

Order Sheet
IN THE HIGH COURT OF SINDH, KARACHI

Crl. Revision Application No.219 of 2021
&
Crl. Revision Application No.262 of 2022

Date	Order with signature of Judge
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Mr. Shamshad Ali Qureshi, advocate for applicants in both Crl. Revision Applications.
Mr. Amjad Hussain Qureshi, advocate for respondent No.1 in both Crl. Revision Applications.
Mr. Muhammad Noorani, Deputy Prosecutor General, Sindh.

Date of Hearing : 24.01.2024

ARSHAD HUSSAIN KHAN J: Through this common order, I intend to decide the captioned Cr. Revision Applications as the parties and the facts leading to both the Applications are the same.

2. The applicants through Cr. Revision Application No. 219 of 2021 have challenged the order dated 18.09.2021, passed by IIIrd Additional Sessions Judge, Karachi (East) whereby the application under sections 7 & 8 of the Illegal Dispossession Act 2005 filed in I.D. Complaint No. 173 of 2020 by respondent No.1 /complainant was allowed with the directions to the applicant to vacate the subject property failing which respondent No.2 (SHO PS Shah Faisal Colony), to get restored the possession of the complainant. Whereas through Cr. Revision Application No.262 of 2022, the present applicants have called in question the order dated 22.12.2022 passed by IIIrd Additional Sessions Judge, Karachi (East) in I.D. Complaint No. 173 of 2020 whereby the application under section 265-K Cr. P.C., filed by the present applicants seeking acquittal was dismissed.

3. Precisely, the relevant facts giving rise to these Criminal Revision Applications are that respondent No.1- Muhammad Aijaz is the real brother of applicant No.1-Niaz Ahmed and applicant No.2 is the wife of applicant No.1 and their another brother was Iftikhar, who was disable and was single, having his own property viz. House No.4/92, Muhallah Shah Faisal Colony, Karachi, consisting upon four-storey building. Respondent No.1 and brother Iftikhar were residing jointly in the same house/building. Meanwhile, in the

year 2015, Iftikhar was expired, however, during his life time, seeing the struggle, love and affection of respondent No.1, he gifted the said property to him. After the death of Iftikhar, respondent No.1 enjoyed the peaceful possession of the said property being absolute owner, however, the applicants, having evil eyes over the property, on 07.11.2020 when respondent No.1 was away from his house, after breaking lock of the house occupied the fourth floor of the said house. The respondent No.1 though approached to the police for retrieving possession, however, when the police failed to get the possession restored, respondent No.1 filed Illegal Dispossession Application No.173 of 2020 under Section 3 / 4 of the Illegal Dispossession Act, 2005 wherein the application under Sections 7 & 8 of the Illegal Dispossession Act, 2005, filed by respondent No.1 was allowed and applicants were directed to restore the possession of the fourth floor in their illegal possession and in case of non-compliance, the SHO concerned was directed to get the possession restored, vide order dated 18.09.2021 passed by the Additional Sessions Judge-III, Karachi-East, which has been challenged by the applicants in Criminal Misc. Application No.219 of 2021. Likewise, the order dated 22.10.2022 passed on the application under Section 265-K Cr.P.C. filed by the applicants, which was dismissed, has been called-in-questions through Criminal Revision Application No.262 of 2022.

4. Learned counsel for applicants has mainly contended that since the property is the inherited one as such no proceedings under Illegal Dispossession Act can be initiated against the legal heirs having interest in the property. It is also contended that the proceedings under the Illegal Dispossession Act is not maintainable against applicant No.1, who happens to be one of the legal heirs of the deceased Iftikhar Ahmed, whereas such type of proceedings can be initiated against the Qabza Mafia and not against the family members. He has further contended that learned Additional Sessions Judge while passing the impugned orders has failed to apply his judicious mind that the applicants against the false and fabricated gift deed alleged to have executed by the deceased Iftikhar Ahmed in favour of respondent No.1, has already filed a civil suit for cancellation of the said gift deed. It is also contended that baseless allegations have been leveled by respondent No.1 in the proceedings pending in respect of Illegal Dispossession Act, 2005. Lastly, he has contended that the above criminal revision applications may be allowed as prayed. In support of his stance learned counsel has relied upon the cases of *Waheed Ahmed Siddiqui v. Additional Sessions Judge and others* [2014 MLD 1513], *Muhammad*

Ramazan v. Habib Ahmed and 19 others [2015 MLD 1782], *Arifullah Khan v. Hukam Zad Khan and 5 others* [2012 MLD 1262] and *Zahoor Ahmad and 5 others v. The State and 3 others* [PLD 2007 Lah. 231].

5. Learned counsel for respondent No.1, while supporting the impugned orders has contended that respondent No.1 is an absolute owner of the property in question by virtue of the registered gift deed executed by his deceased brother Iftikhar Ahmed during his life time. He has further contended that the suit filed by the applicants for cancellation of the gift deed has already been dismissed for non-prosecution, which till dated has not been restored. Lastly, he has contended that the applicants have filed the present proceedings on the misconceived and frivolous grounds as such the same are not maintainable and liable to be dismissed with cost.

