CANTONMENT SURVEY NO.145, SITUATED AT TANDO MAI MAAHN DEH FOUJGAH, CITY, HYD, VIDE RD.NO.375, VOL.439 DATED 26.01.1986.”**

*It is submitted the detail report regarding the said property is as under:-*

1. *That the application along with existing building plan & title documents i.e. sale deed & power of attorney of Bungalow No.07, Svy No.145, Tando Mai Mahan, Hyderabad Cantt was submitted by Mr. Muhammad Ali Kazi s/o Kazi Muhammad Akber.*
2. *After receiving the application, the office of Cantonment Board required verification from city Mukhtiarkar regarding the Sale deed in favour of Mr. Arif Pasha & General Power of Attorney in favour of Mr. Muhammad Ali Qazi in respect of subject plot through vide letter dt: 14.04.2017, letter No.9/Pt-Svy-145/T.M.M/2598.*
3. *That City Mukhtiarkar vide letter No.AM/City/Hyd/732 dt: 19.04.2017 has verified the title of subject plot and further stted that the General Power of Attorney is duly verified by the Assistant Commissioner.*
4. *Objection regarding ownership on subject plot was invited from general public vide advertisement in Daily “Koshish” dt: 13.04.2017.*

5. *NOC from land point of view from MEO Hyderabad Circle Hyderabad was issued vide letter No.H-24/145/96 dt: 31.07.2017.*
6. *After verification of title documents, the case for regularization of existing construction on the said plot was placed before Board and Board vide CBR No.15 (vi) dt: 25.04.2017 & CBR No.10 (03) dt: 20.06.2017 regularized the existing construction with composition fee of Rs.2,408,100/-, which was paid by the attorney of the subject plan.*
7. *After completion of all codal formalities the Completion Certificate of the said bungalow was issued vide letter No.9/Pt-7/Svy:145/T.M.M/2849 dt: 12.07.2017 by the Cantonment Board.*
8. *The subject property is constructed on private land under the management of Revenue authority, the Cantt Board Hyderabad is dealing with the property for Municipal and taxation point of view.”*

**10.** On meticulous perusal of the record made available before me, it reflects from the inquiry report of Inquiry Committee as well as report of Executive Officer Hyderabad Cantonment that the subject Bungalow is constructed on private land area 8355 sq. ft. and a composition fee of Rs.2,408,100/- was paid by the attorney of the subject plan; and *prima facie*, the applicant has illegally occupied the bungalow in question through his associates, which had been under possession/use of respondent No.2 Muhammad Ali Qazi @ Ali Qazi. Furthermore, the accused persons cannot contend that complainant has no lawful authority to file legal proceedings and any attempt to transform the criminal act into civil proceedings is no means as the Illegal Dispossession Act, 2005 was only introduced to protect the owners from dispossession, grabbing, controlling or occupying their properties, without lawful authority. A complaint under the Illegal Dispossession Act, 2005 can be entertained by a Court of Session only if some material exists showing involvement of the persons complained against in some previous activity connected with illegal dispossession from immovable property or the complaint demonstrates an organized or calculated effort by some persons operating individually or in groups to grab by force or deceit property to which they have no lawful, ostensible or justifiable



claim. Subsection (1) of section 7 of the Act of 2005, provides that “If during trial the Court is satisfied that a person is found *prima facie* to be not in lawful possession, the Court shall, as an interim relief direct him to put the owner or occupier, as the case may be, in possession.”

**11.** In the instant case as discussed above, the subject property *prima facie* has been occupied by dispossessing the occupier, as such the trial Court has rightly taken cognizance on the complaint of the respondent No.2/complainant, which was also challenged by the applicant through a Criminal Revision Application bearing No.S-161 of 2021 before this Court, but the same was dismissed by order dated 25.11.2022 with direction to expedite the trial and conclude it within shortest possible time. Similar view has been affirmed in the dictates of law of august Supreme Court of Pakistan in the case of Muhammad Akram and 9 others v. Muhammad Yousaf and another (2009 SCMR 1066). The maintainability of the 'complaint' before the learned trial court is not questionable firstly for the reason that the learned Court had adopted all codal formalities before summoning the accused and secondly that *prima facie* facts and circumstances of the case fully attract the provisions of Illegal Dispossession Act, 2005. In such circumstances, the learned trial Court has rightly allowed the application filed under section 7 of the Act of 2005.

**12.** So far dismissal of application filed by the application under section 265-K Cr.P.C. is concerned, suffice to say that *prima facie*, the respondent No.2 has constituted the case of his illegal dispossession from the subject property in view of above discussion, as such, the learned trial Court has rightly dismissed the application. The applicant has also ample opportunity to disprove the allegations of the respondent No.2 before the learned trial Court through cross-examination of the witnesses as well as evidence of his defense witnesses coupled with production of material, if any, etc.

**13.** For what has been discussed above, I do not find any cogent reason to interfere in the impugned order. Learned counsel for the applicant has also failed to pin point a tangible material

convincing any interference by this Court. Consequently, impugned order is maintained; resultantly, instant criminal revision application is **dismissed** along with pending application and the interim order passed by this Court on 24.03.2023 is hereby recalled. However, the applicant is directed to vacate the possession of subject property/ Bungalow No.7 constructed on plot area 8355 square feet Cantonment S.R No.145 Tando Mai Mahan Deh Foujgah Taluka City Hyderabad and deliver its vacant possession to the respondent No.2 within three days. In case of failure, the Senior Superintendent of Police, Hyderabad shall put into possession to the respondent No.2 immediately.

JUDGE

\*Abdullahchanna/PS\*