

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Crl. Revision Application No.S-61 of 2023
(*Ameer Ali Shahani Vs. Ghulam Sarwar & others.*)

DATE OF HEARING	ORDER WITH SIGNATURE OF HON'BLE JUDGE.
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Application in disposed of case.

For hearing of MA No. 723/2024 (Restoration Application)

Date of hearing and Orders 29-04-2024

Applicant Ameer Ali Shahani present in person.
Respondent Ghulam Sarwar present in person.
Ms. Shabana Naheed Mughal, Assistant P.G for the State.

Adnan-ul-Karim Memon J:- The instant Criminal Revision Application has been preferred by applicant Ameer Ali against the order dated 27.03.2023 passed by the learned Additional Sessions Judge IV Khairpur in Illegal Dispossession Complaint No. 45 of 2022, which was dismissed on the ground that no case under the Illegal Dispossession Act 2005 was made out and the matter was/is purely of civil dispute. An excerpt of the order is reproduced as under:-

“4. Perusal of record shows that the complainant Ameer Ali is a co-sharer in the property in question and same land has not been demarcated amongst them. Other co-sharer has not approached the court regarding illegal dispossession. Furthermore, the respondent No.1/SHO in his report dated 20.08.2022 has not supported the version of the complainant. Furthermore, the respondent No.2/Mukhtiarkar in his report dated 10.05.2022 has mainly reported that as per VF-VIIB entry No.107 dated 16.03.2022 of Deh Larik, S.NO.466/3-27, 467/4-29, 817/1-39, 93/2-00 area 1-00 acre belongs to complainant Ameer Ali and his brother Anwar Ali is co-sharer in the same survey numbers to the extent of 0-10 ghunta. The Mukhtiarkar in his report further submitted that on the site visit it was found that the possession of entire land is lying with Ghulam Sarwar s/o Ameer Bux Shahani and his brothers and on enquiry said occupants disclosed that they have purchased same land from the owners/complainant party through sale agreement coupled with possession. Moreover, the proposed accused No.1 in his objections submitted that he has purchased the agricultural land from complainant through agreement and he paid Rs.7 lacs through Habib Bank Limited but the complainant is not giving him Khata of the land. Moreover, a copy of memo of Cr. Misc. Application No.3881/2022 u/s 22-A, 22-B Cr.PC filed by the complainant against present proposed accused is available on record

and in that application, in para No.5, the complainant has specifically stated that he made sale agreement with proposed accused No.1, but the complainant has suppressed such fact in the present complaint. The said Cr. M.A No.3881/2022 filed by the complainant against proposed accused was dismissed by the learned Additional Sessions Judge-III/Justice of Peace, Khairpur vide order dated 07.10.2022 mainly on the ground that the dispute between the parties is of civil nature. Furthermore, the copy of sale agreement and deposit slip of bank are available on record. The dispute between the parties appears to be of purely civil nature.

5. The ingredients or elements of S.3(1) of Illegal Dispossession Act, 2005 are that accused enters into or upon any property without having any lawful authority to do so and with intention of dispossession of or grabbing, controlling or occupying the property from the owner or occupier thereof. In order to constitute offence under this act the complainant must disclose existence of both and unlawful act (*actus rea*) and criminal intent (*mens rea*). Moreover, the ingredients of section 3(1) of the Illegal Dispossession Act, 2005 are lacking in the present case as the dispute between the parties is purely of civil nature.

6. In view of the above circumstances, I am of the considered view that there is civil dispute between the parties and the basic ingredients of illegal dispossession are lacking in the present matter; therefore, instant complaint merits no consideration which is hereby dismissed. However, the complainant is advised to approach the learned civil court of competent jurisdiction for redressal of his grievances, if he desires so.”

Applicant who is present in person has submitted that he has been illegally dispossessed by the private respondent/accused from his lands viz Survey No.466/3-27,467/4-29,817/1-39 and 93/2-00 area 1-20 acres, situated at Deh Larik, Taluka Sobhodero District Khairpur Mirs. He has further submitted that he approached the trial Court to restore his possession under the Illegal Dispossession Act, as his land was illegally occupied by the private respondent. In support of his contention, he relied upon the documents attached to the memo of Cr. Revision of Application and case law on the subject issue. In support of his submissions, he relied upon the cases reported as Haji Ashgar ali and others Vs. Muhammad Nawaz Narejo and others (2010 YLR 783), Rana Shafique Ahmad Vs. Additional Sessions Judge, Lahore and 3 others (2008 YLR 2259), Walif Jana and 2 others Vs. Rahim Jan and another (2012 MLD 1652), Muhammad Ali Vs. IVth

Additional Sessions Judge, Hyderabad and 8 others (2010 YLR 495), Dr. Mukhtiar Hussain Vs. Muhammad Aslam and others (2013 MLD 778), Nabi Bux Vs. The State & others (2011 P.Cr.L.J 1300), Rahim Tahir Vs. Ahmed Jan & 2 others (PLD 2007 Supreme Court 423), Abdul Bari Vs. The State and 10 others (PLD 2008 Karachi 400), Malik Muhammad Naeem Awan Vs. Malik Aleem Majeed and 5 others (PLD 2008 Lahore 358), Muhammad Arshad Bhatti and another Vs. Muhammad Bux and another (2009 YLR 1507), Rao Khalid Javed Vs. Faiz Ahmed and 6 others (PLD 2009 Lahore 220). He lastly prayed for allowing the instant Cr. Rev. Application.

