

# IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Appeal No. 463 of 2020

[Shamim Akhtar Advocate .....v..... Shahab Khan & another]

Date of Hearing : 19.07.2023  
Appellant through : Appellant present in person.  
Respondents through : Respondent No1 present in person.

## ORDER

**Zulfiqar Ahmad Khan, J:-** The appellant by way of instant Criminal Appeal has impugned order dated 05.10.2020, (“Impugned Order”) passed by learned 3<sup>rd</sup> Additional Session Judge Malir, Karachi, in Criminal Illegal Dispossession complainant No.Nil of 2019 for offences punishable under sections 3, 4, 7 and 8 of the Illegal Dispossession Act, 2005, (“Act of 2005) whereby the complaint of the appellant was dismissed.

2. The grievance of the appellant is that the respondent No.1 on 26.10.2020 at about 12:30 p.m. in conjunction with his companion Shahid Chandio and other unknown persons illegally occupied her plot being No. C-11, Block-a, measuring 200 sq. yards, Pakistan Homes, Malir Cantt Road, Gulistan-e-Johar, Karachi (“subject plot”)

3. After bringing the direct complaint on regular file, the learned trial Court in compliance of provisions of Section 5 of the Act of 2005 directed the SHO P.S. Malir Cantt, Karachi to investigate the matter. The SHO in deference of the directions of the learned trial Court submitted his report to the effect that the respondent No.1 is in possession of the subject plot and a civil suit bearing No. 897 of 2019 is pending adjudication between the parties. The learned trial Court on evaluation of record dismissed the complaint filed by the

appellant vide impugned order, hence the appellant is before this Court.

4. Appellant in person argued that she is owner of the subject plot and being a feminine gender she was dispossessed by the respondent No.1 and his allies, therefore, they be punished under the Act of 2005 which is special procedure. She further contended that she purchased the subject plot in 2016 from one Muhammad Farhan Nabi and was busy in construction on the subject plot but the respondent No.1 in her absence committed the alleged offence but the learned trial Court failed to consider the submissions as well as recorded produced by her and passed the impugned order which is liable to be set aside.

5. Conversely, respondent No.1 contended that he is the real owner of the subject plot having title documents and that the learned trial Court having examined the pros and cons of the matter passed the impugned order which is according to law and cannot be disturbed.

6. Heard the perused the record. The preamble of Act of 2005 is only to protect the lawful owners and occupiers from their illegal or forcible dispossession and prevent them from the land grabbers/Qabza group or land mafia. In the instant case, there is the question in respect of the examination of the title of the parties. It is pointed out that it is the sole function of the Civil Court to give an authoritative decision with regard to the title of the property and the Criminal Court is not competent to give any finding qua title of the property. In such like cases, Criminal Court is simply required to examine the material available before it to form an opinion as to

whether a prima facie case is made out for holding that the person who has complained about his dispossession was in lawful possession or owner because the words used in section 3 of the Act are “owner” and “occupier” of the property. The word occupier has been defined in section 2(c) of the Act viz. “occupier” means the person who is in lawful possession of a property; the word owner is defined in section 2(d) of the Act viz. “owner” means the person who owns the property at the time of his dispossession, otherwise than through a process of law; and the word property has been defined in section 2(e) of the Act, as “property” means immovable property. Thus to attract the provisions of section 3 of the Act, the Court is required to examine as to whether the property was an immovable property; secondly that the person was the owner of the property or in its lawful possession. Thirdly, that the accused has entered into or upon the property unlawfully. Fourthly, that such entry is with the intention to dispossess i.e. ouster, evict or deriving out of possession against the will of the person in actual possession, or to grab i.e. capture, seize suddenly, take greedily or unfairly, or to control i.e. to exercise power or influence over, regulate or govern or relates to authority over what is not in one's physical possession or to occupy i.e. holding possession, reside in or something. The definitions of the above words have been drawn from Black's Law Dictionary and Concise Oxford Dictionary. Though all the four words carry somewhat similar meaning in general, but individually applicable to different situations, times, places and circumstances, therefore, they cannot be given one and same meaning as by doing that one or more words become redundant, which cannot be attributed to the Legislature.

7. To examine the question of title in respect of the property, as already pointed out, the Court has to simply form an opinion as to whether prima facie any party is coming within the ambit of definition mentioned in section 3 of the Act and if the Court forms such opinion from the material placed before it, then the Court can proceed with the matter or otherwise, as the case may be. The similar procedure is being adopted by Magistrate while exercising powers conferred upon him under section 145 of the Code, which is normally required to be adopted in these proceedings. In the instant case, the question of title of the property is already pending before the competent Court of civil jurisdiction before the filing of the complaint.

8. Besides above, the plea raised on behalf of the respondent No.1 that as civil litigation bearing civil Suit No. 897/2019 is already pending between the parties, therefore cognizance under the Illegal Dispossession Act, 2005 could not be taken by the trial Court. In this connection, it may be observed that there is no bar in filing of and/or proceeding with the complaint under the Illegal Dispossession Act, 2005 even during pendency of civil litigation. In the case of Walifa Jana and 2 others v. Rahim Jan and another (2012 MLD 1652) it was held as under;\_

“The pendency of civil litigation also does not debar the complaint under Illegal Dispossession Act nor the court can summarily dispose of the proceedings the way, has been done.”

9. In another case reported as Shaikh Mohammad Naseem v. Mst. Farida Gul reported in 2016 SCMR 1931, a five members Bench of Honourable Supreme Court held as under;\_

“Any act which entails civil liability under civil law as well as criminal penalty under criminal law, such as the Illegal Dispossession Act, 2005 then a person can be tried under both kinds of proceedings, which are independent of each other. Once the offence reported in the complaint stands proved against the accused within the confines of the provisions of the Illegal Dispossession Act, 2005 then he cannot escape punishment on the ground that some civil litigation on the same issue is pending adjudication between the parties. No one can be allowed to take law in his own hands and unlawfully dispossess an owner or lawful occupier of an immovable property and then seek to thwart the criminal proceedings initiated against him under the Illegal Dispossession Act, 2005 on the pretext that civil litigation on the issue is pending adjudication between the parties in a court of law. Therefore, irrespective of any civil litigation that may be pending in any Court, where an offence, as described in the Illegal Dispossession Act, 2005, has been committed, the proceedings under the said Act can be initiated as the same would be maintainable in law.”

10. Yet in another case reported as *Mohammad Aslam v. The State and others* (2017 SCMR 390) it was observed by Honourable Supreme Court that there is no universal principle that whenever a civil suit and a criminal case involved similar or identical subject matters, the proceedings before the criminal court must necessarily be stayed. In view of this legal position the said plea of the respondent No.1 is totally untenable.

11. The appellant successfully established the factum of the alleged incident to the effect that the respondent No.1 on 26.10.2020 at about 12:300 p.m. in conjunction with his companions occupied the subject plot and dispossessed the appellant which fact falls within the ambit of Section 3 & 4 of the Act, 2005, therefore, the appeal filed by the appellant is allowed, the impugned order dated 05.10.2020 by learned respondent No.2 is set aside and the respondent No.1 is directed to hand over/restore the possession of

subject plot to appellant/complainant at once, as provided under section 8(1) of Illegal Dispossession Act, 2005. In case of failure, he be dealt with under the provisions of section 8(2) of the Act.

Karachi

Dated: 19.07.2023.

JUDGE

Aadil Arab.