

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

CR. REVISION APPLICATION NO.85/2023

Date

Order with signature of Judge

1. For hearing of main case.
2. For hearing of MA No.4818/2023.

03.08.2023

Mr. Muhammad Ashraf Samoo advocate for applicant.
M/s. Hidayatullah Mangrio and Habibullah Masood advocates for
respondent No.2.
Mr. Talib Ali Memon, Additional Prosecutor General Sindh.
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SALAHUDDIN PANHWAR, J: Heard learned counsel for the parties
as well learned Prosecutor General Sindh and perused the record.

2. Respondent's case is that petitioners occupied 4 acres land of
respondents; respondents are big landlords having title of 400 acres
land in the area; as per respondents petitioners occupied some
houses out of which some are huts and some are in *katcha*
construction, instead of occupying whole 400 acres land.
Respondents approached the Mukhtiarkar concerned for demarcation
who refused such request and advised them that if they are
dispossessed without due course of law they may approach the
concerned Court by invoking jurisdiction under the Illegal
Dispossession Act 2005, accordingly respondents filed a Complaint
on which learned Judge passed order dated 08.02.2023. The
proposed accused argued that they were in possession of *Bhadda*
land which was owned by Mukhtiarkar and they have no objection if
that land is demarcated. Accordingly learned Judge directed the
Mukhtiarkar to visit the site in presence of both parties and their
advocates and hand over the land of the complainant to him. When
Mukhtiarkar visited the site counsel for respondent (applicant) raised

objection that it needs expert opinion and instruments which are only available with the Settlement, Survey & Record Department. Hence learned trial judge vide order dated 01.03.2023 directed Settlement, Survey & Record Department for demarcation, compliance report was submitted which reflects that when Mukhtiarkar alongwith team visited there, houses were in possession of police and there was police picket; meaning thereby that applicants were dispossessed already with the support of police and police picket was also established to retain the possession in favour of respondents. During this exercise a mishap has happened as it is reported that applicant party caused firing upon police and Mukhtiarkar resultantly one *Tappedar* received injuries and subsequently succumbed to the injuries; as well a police official also received injuries.

3. It would be conducive to reproduce the Order dated: 08.02.2023 passed by the Trial Court as under:-

***“The instant application has been preferred by the complainant namely Allah Bachayo whereby he has alleged that the accused are in illegal occupation of his land viz. block Survey No.308/1,2A admeasuring 04-26 acres made from U.A No.249 alongwith situated in Deh Domani Ulhando, Tapo Tanka, Taluka & District Thatta and such possession of the land be restored to him. The complainant, his counsel, the accused and their counsel are in attendance. The learned counsel for the accused submitted that the accused are not in possession of the land of complainant but in possession of government land which is a bhadda and if the Court directs the concerned Mukhtiarkar to visit the site and if Mukhtiarkar, after measurement of land of the complainant in presence of the parties and their advocates, hands over the possession of land of the complainant to him, they will not interfere in any manner for they are not at his land but on government bhadda land may be cleared after the complainant is handed over the possession of his land by the Mukhtiarkar concerned. Since both the*”**

parties are in agreement that the Mukhtiarkar concerned to hand over the possession of land of the complainant to him, I feel it prompt relief for the complainant that he is to get possession of the land under dispute. In this regard, the Mukhtiarkar concerned is directed to visit the site in presence of both the parties and their advocates and hand over the land of complainant to him The SHO concerned is directed to ensure the police presence with the Mukhtiarkar as well as police presence after the possession is handed over to the complainant, if in the possession of any of the accused and shall further ensure that no any attempt of dispossession is made to the complainant. The Mukhtiarkar shall submit his report to this Court within three days after receipt of this order. In case there is any resistance from any corner, the SHO shall forthwith take action against all those and even he shall register separate FIR under the relevant provisions of law. The Deputy Commissioner Thatta and SSP Thatta shall supervise the proceedings to be carried out by the Mukhtiarkar and SHO concerned. Office is directed to forthwith transmit/send the copy of the instant order to all concerned quarters through all modes.”

The learned Trial Court also passed another Order dated 01.03.2023 in the following manner:-

“This Court had allowed the application under Section 7 of the Illegal Dispossession Act, 2005, wherein the consent was given by the accused party. However, during course of demarcation, the accused party obstructed the process on the pretext that technical experts from the Settlement and Survey Department must be part of demarcation. The Mukhtiarkar concerned has also submitted his report wherein he also requested this Court that in order to ensure proper compliance of court directives, he needs assistance from experts of the concerned Settlement and Survey Department. In presence of such facts, the Director Settlement, Survey and Record Department, is directed to provide all assistance to the Mukhtiarkar concerned to comply with the order dated 08.02.2023. Apart from this, the SHO concerned, is directed that if during course of measurement and restoring possession to the complainant, any resistance is shown by the accused persons in any manner, he shall take coercive action against the accused including registration of separate cases, if they are found in violation of relevant provisions of law. The SHO concerned shall ensure that no any untoward incident arises on the ground while vacating and restoring peaceful possession to the complainant

party. The SSP Thatta shall supervise proceedings. The Mukhtiarkar concerned is once again directed to ensure that after the measurement/demarcation of the land as ordered on 08.02.2023, the possession of the land is restored to the complainant party without fail and without further delay. The Deputy Commissioner Thatta shall properly supervise in this regard. Office is directed to forthwith communicate the copy of this order to the concerned quarters including the Director Settlement, Survey and Record Department. The complainant party shall bear the expenses to be incurred on survey, if applicable by law. To come up on 15.03.2023.”

