

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT
LARKANA**

Crl.Revision.Appln.No.S-48 of 2018

Applicant	Nasrullah Khoso Through Mr. Saeed Ahmed Bijarani, Advocate
Respondents No.2 to 6	Aijaz Ahmed & others Through Mr.Safdar Ali Bhutto, Advocate
The State	Through Mr.Aitbar Ali Bullo, DPG for the State
Date of hearing	19-06-2023
Date of judgment	-07-2023

JUDGMENT

KHADIM HUSSAIN SOOMRO, J:- Through instant Criminal Revision Application, applicant Nasrullah has assailed the order dated 07.08.2018, passed by learned Sessions Judge, Kashmore @ Kandhkot, in Direct Complaint No.38/2018 (Re: Nasrullah v/s Aziz Ahmed and others), whereby after considering the inquiry reports furnished by concerned SHO and Mukhtiarkar, the complaint under Sections 3, 4 of Illegal Dispossession Act, 2005, was dismissed.

2. It is stated in the complainant's complaint that he, his siblings, and others are real owners of land in Deh Tangwani and that he is a co-owner of the landed property with the private respondents. On 13.05.2018, he was present at the land with PWs when the accused persons came there duly armed with deadly weapons and dispossessed him (complainant) from the land admeasuring 04-36 acres out of Sr.No.01, 2-30 acres out of Sr.No.5, 4-31 acres out of Sr. No.483, 2-11 acres, out of Sr.No.493 situated in Deh Tangwani and 01-29 acres out of above survey numbers.

3. Learned counsel for the applicant submits that the impugned order is against the law, equity and natural justice. The applicant's party is the land owner in question, and the same is registered in their names in the relevant title documents. In contrast, respondents No.2 to 6 are illegal occupiers who encroached over the land, and

their possession is unlawful and is liable to be vacated. He further submitted that all the reports of the Deputy Commissioner, as well as the police confirm the ownership of the applicant over the land in question but he has been deprived of his land by the respondents, and there is a good prima facie case for taking cognizance against the respondents, but his complaint was dismissed.

4. Learned counsel for respondents No.2 to 6 submits that respondents No.2 to 6 are the co-owners and co-sharers in the land to the extent of 50% shares; the matter between the applicant and the respondents is purely of civil nature, which cannot be agitated in the criminal complaint as envisaged in Sections 3 and 4 of Illegal Dispossession Act, 2005. He argued that Illegal Dispossession Act, 2005 is applied for land grabbers and mafia. Since, the respondents do not have a history of being professional land grabbers, the same does not apply to the facts of the present case; the respondents have been in possession of the land for last 30 to 40 years, and Illegal Dispossession Act was promulgated in July, 2005, and has got no retrospective effect. He further submits that the parties have been in litigation before the revenue hierarchy. In support of his contentions, learned counsel for respondents No.2 to 6 has relied upon the cases reported as BASHIR AHMED versus ADDITIONAL SESSIONS JUDGE (PLD 2010 S.C page-661), and 2016 P.Cr.L.J-1221, Zahoor Ahmed and 5 others versus the State, reported in PLD 2007 Lahore page-231, passed by the full Bench of the Lahore High Court.

5. Learned DPG for the State has supported the impugned order passed by learned trial Court.

6. I have heard the learned counsel for applicant, learned DPG for the State, learned Advocate for respondents and have gone through the material available on record and the case law cited at bar.

7. Learned trial court while dismissing the complaint, purely relied upon the case of *Bashir Ahmed v/s Additional Sessions Judge, Faisalabad and four others* reported as **PLD 2010 S.C 661** and reproduced the relevant plaitum of the above cited judgment and dismissed the compliant under Section 3 and 4 of Illegal Dispossession Act, 2005, the relevant concluding paragraph of the impugned judgment is reproduced as under “

“In my humble view, through filing of complaint under Act XI of 2005, an attempt has been made by complainant to convert a Civil dispute between the parties into a criminal case, which was liable to be struck down being abuse of process of law. In this context, I respectfully refer the case of Bashir Ahmed v. Additional Session Judge, Faisalabad and 4 others (PLD 2010 SC 661), wherein Honourable Supreme Court of Pakistan has observed as under”:-

"It had been held by a Full Bench of the Lahore High Court, Lahore in the case of Zahoor Ahmed and 5 others, V.S The State and 3 others PLD 2007 Lah.231 that the Illegal Dispossession Act, 2005 has no application to cases of dispossession between co owners and co-sharers and also that the said Act is not relevant to bona fide civil disputes which are already sub judice before Civil or revenue Courts. It had also been declared by the Full Bench of the Lahore High Court, Lahore in that case that the Illegal Dispossession Act, 2005 was introduced in order to curb the activities of Qabza groups/property grabbers and land mafia. It has been conceded before us by the learned counsel for the petitioner that no material is available with the petitioner to establish that respondents No:2 to 4 belonged to any Qabza group or land mafia or that they had the credentials or antecedents of being property grabbers. In the circumstances of this case mentioned above we have entertained an irresistible impression that through filing of his complaint under the Illegal Dis-possession Act, 2005 the petitioner had tried to transform a bona fide civil dispute between the parties into a criminal case so as to bring the weight of criminal law and process to bear upon respondents in order to extract concessions from them. Such utilization of the criminal law and process by the petitioner has been found by us to be an abuse of the process of law which cannot be allowed to be perpetuated.”

