

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No. 228 of 2023

Date	Order with signature of Judge
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1. For hearing of main case
2. For order on MA No.11771/2022

04.12.2023

Mr. Aamir Mansoob Qureshi advocate for the applicants
Mr. Saleem Akhtar Buriro, Additional PG

The case of applicants is that they had been illegally dispossessed by the private respondents from their land i.e Survey No. 184/1 to 4, 186 / (1, 3, 4)187 / (1, 2), 188/2 200(1, 2, 3) 159/3, 180/A to 4, 181/1 to 4, 184/1 to 4,185/2, 3, 5 201(3, 4, 5) and 188/2. They filed a complaint before the trial court under Sections 3,4 and 7 of the Illegal Dispossession Act, 2005, however, their application under Section 7 of the Illegal Dispossession Act, 2005 was dismissed by the trial court on the analogy that the applicant had brought the complaint which fell under the ambit of double jeopardy in terms of Section 403 Cr.PC and under Article 13-A of the Constitution of Pakistan, the applicants were put on notice as to why the respondents should not be acquitted from the subject complaint.

2. Applicants being aggrieved by and dissatisfied with the impugned Order dated 12-09-2022 passed by the Learned Additional Sessions Judge- Thatta whereby Learned Trial Court dismissed the ID Complaint No.13/2021 filed by applicants in limine therefore, applicants prefer this criminal revision and pray that the impugned order may set-aside an excerpt whereof is reproduced as under:-

By this order, I intend to dispose of the application under Section 7 of the Illegal Dispossession Act, 2005 filed by the complainant in this complaint which is filed in respect of Survey No. 184/1 to 4, 186 / (1, 3, 4)187 / (1, 2), 188/2 200(1, 2, 3) 159/3, 180/A to 4, 181/1 to 4, 184/1 to 4,185/2, 3, 5 201(3, 4, 5) and 188/2 whereby the complainants have submitted that they are owners of the land under dispute and the accused have illegally dispossessed them by means of dispossessing their Munchi Nizam, as such, the complainants are entitled for the relief of restoration of their property from the illegal possession of the accused. The notice of the application in hand was served upon the accused who are represented by their counsel. Heard the learned counsel of parties and perused the available material and record placed before this court, so also perused the R & Psof criminal case No. 07 of 2020. The case of the complainants is that they have been illegally dispossessed by the accused from their land under dispute. The record reflects that an identical criminal case bearing crimeNo. 10 of 2020 P.S Jherruck, under Sections 447/34 PPC was lodged by the complainant party whereby trial had proceeded against the proposed accused and another on the same cause, and the complainant failed to bring forth the positive

evidence before the same Court, resultantly the learned lat. Judicial Magistrate, Thatta vide its judgment dated 27 02.03.2022 has acquitted the accused from the charges of illegal dispossession to the complainant party from their land. Prima facie, the case in hand appears to be of double jeopardy for it is also of a criminal nature case and once the accused have been acquitted, they cannot be punished for the same crime twice under Section 403 Cr.PC and under Article 13-A of the Constitution of Pakistan. In my humble view when the case of complainants has no footings, in such a situation it can safely be said that the complainants have no case of an urgent nature to grant them interim relief falling under Section 7 of the Illegal Dispossession Act, 2005; therefore, the application in hand stands dismissed. As far as the fate of the complaint in hand is concerned, the complainants are put to notice under Section 265-K Cr. P.C., to satisfy this Court as to why the accused should not be acquitted from the charges and what different evidence is available with the complainants to continue with the instant trial on the next date of hearing viz. 4,10.2022.

