IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No. 25 of 2024
Criminal Revision Application No. 229 of 2024

Assad Naeem Applicant in Crl. Rev. Appl. No. 25 of 2024 & Respondent No. 1, in Crl. Rev. Appl. No. 229 of 2024	:	through Mr. Kashif Hanif, Advocate.
State	:	through Mr.Khaleeq Ahmed Deputy Attorney General for Pakistan, Mr. Rafique Ahmed Rajori, Additional Advocate General, Sindh & Mr. Zahoor Shah, Addl. P.G. Sindh.
Pakistan Air Force JAG Applicant in Crl. Rev. Appl. No. 229 of 2024	:	through Mr. Amjad Hussain Qureshi, Advocate.
Saleem Akhtar, Respondent in Crl. Rev. Appl. No. 25 of 2024 & Respondent No. 2, in Crl. Rev. Appl. No. 229 of 2024	:	through Mr. Umar Farooq, Advocate.
Date of hearing	:	01.03.2025
Date of Judgment	:	21.03.2025
Date of Announcement	:	26.03.2025

J U D G M E N T

MUHAMMAD SALEEM JESSAR. J- By this single judgment, I propose to dispose of above-said Cr. Revision Applications, as the parties and the subject property in both cases are one and the same.

2. Through Criminal Revision Application No.25 of 2024, applicant/accused Assad Naeem has assailed the order dated 21.10.2023 passed by learned VIth Addl. District & Sessions Judge, Karachi (West) (Trial Court), whereby an application under Section 7 of the Illegal Dispossession Act, 2005 filed by respondent / complainant Saleem Akhtar was allowed and the applicant / accused was directed to hand over the peaceful-cum-vacant possession of the disputed property to the respondent/complainant.

3. The applicant (Pakistan Air Force) in Criminal Revision Application No.229 of 2024 has assailed the order dated 06.12.2024 passed by the same trial Court; whereby an application moved by the applicant in terms of Section 123 of the Pakistan Air Force Act, 1953 was dismissed and the prayer made therein, was declined.

4. Brief facts of the case, as mentioned in the Direct Complaint filed by the complainant viz. Respondent Saleem Akhtar in instant Revision Applications, under Sections 3 & 7 of Illegal Dispossession Act, 2005, are; that the complainant is the owner of' a piece of land admeasuring 2-16 acres, situated in Deh Lal Bakhar, Tappo Gabo Pat, Taluka and District West Karachi under Survey No. 318 and the adjoining piece of an open land admeasuring 2-20 acres, equal to 12100 Sq. Yards from Khet / Survey No. 10 (225-00 acres out of NC-255) situated at Deh Lal Bakhar, Tappo Gabo Pat, Hawksbay, District West, Karachi. He further claimed that said properties were purchased by him vide Conveyance Deed dated 12.11.2007 for a total sale consideration of Rs. 12,00,000/-. The said properties initially rested with one Ismail son of Yar Muhammad and his entitlement was duly recorded in the record of rights and such fact was verified by Mukhtiarkar (Revenue), Keemari, Karachi and the possession / Qabza right was also verified by the Deputy Commissioner Karachi West. It was further stated by the complainant that he purchased above said Property No. 2 in the year 2017 through registered Sale Deed from one Shoukat Ali whose title was verified by Mukhtiarkar Mirpur Sub-Division Karachi West. According to the complainant, the coast guard officials once attempted to encroach upon said properties, hence, and thereafter an application was moved for demarcation of above said Properties.

5. Grievance of the complainant is that on 18.03.2018 his staff namely, Saeed-ul-Hassan son of Muhammad Hussain and Saleh Muhammad son of

Chanesar, deputed on said properties, were abducted and the complainant was dispossessed from the properties. The complainant made multiple representations to the government functionaries but of no avail, hence he filed Complaint under the Illegal Dispossession Act, 2005.

6. In the complaint, the complainant also moved an application under Section 7 of the Illegal Dispossession Act for interim restoration of possession to him which was allowed vide order dated 21.10.2023. The said order has been impugned in Cr. Revision Application No.25 of 2024. PAF has also filed Cr. Revision Application No.229 of 2024 against the order dated 06.12.2024 whereby application for handing over the trial along with R&P to the applicant, was dismissed.

7. I have heard arguments advanced by learned counsel for the parties and have perused the material made available on the record.

