

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Appeal No. 683 of 2019

Date	Order with signature of Judge
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For hearing of main case.

02.07.2024

Mr. Muhammad Shareef Buriro advocate for the applicant.
Mr. Asif Mubarak Ali advocate for the respondents.

Being aggrieved by and dissatisfied with the Judgment dated 06.03.2019 passed by learned IIIrd Additional Sessions Judge, Malir Karachi in Illegal Dispossession Complaint No.47 of 2016 filed by the applicant, dismissing the same, the applicant has preferred the instant Criminal Revision Application under section 435 & 439 Cr.P.C, which was later on converted into appeal. An excerpt whereof is reproduced as under:-

“In view of discussion in forgoing point, I am of the humble opinion that the case of the complainant is replicated with discrepancies, exaggeration as well as infirmities, which could not be made as basis for the conviction of respondents/accused or make her entitled for the possession of the subject property, I, therefore, dismiss the I.D Complaint and acquit the respondents/accused namely Shama Shabbir son of Shabbir Ahmed and Mst. Parveen Akhtar w/o Shabbir Ahmed who is the real mother of the complainant under Section 265-H(I) Cr. P.C. from the charge by giving them the benefit of the doubt. They are present on bail, their bail bond stands canceled and surety discharged.”

2. The facts of the case are that applicant Dr. Zaib un Nisa filed the Criminal Complaint under Section 3 of the Illegal Dispossession Act 2005 against Mudassar Shabbir and six others on the premise that the private respondents dispossessed her from the House No. B-25, Gulshan-e-Amna Malir Halt Karachi, such complaint was filed before the learned Additional Sessions Judge Malir Karachi which was heard and decided on 06.03.2019 and the same was dismissed and acquitted the private respondents from the charge on the premise that the family of the applicant cannot be booked under Illegal Dispossession Act 2005 as Mst. Parveen Akhtar is her real mother. The applicant being aggrieved by and dissatisfied with this judgment approached this Court on 01.06.2019 by filing the Criminal Revision Application which was converted into Criminal Appeal vide order dated 04.10.2019.

3. It is inter alia contended by the applicant that the applicant has titled documents in her favor as such her complaint ought to have been decided on merit and the private respondents ought to have been convicted in the said case. Learned counsel referred to various documents attached with the memo of appeal and submitted that the applicant's deceased father namely Shabbir Ahmed orally gifted the property to the applicant

bearing House No. B-25, Gulshan-e-Amna, Malir Halt Karachi, which he purchased during his lifetime from its previous owner Malik Muhammad Maqsood, from whom the applicant's father obtained physical possession along with title documents of the said property but due to serious illness of heart disease, applicant's father could not get transfer the said house in his name; that sine 2004 the said property/house was orally gifted, the applicant along with her children and husband started to reside in the said house/property peacefully and without any hindrances and during her stay in the said house, the applicant used to pay Kunda Bill of E.lectricity meter 32451356 A/c No. 400025307435 & Gas connection sketch No. 0425390, before installation of Electric complaint was consuming electricity through Solar plant as well as Generator and & all utility bills including Internet were being paid to the concerned authority on regular basis. He has further added that respondents No.s 1 to 4 forcibly entered the house and started to threaten and harass & beaten the children of the applicant and forcibly took away the precious household articles in this regard applicant informed 15 Police as well as moved the application dated 03.05.2016 to the concerned police station for legal action against the respondents No. 1 to 4. He has further added that on the other hand respondents with the collusion of the police party submitted false reports Under Section 107/117 Cr. P.C before the Special Court ACM Malir Karachi against the applicant's husband and also lodged two FIRs No. 168/2016 & FIR No. 171/2016 based on Application under Section 22-A Cr. P.C vide Application No. 490/2016 against the applicant and her husband and also got arrested the applicant's husband. He further submitted that the learned Additional Sessions Judge has erred in law and facts while dismissing the complaint without trial; and that such authority is not vested in the Court to dismiss the complaint by acquitting the private respondents under Section 265-H (1) Cr.P.C. He lastly prayed for allowing the Criminal Appeal.

4. Mr. Asif Mubarak Ali advocate for the respondents has supported the impugned order and prayed for dismissal of the Criminal Appeal.