3. learned counsel for the applicants has submitted that the impugned order on the application of the applicants under Section 7 of the Illegal Dispossession Act 2005 is an erroneous decision as the same ought to have been allowed as an interim relief on the premise the applicants are the absolute owner of the subject property and the respondents have no right title to occupy the property of the applicant. Learned counsel referred to the various documents attached with the memo of revision application and submitted that the respondents had murdered their Manager and the respondents are facing trial; that after lodging the FIR No. 10 of 2020 they again dispossessed of the applicants from the subject property such report of the Mukhtiar and Police is available on record to substantiate the contention of the applicants. Learned counsel further submitted that the title documents of the property are verified to be genuine as such the respondents have no right title to dispossess applicants. He prayed for allowing the instant Criminal Revision Application by directing the trial Court to restore the possession of the subject land to the applicants.

4. It appears from the record that notices to the respondents were issued and Mr. Zahid Nazeer Memon advocate filed his power on behalf of respondents No. 2 to 6, which factum is disclosed in the order dated 23.11.2022 thereafter this matter was taken up on 06.11.2023, 16.11.2013 and 20.11.2023 though intimation notice was given to the learned counsel for the respondents to appear and assist this Court, however, they have chosen to remain absent, leaving this Court with no option but to hear the learned counsel for the applicants and learned Addl. P.G.

5. Learned Addl. P.G. has supported the impugned order passed by the learned trial Court and prayed for the dismissal of the instant Criminal Revision Application.

6. I have heard the learned counsel for the parties and have perused the material available on record.

7. The question involved in the present proceedings is whether the case of the applicants falls within the ambit of Section 403 Cr.PC and under Article 13-A of the Constitution of Pakistan. And whether there was allegation or evidence connecting the respondents to any qabza group, land mafia, or property grabbers, and the matter attracts the provisions of the Illegal Dispossession Act, 2005.

8. I have attended to each of such aspects in some detail with reference to the relevant provisions and the precedent cases. Foremost, Section 403(1), Cr.P.C. provides as follows:

“403. Persons once convicted or acquitted not to be tried for the same offence. (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236 Cr.P.C. or for which he might have been convicted under section 237 Cr.P.C.”

9. The Supreme Court in the case of Abdul Malik and others v. The State and others (PLD 2006 SC 365) has held that when the conviction or acquittal of a person is under challenge in appeal or revision the proceedings are neither fresh prosecution nor there is any question of second conviction or double jeopardy. It is by now a well-settled principle of law that an appeal or revision is a continuation of trial and any alteration of sentence would not amount to double jeopardy.

10. From the above it is quite obvious from a plain reading of the aforesaid section that the principles of *autrefois acquit* and *autrefois convict* contained in section 403(1), Cr.P.C. forbid a new trial after a conviction or acquittal based on the same facts has attained finality. However, the aforesaid principles of *autrefois acquit* and *autrefois convict* contained in section 403(1), Cr.P.C. has no relevance to a case wherein the question under consideration in an Appeal is not as to whether a new trial of the convict should be held or not, but the issue is as to which sentence would be the appropriate sentence for a convict. In the case of Iftikhar Ahmed Khan v. Asghar Khan and another (2009 SCMR 502), the Supreme Court has reiterated the same view.

11. It is emphasized by the learned counsel for the applicant that the applicant had handed over the subject land for looking after to their manager namely Nizam and they illegally dispossessed their manager on 15.11.2019, such report of the incident given to Jhirk police station Thatta, who registered the F.I.R No 10/2020 under section 447, 34 PPC against the respondents, however, the trial ended in their acquittal from the

charges of criminal trespass, vide judgment dated 2.3.2022 passed by the learned judicial magistrate Thatta. however the matter did not end there and the respondents took the law into their own hands and killed the Manager Nizam, such report was lodged with Jhirk police station Thatta registered the F.I.R No. 84 of 2020 under section 302,324,147,148,149,337-A(i), 337-F(i),114,506,504, PPC., on 9.10.2020. As per the applicants they were again dispossessed from the subject land by the private respondents on 8.10.2020, compelling them to file Criminal Illegal Dispossession Complaint before the trial court under Sections 3,4 and 7 of the Illegal Dispossession Act, 2005, however, their interlocutory application under Section 7 of Illegal Dispossession Act, 2005 was dismissed by the trial court on the analogy that the applicants had brought the complaint which fell under the ambit of double jeopardy in terms of Section 403 Cr.PC and under Article 13-A of the Constitution of Pakistan.