The private respondent who is present in person has refuted the claim of the applicant and submitted that he has filed Suit No. 39 of 2024 before Senior Civil Judge Gambat wherein he has sought Declaration, Specific Performance of Contract, and Permanent Injunctions against the applicant/defendant on the premise that he had purchased land admeasuring 01-00 share out of survey No.466/03-27,467/04-29,877/01-39,93/02-00 ghuntas of Deh larik vide agreement dated 06-11-2021 from applicant/defendant No. 01 against sale consideration of Rs. 12,50,0000/-out of which Rs. 70,00,000/- had been paid by him and remaining amount has also been paid in trial Court in terms of order dated 8.4.2024 passed by the trial court, an excerpt of the order is reproduced as under:-

“Per plaint plaintiff Ghulam Sarwar has also purchased land admeasuring 00-10 share out of survey No 466/03-27,467/04-29,877/01-39,93/02-00 ghuntas of Deh larik vide agreement dated 08-11-2021 from defendant No.02 against consideration of Rs.02,50,0000/-out of which Rs.01,10,000/- have been paid by plaintiff remaining are to be paid by

him. At this juncture, guidelines have been derived from reported matter, Re, Messers DW Pakistan (private) Limited Lahore V/S Begum Anisa Fazl-I-Mahmood and others (2023) SCMR 555), wherein Honorable Supreme Court pleased to hold that, the persons seeking specific performance has to put on how that he is geared up and fervent in performance of contract and the plaintiff is required to deposit the sale consideration in court to articulate that vendee has capacity to pay the sale consideration or he is willing to perform obligation arising from the contract.

In view the guidelines, this court deem it fit and proper to direct the plaintiff to submit remaining consideration amount before this court thereby showing their keenness and capacity to perform his part of contract. He is accordingly directed to deposit the amount of Rs. 06,90,000/- with reader of this court, under token of receipt."

From the above, it appears that civil proceedings are pending before the learned Civil Court on the subject issue. Besides the above, this revision application was dismissed on account of non-prosecution vide order dated 18.3.2023, restoration application bearing MA No 6585 of 203 was preferred which was also dismissed for non-prosecution vide order dated 20.11.2023 again restoration application bearing MA No.7567 of 2023 was moved which was too dismissed for non-prosecution vide order dated 30.1.2024 now the applicant has filed the listed application for restoration of the main case as well as miscellaneous applications by assigning various reasons as disclosed in the listed application and affidavit attached thereto and prayed for the decision of the lis on merit.

It appears from the record that the trial Court called for inquiry reports from the Mukhtiarkar concerned, as well as the SHO concerned, and also sought a report as to the period of occupation of alleged land by the respondent. The Mukhtiarkar Revenue submitted the report with the narration that as per VF-VIIB entry

No.107 dated 16.03.2022 of Deh Larik, S.NO.466/3-27, 467/4-29, 817/1-39, 93/2-00 area 1-00 acre belongs to applicant/complainant Ameer Ali and his brother Anwar Ali is co-sharer in the same survey numbers to the extent of 0-10 ghunta. The Mukhtiarkar disclosed that on the site visit, it was found that the possession of the entire land lying with private respondent Ghulam Sarwar Shahani and his brothers, and on the inquiry said occupants disclosed that they had purchased the same land from the owners/complainant party through sale agreement coupled with possession.

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 but it pertained to the Civil Court for the reasons the complainant party had no case for the Illegal Dispossession Act 2005.

At the outset I intend to see the rule position of the case first, primarily Section 3 of the said statute defines the offense thereunder. Section 4 stipulates that any "contravention of Section 3 shall be triable by the Court of Session on a complaint. It also provides that the offense under the Act shall be non-cognizable. Section 5 empowers the Court to direct the police to make an investigation. It is clear from Section 3 *ibid* that to constitute an offense thereunder the complaint must disclose the existence of both, an unlawful act (*actus reas*) and criminal intent (*mens rea*). Besides the Illegal

Dispossession Act, 2005 applied to the dispossession of immovable property only by property grabbers/Qabza Group/land mafia. A complaint under the Illegal Dispossession Act, 2005 can be entertained by a Court of Session only if some material exists showing involvement of the persons complained against in some previous activity connected with illegal dispossession from immovable property or the complaint demonstrates an organized or calculated effort by some persons operating individually or in groups to grab by force or deceit property to which they have no lawful, ostensible or justifiable claim.

In the case of an individual, it must be the manner of execution of his design that may expose him as a property grabber. Additionally, the Illegal Dispossession Act, 2005 does not apply to run-of-the-mill cases of alleged dispossession from immovable 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 co-owners 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 the

relevant property is being regulated by a civil or revenue Court. However, in the impugned order, it was also held that the applicant has to resort to civil litigation to substantiate his case, and the proceedings under the Illegal Dispossession Act, 2005 cannot be maintained.

There is no cavil to the proposition that if the offence 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.

On the contrary, there appears to be a civil dispute over the subject land, and in such a scenario, it appears that the learned trial Court did not take cognizance of the alleged offense and dismissed the I.D Complaint.

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.

When confronted with the above legal position of the case to the parties, both the parties present in court, after making their brief submissions, agreed to disposal of the instant revision application in the terms that the learned Senior Civil Judge Gambat shall decide the fate of Civil Suit No 39 of 2024 pending adjudication between the parties within two months and the fate of subject land and possession thereof shall depend upon the final decision of the civil case, in the intervening period the civil court shall regulate the possession of the subject land; the request seems to be reasonable and acceded to, without touching the merits of the case, therefore, this revision application is restored to its original position and disposed of in the terms of statement made by them.

JUDGE