6. Heard learned counsel for the parties and perused the record.

The Illegal Dispossession Act 2005 is a special law, which has been promulgated to protect the lawful owners and occupiers of the immoveable properties from their illegal or forcible dispossession by the property grabbers. 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 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 sub-section (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”.

7. Provision of Section 3 of 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 is applicable to dispossession of a person from property by any person including land grabber, Qabza group or land mafia. For the purposes of attracting provisions of Section 3 of Illegal Dispossession Act, 2005, court is

required to examine as to whether property was an immovable property; secondly that the person was owner or the property was in his lawful possession; thirdly that accused entered into or upon the property unlawfully; fourthly that such entry was with intention to dispossess i.e. ouster, evict or deriving out of possession against the will of 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. If act of 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 Illegal Dispossession Act, 2005¹. The law has also made it clear that a person who is proved 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 with the purpose to alleviate the suffering and is also effective deterrent against crime. The Legislature has taken full care to close all doors of any injustice to the parties².

8. Before going into further discussion, it would be conducive to reproduce the concluding para of the impugned order, the subject matter of Criminal Revision Application No.219 of 2021, which reads as under:-

“5. Perused the case file and heard the both sides, it is admitted position that complainant is registered owner of the house in question by virtue of the registered Gift Deed in his favor, and admittedly the suit filed by accused is at the stage of restoration of the same which shows lack of interest in the proceeding, whereas charge have been framed and complainant has prime facie case while accused side have nothing to justify their possession on the fourth floor of the house in question viz. House No.4/92. Mohallah Shah Faisal Colony, therefore, instant application is allowed and accused are directed to restore the possession of floor in their illegal possession on or before next date viz. 05-10-2021 and in case of compliance, the SHO concerned is directed to get restored the possession of the fourth floor of the house in question to the complainant and submit such compliance report on subsequent date of Hg, whereas as far as the question of removal and stolen the articles lying in fourth floor worth Rs.3 lac shall be determined and decided after leading with evidence, case is put off to 05.10-2021 for compliance and evidence of the complainant side.”

¹ Mumtaz Hussain vs. Dr. Nasir Khan and others [2010 S C M R 1 2 5 4].

² Muhammad Akram and 9 others vs. Muhammad Yousuf and another [2009 SCMR 1066].

9. The contention of learned counsel for the applicants with regard to the applicability of the proceedings under the Illegal Dispossession Act, only against Qabza Mafia is misconceived one. Though earlier there remained a debate in the courts that as to whether the provisions of Illegal Dispossession Act, 2005, can be invoked against the persons holding the credentials of land grabbers and “Qabza Mafia” only, however, the Supreme Court of Pakistan in the case of *Mst. Gulshan Bibi and others v. Muhammad Sadiq and others* [PLD 2016 SC 769] while deciding upon the issue has held as under:

“7. From what has been discussed above it is evident that no provision of the Illegal Dispossession Act, 2005 imposes any precondition on the basis of which a particular class of offenders could only be prosecuted. The Act aims at granting efficacious relief to lawful owners and occupiers in case they are dispossessed by anyone without lawful authority. Section 3(1) of the said Act by using the terms 'anyone' and 'whoever' for the offenders clearly warns all persons from committing the offence described therein and when found guilty by the court are to be punished without attaching any condition whatsoever as to the maintainability of the complaint. So all that the Court has to see is whether the accused nominated in the complaint has entered into or upon the property in dispute in order to dispossess, grab, control, or occupy it without any lawful authority. Nothing else is required to be established by the complainant as no precondition has been attached under any provision of the said Act, which conveys the command of the legislature that only such accused would be prosecuted who holds the credentials and antecedents of 'land grabbers' or 'Qabza Group'. It does not appeal to reason that for commission of an offence reported in the complaint filed under the Illegal Dispossession Act, 2005 the Legislature would intend to punish only those who hold history of committing a particular kind of offence but would let go an accused who though has committed the offence reported in the complaint but does not hold the record of committing a particular kind of offence. In our view trial of a case is to be relatable to the property which is subject matter of the complaint, pure and simple. Any past history of the accused with regard to his act of dispossession having no nexus with the complaint cannot be taken into consideration in order to decide whether the accused stands qualified to be awarded a sentence under the Act or not. Once the offence reported in the complaint stands proved against the accused then he cannot escape punishment under the Illegal Dispossession Act, 2005.

8. In view of the above discussion we conclude that in any proceedings initiated under Illegal Dispossession Act, 2005, the issues which fall for decision would be whether the offence against a lawful owner or occupier, as described in the complaint, has taken place and whether it is the accused who has committed it without any lawful authority. Anyone found committing the offence described in Section 3 would be amenable to prosecution under the provisions of Illegal Dispossession Act, 2005 and no past record of the accused needs to be gone into by the court.”