8. Learned counsel for the applicant in Criminal Revision Application No. 229 of 2024 submitted that respondent No.1 / proposed accused Asad Naeem is an officer in Pakistan Air Force, therefore, was to be tried by the Military Courts instead of Courts of ordinary jurisdiction. In support reliance was placed upon a decision taken by the Cabinet Division on 07.11.2024 (available as Annexure-B at page-23). Learned counsel for the applicant also placed reliance upon the cases of *SHAH ZAMAN and another Versus FEDERAL GOVERNMENT and another (1995 SCMR 464), MUHAMMAD AZAM Versus THE SESSIONS JUDGE, JHELUM AND 7 OTHERS (1980 P.Cr.L.J 999) BRIGADE COMMANDER HEADQUARTERS FIELD COMMAND NLC, KARACHI Versus THE STATE (1996 MLD A69) and KHALIL AHMED Versus DISTRICT AND SESSIONS JUDGE, RAWALPINDI and another (1990 P.Cr.L.J 1744)*.

9. Learned counsel for respondent No.1 submitted; since respondent No.l is an Air Force personnel, therefore, he has no objection if by granting instant application, impugned order is set aside and the case is handed over to the Military Court in terms of the application submitted by the applicant under Section 549 Cr. P.C.

10. Learned counsel for respondent No.2 / complainant opposed the revision application on the ground that decision of the Cabinet Division was taken much later than the cognizance taken by the trial court. Besides, the issue involved in this case has already been decided by this Court in Cr. Misc.

Application No.107/2023, hence, the Cabinet Division has no authority to override the judgment passed by the superior Court. Learned counsel for respondent No.2 also placed reliance upon Criminal Procedure (Military Offenders) Rules, 1970 and its clauses No.2, 3 & 4 and submitted that earlier the applicant had moved certain applications before the trial Court in this connection, which had been dismissed; however, after decision of the Cabinet Division, a fresh application was filed, which too was dismissed by way of impugned order. According to learned counsel, Charge against the accused/ respondent No.1 has already been framed and the complainant and one witness have also been examined, therefore, claim of the applicant, at this juncture, is unjustified and against the norms of settled principle of law. He, therefore, submitted that by dismissing instant revision application, learned trial Court may be directed to proceed with the trial and decide the matter within shortest possible time.

11. As far as, Criminal Revision Application No.25 of 2024 is concerned, learned counsel for the respondent submitted that examination-in-chief of the complainant as well as one PW has been recorded in terms of order dated 01.02.2025; however, he undertook that he will produce all the remaining witnesses before the trial Court on 04.03.2025. In support of his contention, learned counsel placed reliance upon the cases of *ATTA RASOOL and 3 others Versus Haji MUHAMMAD RAFIQUE and 2 others (2019 P.Cr.L.J 1023), Shaikh MUHAMMAD NASEEM Versus Mst. FARIDA GUL (2016 SCMR 1931), MUHAMMAD ISMAIL NIZAMI and others Versus JAVED IQBAL and another (2016 SCMR 2039), MUHAMMAD ALI Versus ABDUL HAQ and 2 others (2010 MLD 1920), KHAIR MUHAMMAD and 12 others Versus ALI SHER and 4 others (2022 P.Cr.L.J 1603) and FEDERATION OF PAKISTAN through SECRETARY, MINISTRY OF LAW, JUSTICE AND PARLIAMENTARY AFFAIRS, ISLAMA RAD Versus ZAFAR AWAN, ADVOCATE, HIGH COURT (PLD 1992 Supreme Court 72)*.

12. Mr. Kashif Hanif, learned counsel for applicant in Criminal Revision No. 25 of 2024 and respondent No.1 in Cr. Revision Application No.229 of 2024 undertook that he will conduct the cross-examination of all the witnesses ought to be produced before the trial Court on 04.03.2025.

13. Learned Deputy Attorney General for Pakistan submitted that all the orders impugned before this Court are interlocutory in nature and the main case has not been decided as yet.

14. It is settled law that when a legal objection relating to maintainability / jurisdiction is raised, such legal question is to be decided in the first instance. In view of this legal position, in the first instance, I would like to deal with Cr. Revision Application No.229 of 2024 which has arisen as a consequence of dismissal of an application moved by the applicant PAF for handing over criminal proceedings along with R&Ps of the case to the applicant for his trial before the Military Court in view of the decision of Federal Government/Cabinet bearing No.556/Rule-19/2024/926 dated 07.11.2024.

