

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

Criminal Revision Application No.S-128of 2022

11.04.2023.

Mr. Mir Naeem AkhtarTalpur, Advocate for applicant.
Mr. Waqar Ahmed Leghari, Advocate for respondent.
Ms. Safa Hisbani, A.P.G for State.

ORDER

MUHAMMAD FAISAL KAMAL ALAM, J.- This Criminal Revision Application is filed against the impugned Order dated 25.08.2022 passed on the Application filed by the Applicant under the Illegal Dispossession Act, 2005 (**the Act**).

2. As mentioned in the impugned Order, the matter pertains to a built up property admeasuring 13042-06 sq: feet, out of which an area of 2116 sq: feet situated in Ward No.11 Tando Jan Muhammad, District Mirpurkhas was purchased by complainant / applicant from its owner Ali Muhammad through registered sale deed Jild No.13 dated 17.12.1987 whereas an area of 1044 sq: feet situated in Ward No.11 Tando Jan Muhammad District Mirpurkhas from its owner Masood Ahmed through registered sale deed Jild No.01 dated 09.08.1986 and after purchasing the same, the Complainant constructed a house over the said plots.

3. Reports were called under Section 5 of the Act. Both the Reports of the concerned Mukhtiarkar and area SHO confirm the ownership of Applicant, based on the official record; the same was considered by the learned Trial Court, but the Application/Case was dismissed on the ground that Respondent-accused is a real brother of the Applicant. The

second factor which weighed with the learned Trial Court is that no evidence is produced that the Respondent has forcibly dispossessed the Applicant from his property, or, the latter is a land grabber belonging to some gang.

4. To the above facts, learned Counsel for the Applicant has argued and stated that even if some relative is residing in the premises of an undisputed owner, it does not mean that Complaint cannot be filed; contended that his Complaint has been dismissed in limine, which has grossly prejudiced his Case, as, usually such an order is passed in frivolous matters. He has cited the following case law that the Act is not restricted to any class of offenders.

- (i) Mst. Gulshan Bibi and others v. Muhammad Sadiq and others (PLD 2016 Supreme Court 769).
- (ii) Iftikhar Ahmed v. Zulfiqar Ali and 3 others (PLD 2008 Lahore 59).

5. Learned Counsel for the Respondent has vehemently opposed this Revision and states that there is no evidence of dispossessing the Applicant, therefore, Complaint before the learned Trial Court was correctly dismissed. He further states that he is residing in the premises since 1986.

6. Learned A.P.G has opposed the impugned Order and supported the contentions of Application, based on the Official Reports.

7. Arguments heard. Record perused.

8. The impugned Order dated 25.08.2022 has observed that both the Reports (*ibid*) are correct and admittedly the Applicant is the owner. The Complaint was dismissed on the ground that there is no evidence

brought on record about the forcible dispossession of the Applicant by Respondent-accused. Section 5 of the Act has prescribed a procedure for investigation. Its' Second Proviso states that such reports shall be the part of evidence. In the present case both the Reports of concerned Mukhtiarkar and area SHO are in favour of the Applicant and same are not even denied by the Respondent-accused.

With regard to the contention of Respondent's counsel that there is no evidence of dispossessing the Applicant, the same is completely misconceived in nature. There is a judicial consensus on the point that if an owner is unable to utilize his / her property or land, for any reason, it means that his / her ownership right has been adversely affected by the opposite party, which has to be remedied by the Courts. In the present case, admittedly, present Applicant (Complainant) is unable to use and enjoy his property, which is one of his fundamental rights guaranteed by the Constitution of Islamic Republic of Pakistan, 1973. On a specific question, Respondent's counsel states that he is not tendering any rent; this aggravates the grievance of present Applicant and the offence committed by Respondent [accused].

9. The above discussion shows that the Respondent/accused has grabbed and occupied the Subject Property of Applicant since decades; in effect present Applicant has been dispossessed from the Subject Property. Even if a close relative or brother [as in the present Case] has prevented the owner/Applicant to utilize and enjoy his/her property, such an act squarely falls within Section 3 of the Act [*supra*], as ruled by the Hon'ble Supreme Court in *Gulshan Bibi Case* (*ibid*). Consequently, the impugned Order is set aside. Case is remanded for decision a fresh, preferably within six weeks.

Since the Respondent-accused is occupying the premises illegally for the past few decades, as an interim measure, he [Respondent] is directed to handover its vacant, peaceful and physical possession to the Applicant within three (03) weeks from today, failing which area SHO will implement this Order. It is clarified that observation in this Decision is of tentative nature and will not influence the trial.

JUDGE

Tufail