4. Perusal of the aforesaid Orders clearly shows that the Mukhtiarkar concerned has also submitted report to the extent that the demarcation of the subject land was not possible without assistance of the technical experts of the Settlement, Survey & Record Department, which was also not considered by the learned Trial Court in true perspective.

5. The preamble is meant to embody in every view to well define the key to understanding of the Act. The preamble of the Illegal Dispossession Act, 2005 provides that the said Act was promulgated **to protect the lawful owners and occupiers of immovable properties from their illegal or forcible dispossession therefrom by the property grabbers.** In this matter, the Illegal Dispossession Act, 2005 has been misused by the influential persons by taking the advantage of the Court Orders. Therefore, the main purpose of the Act, 2005 has been defeated. Needless to mention that in an illegal dispossession case moot question was to examine whether respondents were forcibly dispossessed or not and whether the case falls within the ambit of the “Illegal Dispossession Act, 2005”. The Respondents are claiming to be big landlords and further claimed that same is *Bhadda* land which comprises of 21 acres. During

inquiry proceedings, the report of the Station House Officer was submitted wherein it has come on record that the Applicants were inducted as *Haris* by the Respondents, which was also not considered by the learned Trial Court. It is matter of record that the boundaries of the subject lands were not clear as the Trial Court itself directed the revenue authorities to demarcate the subject lands with the assistance of Settlement, Survey and Record Department. Once it has come on record that the controversy between the parties over the possession of the subject lands requires evidence and exhaustive demarcation, then the only recourse available with the trial Court was to determine the factual controversy between the parties after recording evidence exhaustively and comprehensively besides determination of the boundaries through the concerned Survey Department. Instead thereof during pendency of the complaint under Illegal Dispossession Act 2005 the learned Additional Sessions Judge passed various orders on day-to-day basis to ensure that possession is handed over to the respondents whereas *prima facie* this case did not appear to be case of forcible dispossession as a prudent mind will not believe that any gang or land-grabbers will occupy *katcha/Bhadda* houses of *haris* instead of land of the respondent which can be used for cultivation. Besides, this is a *Mufassil* area and not within the limits of metropolitan city. In such circumstances, grant of interim relief without being satisfied about existence of *prima facie* evidence as to the lawful or unlawful possession of the Applicants, is also in flagrant violation of the provisions of Section 7 of the Illegal Dispossession Act, 2005 and unsustainable. It would be expedient to reproduce the provisions of Section 7 of the Act, 2005 as under:-

“7. Eviction and mode of recovery as an interim relief. (1) If during trial the Court is satisfied that a person is found prima facie to be not in lawful possession, the Court shall, as an interim relief direct him to put the owner or occupier, as the case may be, in possession.

(2) Where the person against whom any such order is passed under subsection (1) fails to comply with the same, the Court shall, notwithstanding any other law for the time being in force, take such steps and pass such order as may be necessary to put the owner or occupier in possession.

(3) The Court may authorize any official or officer to take possession for securing compliance with its orders under sub-section (1) the person so authorized may use or cause to be used such force as may be necessary.

(4) If any person, authorized by the Court, under sub-section (3), requires police assistance in the exercise of his power under this Act, he may send a requisition to the officer-in-charge of a police station who shall on such requisition render such assistance as may be required.

(5) The failure of the officer-in-charge of police station to render assistance under sub-section (4) shall amount to misconduct for which the Court may direct, departmental action against him”.

6. The words “If during trial the Court is satisfied that a person is found prima facie to be not in lawful possession” are of much significance. The Respondents/Complainant as well as the learned Trial Court were themselves not sure about exact location, boundaries and unlawful possession (if any) of the subject lands without expert opinion in respect of the demarcation to be carried out by the Survey Department; therefore, the main grounds for granting interim relief have not been established. Thus, the Orders dated 08.02.2023 and 01.03.2023 passed by the learned trial Court carry no legal footing.

7. Under these circumstances, this Court while taking judicial notice, is issuing notice to learned Additional Sessions Judge to file his comments that why he may not be referred for disciplinary action through departmental proceedings under relevant Rules with further direction to the learned District and Sessions Judge Thatta that he shall ensure that possession of applicant party is restored within three days without any interference. Such memo of handing over the possession shall be prepared, however, police picket may be there to ensure safeguard from any situation of affray, but not in the houses of applicant party. Besides, learned District and Sessions Judge shall withdraw subject Complaint and shall try himself in accordance with law.

This Court will further hear this matter on 21.08.2023.

J U D G E

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