IN THE HIGH COURT OF SINDH, HYDERABAD CIRCUIT

Cr. Rev. Appl. No. S- 24 of 2007

1. Jalal s/o. Hadi Bux Chandio
2. Muhammad Qassim s/o. Hadi Bux.
3. Munawar Ali s/o. Hadi Bux
4. Mehboob Ali s/o. Hadi Bux
   All Muslims, Adults, Chandio by caste,
   R/o. Village Murad Ali, Taluka Jhuddo, District Mirpurkhas.

5. Raza Muhammad s/o. Ahmed Chandio
6. Mitho s/o. Sobho Khan Chandio
7. Abdul Jabbar s/o. Raza Muhammad Chandio
8. Ahmed s/o. Sobho Chandio
9. Muhammad Ibrahim s/o. Mitho Khan Chandio
10. Nek Muhammad s/o. Mitho Khan Chandio

    No.5 to 10 R/o. Ward No.5, near Bus stop Nao Kot
    Taluka Jhuddo District Mirpurkhas

11. Khadim Hussain s/o. Niaz Muhammad
    Muslim Adult, Khaskheli by caste R/o. Bagh para, Nao Kot
    Taluka Jhuddho

12. Muhammad s/o. Wali Muhammad,
    Muslim Adult Khaskheli by caste R/o. Village Fazal Chandio
    Taluka Tando Bago District Badin

---------- Applicants

VERSUS

1. Kapri Khan s/o. Muhammad Saleh,
   Muslim Adult Chandio by caste, Zamindar
   R/o. Village Bijar Khan Chandio Deh Janhan
   Taluka Jhuddo District Mirpurkhas

2. The State ---------- Respondents

ORDER SHEET

IN THE HIGH COURT OF SINDH, HYDERABAD CIRCUIT.

Cr.Rev.Appl:No.S-24 of 2007

DATE	*ORDER WITH SIGNATURE OF JUDGE*

1. **For Katcha Peshi.**
2. **For hearing of MA 280/2007.**

29.04.2008

Mr. Noor Ahmed Memon, Advocate for applicants.

Mr. Muhammad Yousif Leghari, Advocate for respondent No.1.

Mr. Anwar H. Ansari, State Counsel.

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Learned counsel submits that applicants are aggrieved by order dated 14th February 2007 whereby the objections to the maintainability of application U/S 3 of Illegal Dispossession Act, 2005 have been dismissed with following observation:-

> ***" Since during the course of the trial the complainant has to prove his case of being dispossessed illegally and the accused/opponent would have fair opportunity to refute such plea of the complainant. Therefore, I deem it proper, under the circumstances and facts of present case, to take cognizance into the matter. Let the charge against the accused persons be framed under Section-3 of the Illegal Dispossession Act, 2005."***

Learned counsel submits that basic objection of the applicants was that law was enforced on 6.7.2005 while the applicants were in possession of the land prior to that Act. He further submits that there is a suit pending in the Court of Mirpurkhas which has been filed by the respondent and in such a situation the said application would not have been entertained. He has relied upon PLD 2006 Lahore 649 and PLD 2006 Karachi 221.

On the other hand, Mr. Muhammad Yousif Leghari, learned counsel for respondent No.1 submits that filing of the suit has no bar to the action under Illegal Dispossession Act and he can avail both the remedies. He further submits that Criminal Complaint under Illegal Dispossession Act was filed for different relief then pleaded in the suit and that the factual position in respect of the possession prior to or after the promulgation of ordinance is to be taken into consideration by the learned trial Court. He submits that trial Court may be permitted to record the evidence and to ascertain the factual position in respect to the possession of the parties.

Learned State counsel has consented to the arguments of Mr. Muhammad Yousif Leghari, by stating that there would be no harm if the evidence is recorded and trial Court to reach at the conclusion as to what is the factual position.

After hearing the learned counsel, it is being observed that Criminal Miscellaneous Application bearing No.16/2006 has been filed during pendency of the suit filed by the respondent but the law of Illegal Dispossession Act does not restrain a complainant from taking any action against an alleged accused person as Section 3(2) of Illegal Dispossession Act, 2005 provides that action under Illegal Dispossession Act can be taken without prejudice to any punishment to which a person may be liable under any other law for the time being in force. The said section for convenience sake is reproduced as under:-

"3. Prevention of illegal possession of property, etc- (1) No one shall enter into or upon any property to dispossess, grab, control or occupy it without having any lawful authority to do so with the intention to dispossess, grab, control or occupy the property from owner or occupier of such property.
(2) Whoever contravenes the provisions of the sub-section (1) shall, without prejudice to any punishment to which he may be liable under any other law for the time being in force, be punishable with imprisonment which may extend to ten years and with fine and the victim of the offence shall also be compensated in accordance with the provisions of section 544 of the Code."