15. From perusal of the record and the material placed before this Court, it seems that a complaint under the Illegal Dispossession Act, 2005 was filed by complainant Saleem Akhtar, respondent No.2 herein, in the year 2018 which was transferred to the Court of Xth A.D.J. Karachi West (Trial Court) vide order dated 14.07.2018, inquiry report was called and after hearing the parties and taking into consideration the inquiry report. Learned trial Court took cognizance and issued bail-able warrants against the proposed accused Assad Naeem to appear before the Court and furnish solvent surety of Rs.1 lac. The trial Court also wrote a letter dated 28.08.2018 to J.A.G. Pakistan Air Force Headquarter at Peshawar in respect of the subject case, but the same was not responded to by the J.A.G. P.A.F. Headquarter. However, when the matter was transferred to the trial court, the P.A.F. was duly represented by the counsel appointed by PAF, to contest the matter, whereas the proposed accused namely, Assad Naeem never put his appearance before the Court, nor was represented by any counsel. Air Force authority filed an application on 21.04.2018 praying therein for proceeding with the trial of the proposed accused by the PAF authorities; however, said application was dismissed vide order dated 01.11.2021 which order was never challenged, thus the same attained finality.

16. Yet, another application under Section 265-K Cr. P.C. was filed on behalf of the proposed accused Asad Naeem which was also dismissed by trial court vide order dated 30.11.2022. The said order was assailed before this Court by means of filing Cr. Misc. Appl. No.107/2023 which was dismissed vide judgment dated 13.09.2023. In the said judgment, question of jurisdiction as per provision of section 123 of PAF Act 1953 was also discussed. The said judgment has also not been challenged either by the concerned authority of PAF or the applicant / accused himself. It also appears that the accused Asad

Naeem has claimed benefit under section 197 Cr.P.C. being an officer of the Federal Government, despite the fact that said provision of law has been declared repugnant to injunction of Islam by the Hon'ble Sharia Appellate Bench of Pakistan in the case of *FEDERATION OF PAKISTAN through SECRETARY, MINISTRY OF LAW, JUSTICE AND PARLIAMENTARY AFFAIRS, ISLAMABAD Versus ZAFAR AWAN, ADVOCATE HIGH COURT* (*PLD 1992 72)*. Not only this, but the PAF authority filed yet another application under section 549 Cr. P.C read with Section 123 PAF Act, 1953 and Rule 2 and 3 of Criminal Procedure (Military Offender) Rules 1970, which was also dismissed vide order dated 18.11.2023. The said order was challenged before this Court through Cr. Misc. Application No.84 of 2023, in which office raised objection that "how this criminal misc. application is maintainable when the impugned order was passed in ID complaint". Ultimately, the said application was withdrawn.

17. At this juncture, it may be observed that while deciding Cr. Misc. Appl. No.107 of 2023, which was filed by accused Assad Naeem against the order of trial Court whereby his application under Section 265-K Cr. P.C. was dismissed vide order dated 30.11.2022, this Court held as under:

> "…..it is crystal clear that he has got no respect for the process of the Court. He avoided to appear before the trial Court for about two years and it was only when the trial Court took coercive steps by initiating proceedings under Sections 87 and 88 Cr. P.C. and issuing directions to NADRA for blocking his CNIC, that the applicant / accused rushed to the trial Court after obtaining protective bail from this Court. It is apparent that no tangible material has been produced by the applicant / accused to show that there is no probability of his conviction in the instant case. In the instant case disputed factual aspects are involved and the same could be resolved only after recording of evidence of the witnesses. In the circumstances, unless and until evidence is recorded, it cannot be determined with certainty that there is no likelihood that the applicant / accused would not be convicted in the instant case."

18. While dealing with the legal objection to the effect that accused / applicant, being an Air Commando, cannot be tried by an ordinary Court, it was held:

> "Learned counsel for the applicant has also raised legal objection to the effect that the applicant, being an Air Commando, cannot be tried by an ordinary Court. Learned counsel for complainant / respondent No.3 in rebuttal to such contention submitted that where an army personnel is guilty of a civil offence, it is not necessary that he should be tried by the Court Martial as envisaged in Section 94 of Pakistan Army Act. In support of his contentions, learned counsel placed reliance upon the cases of IFTIKHAR AHMED JAMAL Versus The STATE (PLD 1983 Federal Shariat Court 221).

