

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.150 of 2024

Appellant: Noor Alam in person
State: Through Zahoor Shah, Additional PG
Respondent No.1: Abdul Aziz-ur-Rehman in person
Date of hearing 03.7.2024
Date of Judgment 12.07.2024

J U D G M E N T

ADNAN-UL-KARIM MEMON, J. – Through instant Criminal Appeal, the appellant Noor Alam has assailed the orders dated 23.1.2024 and 29.8.2023 passed by learned IV Additional Sessions Judge, Karachi East in Illegal Dispossession Complaint No.130/2023, in which the learned trial Court allowed the application of the respondent No.1 Abdul Aziz Ur Rehman under Section 7 of the Illegal Dispossession Act 2005 and directed the appellant to handover the possession of the subject property to respondent No.1. Consequently SHO P.S. PIB Colony complied with the order and handed over the possession of Government accommodation i.e Quarter No.G-18/1, Press Quarters PIB Colony to respondent No.1 vide his report dated 26.2.2024.

2. The appellant claims that he and Respondent No.1 entered into a tenancy agreement in respect of Government accommodation i.e. Quarter No.G-18/1, Press Quarters PIB Colony to be used by the appellant for residential purposes and paid an advance amount of Rs.10,00000/- to the respondent No.1, however, he filed the Complaint No.130/2023 under Section 3,4 and 7 of the Illegal Dispossession Act 2005 before the learned IV Additional Sessions Judge, Karachi East and the application under section 7 of the Illegal Dispossession Act 2005 which was allowed with a direction to handover the possession of the subject premises to the respondent No.1 vide orders dated 23.1.2024 and 29.8.2023.

3. Appellant present in person has contended that at the time of passing the impugned orders, the learned trial Court has been failed to apply judicial mind; that respondent No.2 / SHO P.S. PIB Colony submitted false and bogus report in favor of respondent No.1, as the Investigating Officer has recorded the statement of the witnesses only who are relatives of respondent No.1, but the Investigating Officer did not

record the statement of the appellant and his witnesses, hence the report of the Investigating Officer is based on bundle of lies and no value in the eyes of law; that in fact, the appellant had obtained the subject property on rental basis from respondent No.1 in the year 2018 and deposited Rs.100,000/- as advance and appellant paid monthly rent but in the year 2023, the respondent No.1 demanded to vacate the subject property from the appellant but the appellant required the time alongwith demanding his deposited amount Rs.100,0000/- the respondent No.1 lost his temper and issuing severe threats to file false and bogus cases against the appellant, hence respondent No.1, filed a false and bogus complaint against the appellant to usurp the deposited advance amount of the appellant. It is further contended that there are 90% of government quarters have been rented out in the locality to different tenants by government employees or their legal heirs, in this regard, the Court may be pleased to pass an order for conducting a proper inquiry from an honest police officer or through Nazir of this Hon'ble Court. It has further contended that whenever the government employees rented out the government quarter, they neither executed the rent agreement nor issued rent receipts, as such in the instant case neither tenancy agreement executed nor receipts were issued by respondent No.1 to the appellant, the subject property was initially sealed later on, the possession of the same was handed over to respondent No.1 by the concerned police station and the articles of the applicant have been detained in a room of the subject property; that the Investigating Officer has submitted a report that the appellant has occupied over the subject property since the year 2020 and respondent No.1 has filed the complaint in the year 2023 after elapsing of three years, which proves that he approached the Court after elapsing of several years with malafide intention and ulterior motives. The appellant also contended that he is the tenant of respondent No.1 and to avoid payment of advance money complainant/respondent No.1 had lodged the false complaint.

4. Respondent No.1 present in person has submitted that he is a government official and the subject property bearing Quarter No.G-18/1, Press Quarters PIB Colony was allotted to him and his salary is still being deducted; that he was occupying the said quarter and in March 2019 he visited his home and when returned it was illegally occupied by the appellant. He also highlighted the inquiry of the SDPO, which confirmed that the allotment is still intact in favor of the complainant, and appellant Noor Alam had no evidence of lawful occupation. He contended that the appellant had even not paid utility bills and thus this criminal appeal may be dismissed.

5. I have heard the parties present in court and have gone through the record of the case, including the above sub judice proceedings with their assistance.

6. It is the case of the appellant that he is the lawful occupier of the subject property bearing Quarter No.G-18/1, Press Quarters PIB Colony based on a rent agreement executed by and between the parties; whereas the private respondent claims to be lawful allottee of the quarter/government accommodation based on Allotment order 22.11.2017 issued by Pakistan Printing Press and the appellant had occupied the subject property illegally in March 2019.

7. On perusal of the definition of Section 2(c) and (d) of the Illegal Dispossession Act, 2005, which says that the person should be the lawful owner or lawful occupier before seeking remedy under this act. Herein this case, the appellant claims that the subject official quarter was given to him by a private respondent, on perusal of the record does not show such contention to be correct as the official accommodation cannot be given on rent by the allottee under the terms and conditions of allotment.

8. On the Court query, the appellant has not offered any plausible answer in this regard as to why he entered into a purported rent agreement with respondent No.1 when he knows that such an arrangement is illegal.

9. Primarily, the Illegal Dispossession Act, of 2005 was introduced to curb the activities of Qabza groups/property grabbers and land mafia. During arguments, it has been conceded by respondent No.1 that no material is available with him to establish that the appellant belonged to any Qabza group or land mafia or that he had the credentials or antecedents of being property grabbers. However, he states that his official accommodation has now been handed over to him in compliance with the court order. At this stage, the appellant states that he has paid an advance amount to the private respondent No.1, Which he is avoiding returning and has managed such drama, this aspect of the case is to be looked into by the competent court of law having jurisdiction if approached by the party.

10. In the circumstances of this case mentioned above, I have entertained an irresistible impression that through the filing of his complaint under the Illegal Dispossession Act, 2005, respondent No.1 has tried to transform a dispute between the parties into a criminal case to bring the weight of criminal law and process. Such utilization of the

criminal law and process by the private respondent has been found by this Court to be an abuse of the process of law which cannot be allowed to be perpetuated. It is high time for Courts to exercise such vast power vested therewith to save the precious public property.

11. For what has been discussed above, this criminal appeal is *dismissed* along with the listed application, if any leaving the appellant to raise his grievance to the competent form about advance payment as discussed supra.

12. The question of whether illegal encroachment and forcible dispossession of Government property falls within the purview of public Property under Section 2(o) of the Sindh Public Property (Removal of Encroachment) Act, 2010 and the remedies are provided by law. The trial court shall see all the aspects of the case and after hearing the parties on the maintainability of the complaint under the Illegal Dispossession Act, 2005, decide the subject issue within one month, without fail, if not earlier decided.

13. Before parting with the order, I would like to make it clear that observations made hereinabove shall not influence the merits of the case of either party pending adjudication in any Court of law.

JUDGE

Shafi