There may be a situation when a suit has been filed for declaration and injunction etc and even if during pendency of the suit the plaintiff is dispossessed prior to or after grant of injunction then besides remedy available to him on that pending suit, an aggrieved person can also initiate proceeding under Illegal Dispossession Act.

In such situation, there seems to be no restriction for an aggrieved person to initiate any other action in addition to his action under Illegal Dispossession Act.

The perusal of Section 3 of Illegal Dispossession Act, 2005 shows that it prohibits and restrict a person from taking into possession or occupying a property to which he is not legally entitled and if a person remain in illegal possession despite the fact that he is not the lawful owner nor legally authorized then on every passing day fresh cause of action continues to the actual owner who has been dispossessed even prior to Illegal Dispossession Act, 2005. Said Section prohibits that no person without lawful authority will grab, control or occupy the property. Keeping in view the wording of Section 3, it appears that said section is prohibiting illegal dispossession, grabbing, control or occupation as far as the dispossession is concerned, it must have taken place prior to promulgation of the ordinance but the words control and occupation remain

on the scene and cause continuance of illegality by every passing day and if a person is in illegal control or in occupation of property prior to promulgation of the Act then there is no justification that he should justify his position on the ground that since the property has been illegally occupied earlier to promulgation of Act therefore Section 3 of the Act will not apply. The said Act, apparently has been promulgated for the public good, keeping in view the menace of illegal possession prevalent in the society and since the Act is towards betterment of the society therefore keeping in view its wording, it will be beneficial if it is to be stretched in a way that very purpose of the Act is fulfilled and the persons who have been deprived of their right in respect to the property should be provided some relief. If the law is made applicable from the cut date of its promulgation then there can be certain instances when a person occupying the property illegally even after the ordinance would try to wriggle out from the clutches of law by forging a predated document and that would take much time for Court to decide its illegality and the position will further be complicated if a suit is filed on the basis of that document. Under Act 2005, the Sessions Court has ample power to take the cognizance and if from initial inquiry it finds that the case is made out then it must proceed.

I have gone through detailed and very well written judgment of Ist Additional Sessions Judge, Mirpurkhas who has taken into account all the aspects of the case and thereafter has proceeded further.

In the light of above, it can be held that contention of learned counsel for applicants that law is not applicable to the dispossession which have taken place prior to Act has no force as although dispossession has taken place earlier but the control and occupation of an illegal possessor remain with it which create cause of action on every day and continues.

In such a situation, the law can be considered as a warning to the illegal occupants so immediately after passing of the Act, the persons who are in unlawful possession in terms of Section 3 of the Illegal Dispossession Act, should surrender the possession or to face the consequences. The authorities cited by learned counsel for the applicants can be distinguished by the authority laid down by the Honourable Supreme Court in a reported judgment PLD 2007 Supreme Court 423 in following words:-

> "The Illegal Dispossession Act, 2005, is a special enactment which has been promulgated to discourage the land grabers and to protect the right of owner and the lawful occupant of the property as against the unauthorized and illegal occupants. The careful examination of the relevant

provisions in the Act would reveal that all cases of illegal occupants without any distinction, would be covered by the Act, except the cases which were already pending before any other forum. The respondent admittedly was inducted into the premises by a person, who was neither owner nor a lawfully constituted attorney of the owner to have any authority to enter into an agreement of sale on behalf of the owner or deliver the possession of the property to the respondent and thus apparently, he was an illegal and unauthorized occupant of the premises. The contention that Illegal Dispossession Act, 2005, is not applicable to an illegal occupant, who was in occupation of the premises prior to the date of the promulgation of the Act, has no substance. The purpose of this special law was to protect the right of possession of lawful owner or occupier and not to perpetuate the possession of illegal occupants."

In such a situation and keeping in view that law comes into motion when there is challenge in respect to the ownership and lawful authority then the Session Judge has to decide that issue keeping in view that illegal ownership or unlawful authority does not become lawful after passage of time only.

In the above circumstances, this Criminal Revision Application is dismissed alongwith listed application.

Judge

Tufail