12. The learned trial court called a report from Mukhtiarkar concerned about the status of the subject land viz block No. 182, 183(1 to 5) 184(1 to 4) 185(2,3,4). 201(3,4,5) 203, 200(1,2,3) and others admeasuring 17-18 acres who after visiting the site have reported that as per entry No. 59 dated: 11.08.2017 of VF-VII-B Deh Verh Tapo Tando Hafiz Shah, the above block Nos. were entered in the name of applicants namely Sheheryar and Shahzad Fazal, and Mst. Sameena, Sheeraz Ahmed, and as per entry No. 60, the above block is entered in the name of Zafarullah Abbasi. He further reported that as per the site visit blocks No. 183, 186(1,3,4) 185(3,4) 184(3,4) out of the above block Nos were/are under the possession of Latif Khoso, Nawaz Khoso, and others Khosa community and they had also constructed houses over there.

13 It is well-settled law that remedy under the Illegal Dispossession Act, 2005, cannot be restricted only against a Qabza Group. In the statute, the definition of Qabza Group or Land Mafia has not been given except that the preamble provides that to protect the lawful owners and occupiers of the immovable property from their illegal or forcible dispossession therefrom by the property grabbers. If it is accepted that the remedy under the Illegal Dispossession Act is available only against the professional land grabbers, though the statute has not defined what is meant by land grabbers or Qabza Group, then a person, who illegally and unlawfully grabs or dispossesses or occupies the property from a lawful owner for the first time, cannot be prosecuted under the act merely because there is no such previous history of him to call him a man professional engaged in the activity of land gabbing. However, in the present case, the applicants are shown by the Mukhtiarkar as in lawful ownership of the property in dispute. More so, the Act, 2005 is a special enactment promulgated to discourage the land grabbers and to protect the rights of the owner and

lawful occupants of the property against unauthorized and illegal occupants. Besides, there is no requirement in the act that one must have grabbed at least so many properties and only then he will be proceeded against; no doubt in the preamble, the words land grabbers, have been used and they have been used in the plural, but firstly the preamble though it must be given due weight, it does not have the same weight as the word used in the Act. Therefore, for prosecution under the Illegal Dispossession Act, 2005 even if an individual is illegally dispossessed, he has a right to have a recourse to the provisions of the Illegal Dispossession Act, 2005 without prejudice to such other remedies that may be simultaneously available to him under the other laws. However the determination of guilt or otherwise was entirely the prerogative of the Trial Court, which decision can be arrived at after completing the procedure prescribed for the trial itself the dismissal of the applicant's complaint at a nascent stage deprived the applicants not only of their remedy but also to the right to be treated under the due process of the law.

14. The pertinent provision in regard hereof in Section (3) of the Illegal Dispossession Act, 2005, which states as follows:

“3. Prevention of Illegal Dispossession of property, etc.-(1) No one shall enter into or upon any property to dispossess, grab, control or occupy it without having any lawful authority to do so with the intention to dispossess, grab, control or occupy the property from owner or occupier of such property.”

15. It follows that an illegal dispossession from an immovable property has to take the place of either the owner or an occupier to attract the provisions of this Act. Whereas there is no cavil to the factum that Mukhtirkar has shown the applicants to be the owner of the property, there is the issue of only occupation of the Subject Property, which needs adjudicated before the trial court and hence the learned Trial Court has erroneously refused to entertain the complaint on the analogy that the subject dispute was/is not amenable to the jurisdiction of the Trial Court according to the Illegal Dispossession Act, 2005., based on the double jeopardy. It is apparent that the due process of law and a remedy, if the claim proves successful, was/is also available to the applicants before the trial Court and it would be premature to say that the case of the applicants falls within the doctrine of double jeopardy. However at the same time, it is well-settled law that no person may be evicted from a property save under the due process of the law, and in the present case the applicants claim that they have been dispossessed from their lawful property, this factum needs to adjudicated by the trial court.