Section 94 of Army Act, 1952 reads as under:

> ***"94. Order in case of concurrent jurisdiction of Court martial and Criminal Court.-When a Criminal Court and a Court martial have each jurisdiction in respect of a civil offence, it shall be in the discretion of the prescribed officer to decide before which Court the proceedings shall be instituted and, if that officer decides that they shall be instituted before a Court martial, to direct that the accused person shall be detained in military custody."***

19. From bare perusal of above-quoted Section of Army Act, 1952, it is evident that where an army personnel is alleged to be involved in the commission of a civil offence, then jurisdiction of an ordinary Criminal Court is not ousted and there seems to be no bar in conducting trial of such person by an ordinary Criminal Court. If an authority is needed, reference may be made to the case of **Iftikhar Ahmed Jamal** (supra). In view of this legal position, the above legal plea raised on behalf of the applicant / accused is not sustainable.

20. It is pointed out that the above judgment has also not been challenged before the higher forum, thus above said finding given by this Court attained finality and cannot be re-agitated and reopened.

21. Besides, the language of Section 123 of PAF Act, 1953 reveals that its applicability is restricted to the cases only where there is concurrent jurisdiction of criminal court and court martial, whereas there is no concurrent jurisdiction of the trial Court viz. Court constituted under Illegal Dispossession Act, 2005 and the Court-Martial of the Air Force which fact has also been admitted by the applicant's counsel in his written arguments to the effect that "concurrent jurisdiction" means simultaneous jurisdiction vested in Criminal Court and Court-Martial of the Air Force, whereas the trial Court is a Special Court and not an ordinary Criminal Court.

22. It is evident that illegal Dispossession Act. 2005 is a special law and section 4 thereof contains non-obstante clause. Relevant provisions of PAF Act, 1953 envisage that section 123 of the said Act is not applicable to the special laws. In this context, reference can be made to the provision of Section 71, Sections 4 (xi), 4 (xvi) and 123 of PAF Act, 1953. In view of this legal position, the provisions of sections 3 and 4 of the Illegal Dispossession Act, 2005 shall prevail over the provision of section 123 of PAF Act, 1953.

23. It seems that the applicant has mainly stressed their prayer on the basis of decision of Cabinet Division as reflected in the letter No. 556/ Rule-1912024/926 dated 07-11-2024. As stated above, prior to such decision of Cabinet Division, applications had been moved by the PAF for transferring the trial to Military/Court Martial which were dismissed and the dismissal orders were not challenged before the higher forum. It was when the trial was in progress and the complainant and one witness had been examined before the trial Court, that the applicant PAF came with such plea that in view of the decision of the Cabinet Division, the trial court has no jurisdiction and that the trial of the accused is to be conducted by the Military/Martial Court.

24. In fact, Federal Cabinet Decision No.556/ Rule-1912024/926 dated 07-11-2024, is based on the provisions of section 124 (2) of PAF Act 1953 and Rule 6 (2) of Criminal Procedure (Military Offender) Rules 1970, which are not attracted in the present case as this case is governed under the provision of section 123 of PAF Act 1953 read with Rule 2 and 3 of Criminal Procedure (Military Offender) Rules1970. Moreover, in the said letter no reference has been made to the judicial order passed by the trial Court on 01-11-2021 in which the question of jurisdiction had already been decided and the said order was not challenged before high forum, as such the same attained finality. Besides, similar order dated 30-11-2022 was passed by the trial court which was assailed through Cr. Misc. Application No. 107/2023 in this Court and the question of jurisdiction was determined by this Court vide judgment dated 13-09-2023. This order was also not challenged as such the question of jurisdiction attained finality. Thereafter, the applicant made another attempt for transfer of offender and his trial to Military Court by filing application before the trial court through JAG branch which was again dismissed vide impugned order dated 18-11-2023 which was challenged by the applicant before this Court by filing Criminal Misc. Application No.84/2024, which was ultimately withdrawn unconditionally and stood disposed of vide order dated 18-1-2025 as such the same also attained finality. Despite this, surprisingly the applicant again filed sımilar application on the basis of letter dated 07-11-2024 issued by the Federal Government, which too was dismissed by the trial court vide order dated 06-12-2024, the same has been challenged in the instant revision application. It is pertinent to mention that said letter regarding decision of Cabinet Division is quite silent with regard to above-mentioned judicial orders, as such the same has no value in the eye of law.

