

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Revision Application No.38 of 2022

Date _____ Order with signature of Judge _____

Priority Cases

1. For hearing of main case
2. For hearing of MA No.2335/2022

08.11.2023

Mr. Paras Ali Lodhi advocate for the applicant
Ms. Rahat Ehsan, APG

The present Criminal Revision Application No.38/2022 filed by applicant Waqar Ismail against the order dated 14.02.2022 passed by learned VIth Additional Sessions Judge, South Karachi in Illegal Dispossession Complaint No. 2617/2021, whereby the Application presented by the respondent No.1/complaint under Sections 3, 4, 5 and 7 of Illegal Dispossession Act, 2005 was entertained and cognizance of the offense was taken with the following observation:-

“Heard learned counsel for the complainant and perused the record as well as inquiry report submitted by the SHO concerned and documents filed by the complainant along with this illegal dispossession complainant. After perusal of the above report of SHO concerned, I am of the view that prima facie case is made out under Section 3&4 of Illegal Dispossession Act 2005 against the proposed accused/respondents No. 1 to 5, abovenamed. Therefore, I admit the complaint U/s 3 of Illegal Dispossession Act, 2005, I also ordered that bailable warrants to be issued against the proposed accused/respondent No. 1 to 5, in sum of Rs. 100,000/- each (Rupees One Hundred Thousand each) and P.R bond in the like amount to the satisfaction of this Court .Put off to 28.02.2022, for execution of bailable warrant and its report.”

2. The learned counsel for the applicant has contended that respondent No.1/complainant has filed a baseless complaint under Sections 3 & 4 of the Illegal Dispossession Act, 2005 against the applicant to usurp the subject property, even though the applicant is the lawful owner in terms of Sale Deed registered on 29.7.2021, such mutation has already been made in the record of rights; that the respondent No.1 is claiming the occupancy being a tenant of the subject premises by showing himself that he was/is in lawful possession of the subject premises. He has further contended that respondent No.1 has failed to make out any prima facie case against the applicant based on a purported tenancy agreement with someone else as such no case of the Illegal Dispossession Act, 2005 was/is made out thus cognizance taken by the learned trial court is illegal and unlawful. He submitted that the concerned SHO was directed to provide his report which is available on record which prima-facie shows that the applicant is in possession. He lastly prayed for allowing the Criminal Revision Application by setting aside the order dated 14.02.2022 passed by learned VI-Additional Sessions Judge, East Karachi in Illegal Dispossession Complaint No.2617/2021.

3. Respondent No.1 has been served, through SHO Nabi Bux Police Station vide service report dated 1.11.2023, however, he has chosen to remain absent on the premise that his counsel will put his appearance, however they are not bothered to appear. Learned DPG has supported the order passed by the learned trial Court. He prayed for the dismissal of the instant Criminal Revision Application.

4. I have heard learned counsel for the parties present in the Court and also examined the grounds which prevailed with the learned trial Court while taking cognizance of the matter and the reasons which persuaded the Court to pass the impugned order dated 14.02.2022.

5. Although learned counsel for the applicant adverted at length, to factual controversies between the parties relating to title, possession, and similar matters, it is not necessary to adjudicate on such factual aspects because the matter before me is confined to the issue noted in the impugned the order dated 14.02.2022.

6. The legal question as to whether the trial Court had jurisdiction in the matter can thus be easily decided by referring to the above circumstances and the relevant provisions of the Illegal Dispossession Act, 2005 (hereinafter referred to as the "Act"). Section 3 of the said statute defines the offense thereunder. Section 4 stipulates that any "contravention of Section 3 shall be triable by the Court of Session on a complaint". It also provides that the offense under the Act shall be non-cognizable. Section 5 empowers the Court to direct the police to make an investigation. The scope of these provisions of the Act will be considered during this opinion.

7. It is clear from Section 3 *ibid* that to constitute an offense thereunder the complaint must disclose the existence of both, an unlawful act (*actus reas*) and criminal intent (*mens rea*). Besides the Illegal Dispossession Act, 2005 applied to the dispossession of immovable property only by property grabbers/Qabza Group/land mafia. 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. In the case of an individual, it must be the manner of execution of his design that may expose him as a property grabber. Additionally, the Illegal Dispossession Act, 2005 does not apply to run-of-the-mill cases of alleged dispossession from immoveable properties by ordinary persons having no credentials or antecedents of

being property grabbers/Qabza Group/land mafia, i.e. cases of disputes over possession of immovable properties between co-owners or co-sharers, between landlords and tenants, between persons claiming possession based on inheritance, between persons vying for possession based on competing title documents, contractual agreements or revenue record or cases with a background of an on-going private dispute over the relevant property. Further a complaint under the Illegal Dispossession Act, 2005 cannot be entertained where the matter of possession of the relevant property is being regulated by a civil or revenue Court.

8. In view of the allegations and circumstances considered above, it is apparent that even if it is ultimately established that the applicant is in occupation of an area owned by him, there is no indication that he also had the necessary criminal intent. On the contrary, the averments in the complaint point in the opposite direction and show at best, that there is a dispute of a purely tenancy of the subject property. From the same, it appears that the learned trial Court took cognizance of the alleged offense without making the requisite determination that the complaint disclosed the commission of such an offense. However, the learned trial Court took cognizance of the alleged offense without making the requisite determination whether the complaint did disclose the commission of such an offense under the Illegal Dispossession Act, 2005. The trial Court decided the question of its jurisdiction and the maintainability of the complaint without considering the averments made in the complaint. It has merely been observed that the case is made out under Sections 3 & 4 of the Illegal Dispossession Act 2005 against the proposed accused/applicant who has shown title documents that are prima facie in his favor.

9. It is implicit in this observation that the 'intention to dispossess, grab, control, or occupy cannot be deduced from the complaint. The Court empowered to take cognizance of an offence under the Act, is required to filter out those complaints which do not disclose the requisite criminal intent. Courts that have been authorized to try cases under the Act, 2005 thus have a responsibility to see that the persons named in the complaint have a case to answer before they are summoned to face trial.

10. In view of the forgoing circumstances, I am not left in any doubt that jurisdiction was assumed by the learned trial Court on an erroneous premise. This Criminal Revision Application is allowed. As a consequence, the impugned order dated 14.02.2022 passed by the learned trial Court is set aside, with the result that the complaint filed by the private respondent is dismissed in limini for the reasons discussed supra.

JUDGE