16. From the perusal of the record, it appears that it may be unsafe to draw any inference at this stage suggesting that the applicants were in fact in possession of the Subject Property at any time whatsoever. And it is for the trial court to swift the chaff from the grain after recording evidence. The record of the case would suggest that there is a dispute regarding the occupation of the Subject Property and not in respect of the title thereto. The applicants appear to have prima facie demonstrated their title to the Subject Property and it falls to the respondents to prove that their occupation of the Subject Property was/is in fact in due accordance with the law.

17. It may be noted, however, that the observations made herein are tentative and are based entirely on the record that is available before this Court at present as the respondents are not putting up their appearance before this court to assist on their claim. The same shall not in any manner have any effect upon competent proceedings between the parties, wherein the subject issue may be adjudicated.

18. The next issue to address is the reasoning laid down by the learned Trial Judge that the provisions of the Illegal Dispossession Act, 2005 could not be attracted since the respondents have already been acquitted from the criminal trespass case, with utmost respect to the learned Trial Court, this Court is unable to agree with the said contention. For the simple reason that the facts and law on both the cases i.e. FIR case and Complaint case are altogether different under which the respondent was/is being tried constitute offense committed under different enactment, therefore it cannot be said at this stage that latter proceedings are hit by provision of Article 13 of the Constitution of the Islamic Republic of Pakistan 1973, Section 403 of the Cr. P.C and Article 26 of the General Clause Act. At it is well settled law that when an offense under two or more enactments then the offender shall be liable to be prosecuted and punished under either or any of the enactments but shall not be liable to punished twice for the same offense. The facts of the instant case, viewed from any angle are suggestive of the fact that respondent was charged under two different enactment i.e. PPC and Illegal Dispossession Act, 2005. In such circumstances, in my humble view that the provision of Article 13(a) of the Constitution of the Islamic Republic of Pakistan 1973, Section 403 Cr. P.C and Section 26 of the General Clause Act 1897 are not relevant in the instant case, because the respondents have been alleged to have committed offenses which are neither similar to each other under the same enactments, therefore the learned trial Court has erroneously dismissed the application under Section 7 of Illegal Dispossession Act, 2005 vide order dated 12.09.2022 on the aforesaid analogy. I am guided by the decision of the Supreme Court in the case of Muhammad Nadeem

Anwar v Security & Exchange Commission of Pakistan 2014 SCMR 1376, *Mst. Gulshan Bibi v Muhammad Sadiq* PLD 2016 SC 769.

19. It is thus stipulated that the reasoning, provided by the learned Trial Court for the dismissal of the application, under Section 7 of the Illegal Dispossession Act, 2005 vide the impugned order dated 12.09.2022, is hereby declared to be contrary to the ratio laid down by the Supreme Court of Pakistan in its various pronouncements.

20. In view of the foregoing and with specific reference to the preponderance of factors, narrated supra, pointing to the nature of the dispute, it is declared that the Criminal Complaint No.13/2021 filed before the learned Trial Court is liable to proceed on merits and to be concluded within two months. Accordingly, this criminal revision application is allowed in the terms that the trial Court shall determine the issue of possession of the subject property after recording evidence of the parties; and, in the intervening period, without any loss of time, take possession of the subject property and manage its affairs till the decision of the Illegal Dispossession Complaint No. 13 of 2021 (re-*Shiraz Ahmed Abbasi & another vs Latif Khoso and others*). Such compliance report shall be filed through MIT-II of this Court. MIT-II shall seek compliance within the time, in case of failure, the matter shall be placed for appropriate order by the competent authority on the administrative side.

JUDGE