25. Besides above, it also seems that in present case not only the cognizance has been taken but the charge has also been framed and the complainant as well one witness have been examined. As far as the point of jurisdiction is concerned, it has also already been determined by this Court. It is also noteworthy that no minutes of meeting of Federal Cabinet have been attached alongwith the above referred letter dated 07.11 2024, thus the said letter is silent as to whether the above facts as to cognizance, framing of charge etc. and determination of jurisdiction by the trial Court as well as by this Court were apprised to the cabinet division at the time of taking above said decision. Needless to emphasis that the decision of the cabinet division taken without following the procedure / law and in contravention of the judicial pronouncement is not sustainable in the eye of law.

26. Reference in this context can be made to the judgment passed by a Full Bench of Honourable Supreme Court in the case of Government of Sindh and others Vs. Messrs SAIF TEXTILE MILLS LTD. and 6 others, reported in 2003 SCMR 265. The relevant portion from the judgment is reproduced hereunder:

> "These appeals, by leave of the Court, are directed against the order passed by Peshawar High Court, Peshawar. Operative para from the leave granting order is reproduced hereinbelow:--
> "The petitioner contended before us that the office order issued on the basis of ECC decision of the Cabinet Division could not be considered as a notification issued in terms of provisions of the Customs Act, and therefore, the exemption, which was claimed on the basis of this **decision of ECC of the Cabinet Division, could not be given effect to by amending the judgment already pronounced by the Court in the main writ petitions**. It is also contended by the learned counsel for the petitioners that in any case if the respondents wanted to enforce the decision of the ECC of the Cabinet Division, which was based on a separate cause of action, they should have filed a separate petition the order already passed by the Court disposing of the main writ petitions could not be amended so as to give effect to the above decision. The contentions raised by the learned counsel for the petitioners require further reexamination and we, accordingly grant leave to appeal in all these Petitions."`

27. Ultimately, after hearing the counsel for the parties, appeal was dismissed, meaning thereby that it was declared that the decision of ECC of the Cabinet Division could not be given effect to by amending the judgment already pronounced by the Court in the main writ petitions i.e. the said decision of the Cabinet Division cannot override the judgment already pronounced by the High Court.

28. Reference can also be made to an unreported judgment passed by a Division Bench, headed by Honouranle Chief Justice of this Court in C.P. Nos.D-125 & 403 of 2018 a/w C.P. No.D-4711 of 2018, wherein it was held as under:

> "In view of hereinabove factual and legal position, common relief sought in above petitions against freezing of Special Judicial Allowance to all the cadres of officers and staff of the Sindh High Court, its Benches and its Circuit Courts, Judicial Officers of District Judiciary Sindh and staff of District & Civil Courts of Sindh as well as applications in disposed of petition i.e. C.P. No.D-403/2018 vide order dated 29.10.2020, are allowed and impugned Office Memorandum dated 13.07.2022 is hereby set aside to the extent of Para 9 of Special Pay and Allowance, including civil employees in BPS-1 to 22 of Judiciary shall stand frozen at the level of its admissibility as on 30.06.2022 **as well as decision at Item No.7.10(i), as reflected in the Minutes of the Provincial Cabinet Meeting held on 11.10.2022 and the decision at Item No.21.8, as reflected in the Minutes of the Provincial Cabinet Meeting held on 01.12.2023 to this effect are hereby declared to be illegal and without lawful authority for having no factual and legal basis and having been issued/decided in complete violation of the decision of judicial pronouncement on the subject and the directives issued by the Hon'ble Chief Justice of this Court pursuant to such decision as well as contrary to the orders passed in the aforesaid petitions on the basis of undertaking given on behalf of the Government of Sindh, as reflected in order dated 25.05.2018.** Since the decision(s) taken by the Provincial Cabinet, Government of Sindh relating to Special Judicial Allowance, besides being arbitrary, has no factual or legal basis, whereas, all the cadres of Officers and staff of Sindh High Court, its Bench and Circuit Courts, Judicial Officers and staff of District and Civil Courts of Sindh judiciary have been deprived of Special Judicial Allowance while given different treatment from the Judicial Officers/Staff of the Judiciary in other Provinces of Pakistan, performing the same judicial function, therefore, such decision is otherwise discriminatory, besides being in violation of judicial pronouncement, and also against the undertaking given before this Court on behalf of Government of Sindh in the above petitions, therefore, not sustainable in law. Reliance in this regard can be placed in the following cases:
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> 1. **GOVERMNET OF PAKISTAN AND OTHERS v. MESSRS SAIF TEXTILE MILLS LTD. & 6 OTHERS [2003 SCMR 265];**
> 2. **FEDERATION OF PAKISTAN THROUGH SECRETARY MINISTRY OF COMMUNICATION ISLAMABAD AND ANOTHER v. SHUJA SHARIF AND OTHERS [2023 SCMR 129];**
> 3. **GOVERNMENT OF PUNJAB THROUGH SECRETARY, FINANCE DEPARTMENT, LAHORE v. MUBARIK ALI KHAN [PLD 1993 SUPREME COURT 375];**
> 4. **MUHAMMAD ISHAQ AND OTHERS v. ZEAL PAK CEMENT FACTORY LTD. [2024 SCMR 628]; and**
> 5. **MST. YASMEEN AKHTAR AND OTHERS v. THE GOVERNMENT OF SINDH THROUGH CHIEF SECRETARY AND 3 OTHERS [2020 PLC (C.S) 1249,"**