10. In the present case, it is also the stance of the applicants that a civil litigation in respect of the subject property is pending between the parties

as such the impugned order cannot be passed. Although the suit filed by the applicant was dismissed which till date has not been restored and if for the sake of arguments, it is assumed that the litigation is pending even then it is well settled position of law that merely on the basis of pendency of civil litigation neither the proceedings in criminal matter can be terminated nor the transfer of possession in terms of section 8 of the Act of 2005 can be declared illegal. This controversy was put to rest by the Supreme Court of Pakistan in the case of *Shaikh Muhammad Naseem v. Mst. Farida Gul* [2016 SCMR 1931] wherein it is held as under:

“5. In the impugned judgment it was also held that where civil litigation with regard to illegal dispossession from immoveable property is pending between the parties, the proceedings under the Illegal Dispossession Act, 2005 cannot be maintained. This finding is also based on the decision of the Lahore High Court in Zahoor Ahmed's case (PLD 2007 Lahore 231, reasoning of which was adopted by three-member bench of this Court in Bashir Ahmed's case (PLD 2010 SC 661). We are of the view that such a finding is also not sustainable in law. 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.”

11. Insofar as the contention of learned counsel for the applicants with regard to the property being inherited property is concerned, a perusal of the material available before this Court reflects that by virtue of the registered Sale Deed dated 16th June, 1988, the brother of both respondent No.1 and applicant No.1 namely; Iftikhar was absolute and exclusive owner of the property, who (Iftikhar) gifted the said property to his brother-respondent No.1, vide Declaration and Confirmation of Oral Gift of Immovable Property registered on 30th September, 2008, vide Registration No.2467 before the Sub-Registrar, Shah Faisal Town, Karachi. Furthermore, a Civil Suit bearing No.335 of 2018 was filed by the applicant No.1 through applicant No.2 being

his Special Attorney for declaration, cancellation, partition and permanent injunction, however, as per diary / order-sheets dated 21.02.2020 and 29.02.2020 since the plaintiff (present applicant No.1) was not pursuing the matter despite affording several opportunities, therefore, the said suit was dismissed for non-prosecution. Thereafter, an application under Order IX rule 9 read with Section 151 CPC was filed, which was also dismissed for non-prosecution with no order as to costs with the following observations :-

“3. Upon perusal of record, it reveals that the suit filed by plaintiff through his attorney was dismissed by this Court due to non-prosecution vide order dated: 29-02-2020. Then, on 26-11-2020, an application under Order IX Rule 9 r/w section 151 CPC for recalling of order dated: 29-02-2020, filed by plaintiff's attorney was noticed to defendants' side and objection in shape of counter affidavit were filed by defendant No.04 against the application moved by plaintiff side. The matter has been fixed for arguments of plaintiff's side on application under Order IX Rule 9 r/w 151 CPC since 01-10-2022 and the same has been prolonging on one pretext or the other. Today again, the attorney of plaintiff got the time fixed at 12:00 noon for hearing of application under Order IX Rule 9 r/w 151 CPC but has not turned up before this Court for proceeding the matter positively. Such conduct of plaintiff side is unwarranted and amounts to abuse of process of law, which has resulted in pending adjudication of application under Order IX Rule 9 r/w 151 CPC filed by plaintiff since 20-08-2022. Therefore, I am of the opinion that the conduct of plaintiff side is only to linger on the matter to the agony of other side and is also wasting precious time of this Court. For the foregoing reasons, the application under Order IX Rule 9 r/w 151 CPC filed by plaintiff's attorney stands dismissed in non-prosecution with no order as to costs.”

12. The crucial aspect of the matter is the registered gift deed, which though challenged in a civil suit, however, the said suit has been dismissed. A perusal of both the impugned orders reflects that the applicants at the time of hearing did not try to establish that the execution of the gift deed was not as per the wish of the donor and was executed under fraud, coercion and misrepresentation etc. Conversely, it has mainly been emphasized that the subject property is inherited property and the applicants are entitled to have their shares being legal heirs of his deceased brother Iftikhar, who has already gifted the said property to respondent No.1 through a valid registered deed. During the course of arguments when the counsel for the applicants was asked to show documents viz. utility bills etc., which could justify the applicants' occupation of premises prior to the date of incident, he has failed to point out any document from the record. Furthermore, a perusal of the record also shows that pursuant to the directions of the trial court, SHO of the concerned Police Station submitted an enquiry report

dated 10.02.2021, which substantiates the stance of respondent No.1 taken in the ID proceedings.

13. The upshot of the above discussion is that I do not find any illegality/infirmity or material irregularity in the impugned orders, as such the same do not warrant any interference by this Court in exercise of its revisional jurisdiction. The case law cited by learned counsel for the applicants have been perused but found distinguishable from the facts of the present case and hence the same are not applicable to the present case. Accordingly, present Criminal Revision Applications are dismissed along with pending application(s). Consequently, interim order passed earlier on 04.10.2021 is hereby recalled. However, the main case / complaint under sections 3/4 of the Illegal Dispossession Act, 2005, would be decided by the trial court on its own merits without being influenced by the observations made by this Court in the instant order.

JUDGE

Karachi;
Dated: 23.02.2024

*Jamil**