8. The learned trial Court erroneously observed that the Illegal Dispossession Act, 2005 is only applied for land grabbers, the land

Mafia/Qabza Group, and against those accused who had a history of professional land grabbing. The learned trial Court's above observation clarifies that the Illegal Dispossession Act does not apply to everyone. Section 3 of the Illegal Dispossession Act, 2005, does not categorize the offender as someone who can only be prosecuted if they are professional land squatters, according to its plain reading. In Section 3(1) of the Illegal Dispossession Act, the words "dispossess," "grave," "control," and "occupied" are used, making it clear that they apply to all forms of unlawful possession. No one and "whoever" is a general term that applies to all sorts of offenders and is not limited to any one class of criminals in Sections 3(1) and (2). By using the terms "anyone" and "whoever" for the offenders, Section 3(1) of the Illegal Dispossession Act, 2005, clearly warned all persons against committing the offence described therein and provided that those found guilty by the Court would be punished without attaching any conditions to the maintainability of the complaint. The only thing the Court needs to determine "whether the accused named in the complaint had entered into or onto the subject property in order to seize it, take possession of it, or occupy it without a valid right to do so". Nothing further needs to be proved by the complainant because there is no prerequisite set forth in any component of the aforementioned Act that implied the legislature's directive which only these accused would be.

9. Illegal Dispossession Act, 2005, is a special legislation passed to prevent a crime; when the legislature passes a special law for punishing a crime, it may or may not specify any specific group of people who can be prosecuted. Suppose the special law designates a group of people who can be prosecuted after establishing a particular act as an offence. In that case, the person in question cannot be prosecuted unless they fall under the specified category. Hence, the observation of learned trial Court is contrary to recognized legal principles. In this context, I have been guided from the judgment pronounced by the Honorable five-member Bench of the Supreme Court of Pakistan in cases of ***MST. GULSHAN BIBI Vs. MUHAMMAD SADIQ & OTHER (PLD 2016 S.C Page-769) and SHAIKH MUHAMMAD NASEEM VS. MST. FARIDA GUL (2016 SCMR Page-1931)***.

10. The learned trial Court relied upon cases of **BASHIR AHMED versus ADDITIONAL SESSIONS JUDGE (PLD 2010 S.C page-661)** as well as **Zahoor Ahmed and 5 other versus the State**, reported in **PLD 2007 Lahore page No 231**. However, in both of the preceding judgments, the Honourable Supreme Court of Pakistan pronounced a case of BASHIR AHMED (*supra*) to be invalid and not a good law. It is worth to mention here that the judgment of Bashir Ahmed V/S. Additional Session Judge was pronounced while relying upon a case of Zahoor Ahmed, cited *supra*.

11. The learned trial Court also observed that the dispute between the parties is of civil in nature and the complaint under Illegal Dispossession Act is not maintainable, this observation of the erudite trial Court is likewise contrary to established legal principles of law, because the criminal and civil proceedings can be preceded concurrently. There is no prohibition to pursue both remedies simultaneously, since the nature, scope, and consequences of both the remedies are distinct and distinguished from each other and one remedy does not bar exhausting other one. The availability of a remedy under a civil law, as stated above, does not preclude an aggrieved person from filing a complaint under Illegal Dispossession Act, 2005, which is a specific legislation established to protect the property's legitimate owner or occupier.

12. Reverting to the argument of learned counsel for the private respondents that the respondents have been in possession of the land for last 30 to 40 years and the Illegal Dispossession Act was promulgated in the month of July, 2005 and it has no retrospective effect. No doubt, Article 12 of Constitution of Islamic Republic of Pakistan, 1973, provides the preservation of an individual's basic rights and provides protection against retrospective punishment. The relevant article says "No law shall authorize the punishment of a person for an act or omission that was not punishable by law at the time of the act or omission." This article makes sure that people cannot be penalized for anything they did or didn't do that wasn't a crime when it happened. It strives to safeguard the legality concept and offers protection from retrospective legislation. This legal question was neither urged before learned trial Court nor does it find a place in the impugned order. Moreover, the parties had not been

entangled in any litigation about the land in question before 30 or 40 years, as alleged by learned counsel for the private respondents, as there is no such record to establish that the parties have been in litigation before the commencement of Illegal Dispossession Act, 2005. In this context, I have taken assistance from a case of **Dr. MUHAMMAD SAFDAR V/S EDWARD HENRY LOUIS**, reported in **PLD 2009 Supreme Court-404**, the paragraph No.04 of the judgment is reproduced as under:-

We have heard the learned counsel for the parties and have also perused the available record with their able assistance. During the course of arguments before the High Court it was admitted by the learned counsel for the petitioner that the date of dispossession was mistakenly Indicated to be 13th January, 2003. We find that both the parties had already instituted civil suits with regard to the same property and the matter had become sub judice well before the Act, 2005 came into force Therefore, we fail to understand how the provisions of the Act 2005 could be invoked ex-post facto by the petitioner. The reference to the case of Rahim Tahir (supra) was in-apt as it did not lay down the correct law to the extent of retrospective application of the Act, 2005. The making of a law providing for retrospective punishment of a person is specifically prohibited by Article 12 of the Constitution of the Islamic Republic of Pakistan. There is nothing to indicate that the Act of 2005 was intended to have any retrospective operation. The impugned judgment of the High Court is plainly correct to which no exception can be taken.

13. As a result of what has been discussed hereinabove, the impugned order dated 07.08.2018, passed by learned Sessions Judge, Kashmore @ Kandhkot in a Direct Complaint No.38/2018 (Re: Nasrullah v/s Aziz Ahmed and others), is set aside, having been passed without considering the scope of Section 3 & 4 of Illegal Dispossession Act, 2005, and the matter is remanded back to learned trial Court to decide the same afresh in accordance with law, after providing the opportunity of hearing to all the concerned, without being influenced by the findings recorded in earlier order.

14. The instant Crl.Revision Application is disposed of accordingly.

JUDGE