29. As stated above, prior to aforesaid decision of cabinet division, cognizance had been taken by the trial court, charge was framed and the

complainant so also one witness were also examined. In this view of the matter, I am of the opinion that the decision of the Cabinet Division cannot be given retrospective effect at such belated stage. For this I am fortified by the judgment of a Division Bench of Islamabad High Court passed in the case of ***IMRAN AHMAD KHAN NIAZI*** Versus ***FEDERATION OF PAKISTAN and others***, reported in PLD 2024 Islamabad 155, wherein it was held as under:

> "It is well settled that retrospective operation cannot be given to executive orders so as to destroy vested rights of citizens. Hence, the notification dated 15.11.2023 issued by the Ministry of Law and Justice based on the **Cabinet's decision** dated 15.11.2023 giving ex-post facto sanction to the proceedings and trial conducted in jail between 29.08.2023 and 12.11.2023 is unlawful. ………………
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> "vii. It is also declared by way of clarification that notification (F.No.40(68)/2023-A-VIII) dated 15.11.2023 issued by the said Ministry on the basis of the **Cabinet's decision** dated 15.11.2023 cannot be given retrospective effect."

30. From scrutiny of the record, it also reveals that at one stage both, the PAF as well as the proposed accused Asad Naeed, were being represented by one and the same advocate. This is enough to hold that they appear to be hands in gloves. In the circumstances, the prayer sought by PAF for handing over the case / trial of accused Asad Naeed to Military / Martial-Court would be violative of principle "NEMO DEBET ESSE JUDEX IN PROPRIA SUA CAUSA" (no one should be judge of his own cause).

31. In view of above legal position, I am of the opinion that the order impugned in this Cr. Revision Application does not call for any interference by this court in exercise of its revisional jurisdiction.

32. Now I advert to Cr. Revision Application No.25 of 2024 whereby the order allowing application for handing over the interim possession under Section 7 of the Illegal Dispossession Act, 2005 to the complainant Saleem Akhtar has been challenged. In order to properly adjudge the impugned order passed by the trial Court, it would be advantageous to reproduce hereunder the provision of Section 7 of the Illegal Dispossession Act, 2005:

> *"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 subsection (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 subsection (3), requires police assistance in the exercise of his power under this Act, he may send a requisition to the officer-incharge 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 subsection (4) shall amount to misconduct for which the Court may direct departmental action against him."*

33. From perusal of above provision of law, it appears that the Court dealing with the application under Section 7 of Illegal Dispossession Act, 2005 is authorized and has ample power to grant 'interim relief' under the said provision of law during the pendency of main application in favour of owner/occupier if during trial the Court is satisfied that the accused is prima facie not in 'lawful possession'.