5. I have heard the learned counsel for the parties and pursued the material available on record.

6. The crucial question involved in the present proceeding is whether the Illegal Dispossession Act 2005 is applicable in the case of a family dispute arising out of inheritance or otherwise. Primarily this is a special law, which has been promulgated to protect the lawful owners and occupiers of immovable properties from their illegal or forcible dispossession by the property grabbers.

7. Under Section 7 of the Act, a specific provision for interim relief has been provided while under Section 8 meticulous provision has been made for the delivery of possession of the property to the owner, which reads as under:-

“8. Delivery of possession of property to owner etc.,-- (1) On conclusion of trial, if the Court finds that an owner or occupier of the property was illegally dispossessed or property was grabbed in contravention of section 3, the court may, at the time of passing order under sub-section (2) of that section, direct the accused or any person claiming through him for restoration of the possession of the property to the owner or, as the case may be, the occupier, if not already restored to him under section 7.

(2) For the purpose of subsection (1), the Court may, where it is required, direct the Officer-in-Charge of the police station for such assistance as may be required for restoration of the possession of the property to the owner or, as the case may be, the occupier”.

8. Provision of Section 3 of the Illegal Dispossession Act, 2005, is very clear and unambiguous and its scope is wide enough to cover the class of persons mentioned in the preamble. Therefore, the preamble of the Act cannot restrict its meaning and the Act applies to the dispossession of a person from property by any person including land grabbers, Qabza group, or land mafia.

9. To attract provisions of Section 3 of the Illegal Dispossession Act, 2005, the court is required to examine whether the property was an immovable property; secondly, whether the person was the owner or the property was in his lawful possession; thirdly the accused entered into or upon the property unlawfully; fourthly that such entry was 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 or regulate or governor relates to authority over what is not in one's physical possession or to occupy i.e. holding possession, reside in or something. If the act of the accused comes within the meaning of any of the words viz. dispossess, grab, control or occupy on the date when Illegal Dispossession Act, 2005, was promulgated then action can be initiated as provided under Section 4 of the Illegal Dispossession Act, 2005.

10 The law has also made it clear that a person who is proven guilty shall not be saved from the punishment for which he may be liable under any other law for the time being in force. The provisions of section 3(2) are salutary and mandatory. It is to alleviate the suffering and is also an effective deterrent against crime. The Legislature has taken full care to close all doors of any injustice to the parties.

11. Further a complaint under the Illegal Dispossession Act, 2005 cannot be entertained where the matter of possession of the 7 relevant properties is being regulated by a civil or revenue Court. There is no cavil to the proposition that if the offense confines to the provisions of the Illegal Dispossession Act, 2005 then the land grabbers/Qabza Group/land mafia cannot escape punishment as no one can be allowed to take law in his own hands and unlawfully dispossess an owner or lawful occupier of an immovable property however, in the present case both the parties are at loggerhead and claim and counterclaims, in such a situation prima facie it cannot be said at this stage that whether the case falls within the definition of Illegal Dispossession Act, 2005, therefore, at this stage, the proceedings under the said Act cannot be taken into its logical end until and unless it is decided whether the applicant had sold out his land to the private respondent or otherwise as both the parties relied upon certain documents which need to be appreciated by the trial court having plenary jurisdiction. In principle, 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.

12. 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 coowners 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 relevant property is being regulated by a civil or revenue Court.

13. The trial Court has carefully scanned the material placed before it and concluded that the case in hand did not fall within the ambit of Section 3 of the Illegal Dispossession Act, 2005 for the reasons the complainant party had no case for the Illegal Dispossession Act 2005.

14. In the present case, both the parties are one family, however, due to the application of the Illegal Disposition Act 2005, on the plea that he purchased the property from the original owner through a sale deed the

same assertion has been denied by the respondents and this issue could be resolved through civil proceedings.

15. The upshot of the above discussion is that I do not find any illegality/infirmity or material irregularity in the impugned judgment dated 06.03.2019, as such the same does not warrant any interference by this Court. Accordingly, the present Criminal Appeal is dismissed along with the pending application(s).

JUDGE

Shafi