34. In this connection, reference may be made to the case of ***ATTA RASOOL and 3 others*** Vs. ***Haji MUHAMMAD RAFIQUE and 2 others***, reported in **2019 P Cr. L J 1023 [Sindh]** wherein this legal point was elaborately discussed and a well-reasoned judgment was passed by this Court. Relevant portions from the judgment are reproduced as under:

> ***"Reverting to merits of the case, I would say that the provision of section 7 is a deliberation whereby the 'interim relief' could well be granted in favour of owner/occupier if during trial the Court is satisfied that a person (accused) is prima facie not in 'lawful possession'. I needs not be insisted that term 'prima facie' can never be a substitute to the term "proof" which aspect also needs to be kept in view by the Court(s) while exercising jurisdiction under section 7. It may well be added that the provision of section 7 of the Act appears to have been couched in a manner whereby the accused is to prima facie establish his being in 'lawful possession'. Bare reading of the section 7 of the Act makes it quite clear that such exercise has not been restricted to any particular stage hence, I would feel-safe to say, such exercise can well be exercised before recording of evidence or completion thereof.***
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> ***Needless to add that an interim order (relief) never necessarily controls the fate of main complaint/case which otherwise has to be decided on conclusion of trial. Thus, wisdom of deliberate insertion of interim relief must always be given its weight because the object of the Act is to protect the lawful owners, which, surely, would include right to be put in possession as early as possible even by course of interim relief." ……………***
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> ***"At this juncture, I feel it quite appropriate to refer operative parts of the case of Shaikh Muhammad Naseem v. Mst. Farida Gull 2016 SCMR 1931 whereby the honourable apex Court has made two aspects relating to scope and object of the Act clear. The operative parts are reproduced hereunder:-***
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> ***"3. ...As the term 'property grabbers' appearing in the preamble of the Act has been used in general sense, it cannot be identified with any***

particular category of offenders in order to restrict the scope and applicability of the Illegal Dispossession Act, 2005 to a particular category' of offenders. Additional the substantive provision of Illegal Dispossession Act i.e. section 3 expressly uses general term such as 'no one' and `whoever' for the offender. This clearly indicates that the widest possible meaning is to be attributed to these terms. Thus the provisions of section 3 clearly demonstrate that whosoever commits the act of illegal dispossession as described in the Illegal Dispossession Act. 2005 against a lawful owner or a lawful occupier, he can be prosecuted under its provisions without any restriction."

"5....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."

The above principles, so enunciated by apex Court, help me to conclude that the remedy, provided by the Act, cannot be defeated even if the accused comes with any claimed status, including tenant and purchaser even if otherwise the offence, as described in the Act, appears to have been committed i.e 'dispossession of lawful owner/occupier from immovable property without any lawful authority'. I would respectfully add that in the case of Muhammad Ismail Nizami and another v. Javed Iqbal and another 2016 SCMR 2039, the order of this Court, directing landlord to put tenant into possession under section 7 of the Act, was maintained."

35. In the case reported as NOORULLAH Versus MUHAMMAD FARRUKH and 4 others, (2023 YLR Note 9 [Sindh],) it was held as under:

> "14. From a bare perusal of the Heading of and subsection (1) to section 7 of the Act, 2005, it is crystal clear that, in fact, this is an interim relief which provides that during the pendency of the trial of main case/ complaint filed under Section 3 of the Act, 2005, if trial Court is satisfied, on the basis of available material, prima facie the proposed accused in the main case / complaint is not in lawful possession, then the Court shall, as an interim relief direct him to put the owner or occupier, as the case may be, in possession. From the language of this section it is apparent that it has nothing to do with the proceedings of the main case / complaint which would be decided on its own merits after conclusion of the trial. From the perusal of the impugned order it appears that it starts from the wordings, "By this order I intend to dispose of present application under section 7 of Illegal Dispossession Act ." In this view of the matter the plea of the applicant that the procedure laid down in section 5 of the Act, 2005 has not been followed before passing the impugned order is devoid of force, because such procedure is to be adopted while deciding the main application / complaint under section 3/4 of the Illegal Dispossession Act, 2005 and not while disposing of the application for interim relief under section 7 of the Act, 2005."

36. It is also significant to point out at this juncture that while deciding this matter, the conduct of the applicant / accused Assad Naeem is also to be

taken into consideration. The complaint under the Illegal Dispossession Act, 2005 was filed by complainant/respondent Saleem Akhtar in the year 2018. Vide order dated 14.07.2018, inquiry report was called and after hearing the parties and in view of the inquiry report, Xth A.D.J. Karachi West, took cognizance and issued bail-able warrants against the proposed accused Asad Naeem to appear before the Court and furnish solvent surety of Rs.1 lac. A letter was also sent by the court on 28.08.2018 to J.A.G. Pakistan Air Force Headquarter at Peshawar in respect of the subject case, but the same was not responded to by the J.A.G. P.A.F. Headquarter. However, despite that applicant / accused Asad Naeem never put his appearance before the Court, nor was represented by any counsel.

37. Instead of appearing before the trial Court and proceeding with the trial, the applicant / accused Asad Naeem moved an application under Section 265-K Cr. P.C. for his premature acquittal through his advocate which was dismissed and the said order was assailed before this Court by means of filing Cr. Misc. Appl. No.107/2023 which was also dismissed. In the said judgment too this Court highlighted the conduct of the applicant / accused in the following words:

> **"Thereafter, trial court took cognizance in the matter vide order dated 13.04.2019 after looking into the contents of enquiry report and issued bailable warrants against the applicant/ proposed accused by directing him to appear before trial court by furnishing surety in the sum of Rs 1,00.000 (Rupees One Lac Only) but applicant/accused did not appear before the trial court. However, it was only after the Trial Court initiated the proceedings under Sections 87 & 88 Cr. P.C. against the applicant/accused and issued direction to NADRA to block CNIC of applicant / accused, that the applicant/accused appeared before trial Court after obtaining protective bail from this Court. Thereafter, applicant/accused filed Application under Section 265-K Cr. P.C. before the Trial Court wherein the counsel for the applicant / accused had appeared whereas the accused remained absent. The said application was dismissed by the trial Court vide order dated 01.11.2021. Thereafter, the applicant / accused filed second application under Section 265-K Cr. P.C. which was also dismissed by the trial Court vide impugned order which has been challenged by the applicant through instant Cr. Misc. Application.**
>
> **From above conduct of the applicant / accused, it is crystal clear that he has got no respect for the process of the Court. He avoided tappear before the trial Court for about two years and it was only when the trial Court took coercive steps by initiating proceedings under Sections 87 and 88 Cr. P.C. and issuing directions to NADRA for blocking his CNIC that the applicant / accused rushed to the trial Court after obtaining protective bail from this Court."**

38. From perusal of impugned order passed by the trial Court, it seems that the same has been passed in accordance with the law after affording proper

opportunity of hearing to both sides. The trial Court has also highlighted the unwarranted conduct of the applicant / accused in pursuing the case. In fact, the complaint under Section 3 of Illegal Dispossession Act, 2005 was filed in the year 2018 and about 06 years have passed; however, the matter could not be disposed of on account of unwarranted conduct and attitude of the proposed accused. Record shows that after taking cognizance, trial court repeatedly issued summons to the accused but he deliberately failed to appear. It was only when the proceedings under sections 87 & 88 Cr. P.C. were initiated against the accused, that he appeared and surrendered before the trial court. It appears that Charge was framed on 30.11.2022 and the evidence of complainant and one witness has been recorded. From perusal of the record it also appears that all the registered documents relating to the subject property have been verified in favour of the complainant. The verification reports depict that all such documents produced by the complainant are genuine and have been issued from the concerned office / department. It is now well settled that the provisions of section 7 of Illegal Dispossession Act 2005 could be passed, if during the trial, court is satisfied that the accused / respondents are in unlawful possession. In the impugned order, the trial court has categorically observed, ***"Hence, from the available record of the case, this court is of the opinion that the prayer made by the learned counsel for the complainant for seeking the interim possession of the subject property is satisfied**."*

39. Since, the impugned orders do not suffer from any legal infirmity or illegality which may warrant interference by this Court. Hence, both Criminal Revision Applications, being devoid of its merit, are hereby **dismissed** along with pending application(s), if any. Consequently, interim order passed on 01.02.2024 in Criminal Revision Application No.S-25 of 2024 is also hereby recalled. As reported by learned counsel for the parties, the complainant as well as one witness has been examined and they shall produce remaining witnesses on coming date. Therefore, it is expected that trial Court shall expedite the trial and conclude it within shortest possible time, under intimation to this Court through MIT-II.

JUDGE

Karachi
Dated. 26.03.2025
Approved for Reporting