

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Cr. Revision Appln. No. S-73 of 2025

Applicant : 1) Ayaz s/o Hassan, Mallah
2) Abdul Sattar s/o Hassan, Mallah
3) Hassan @ Babloo
4) Waqar
5) Shan, (applicant Nos.3 to 5 sons of Ayaz Mallah)
Through Mr. Nusrat Hussain Memon, advocate

Respondent No.1 : Mst. Khalida Begum d/o Ghulam Muhammad, Mallah
Through Mr. Ghulamullah Memon, Advocate

The State : Through Mr. Mansoor Ahmed Shaikh, DPG

Date of hearing : 26.09.2025
Date of order : 26.09.2025
Reasons recorded on : 29.09.2025

ORDER

KHALID HUSSAIN SHAHANI, J.— Applicants Ayaz Mallah and others invoke revisional jurisdiction of this court, seeking to challenge two orders passed by the learned Additional Sessions Judge, Moro. The first impugned order dated 13th May 2025 pertains to the taking of cognizance against the applicants for offence under Section 3(2) of the Illegal Dispossession Act, 2005, while the second impugned order dated 22nd August 2025 allowed the application under Section 7 of the said Act, directing the applicants to hand over interim possession of the disputed agricultural land measuring 50 Paisa of (0-31½) *ghuntas* from Survey No.410, Deh Khokhar to the complainant Mst. Khalida Begum.

2. The genesis of this matter emanates from a complaint filed by Mst. Khalida Begum under Sections 3(2) of the Illegal Dispossession Act, 2005, wherein she alleged that her mother, Mst. Zaib-un-Nisa Mallah, is the lawful owner of the disputed agricultural property through registered sale deeds No. 936 dated 30th September 1997 and No. 1042 dated 26th July 2006. According to the complainant's version, on 1st April 2025,

when she visited the disputed land along with her brother Mehran Ali and their Hari/peasant namely Sajjad, they found the accused persons in possession of the property armed with weapons, who threatened them with dire consequences and prevented them from accessing what they claimed to be their lawful property. The complainant further alleged that the applicants had unlawfully occupied the disputed land without any legal authority and were cultivating the same in violation of her mother's ownership rights.

3. During the trial proceedings, the learned Additional Sessions Judge, Moro, after calling reports from the concerned Station House Officer, Mukhtiarkar Revenue and conducting necessary inquiries, formed a prima facie opinion that a case against the accused persons was established and accordingly took cognizance under Section 3(2) of the Illegal Dispossession Act, 2005. Subsequently, during the pendency of the complaint, the learned trial court also allowed the complainant's application under Section 7 of the Act, directing the applicants to restore interim possession of the disputed property to the complainant pending final adjudication of the matter.

4. Learned counsel Mr. Nusrat Hussain Memon, appearing for the applicants, vehemently challenged both impugned orders on multiple grounds. The primary contention advanced was that the complaint lacks maintainability under the owner clause contained in Section 2(d) of the Illegal Dispossession Act, 2005, as the complainant herself is not the registered owner of the disputed property, which admittedly remains in the name of her mother, Mst. Zaib-un-Nisa, who is still alive. Counsel

argued that the statutory definition of "owner" under the Act requires the complainant to be the actual owner at the time of dispossession with proper record of rights and title documents in their favor, relying upon the precedent established in PLD 2008 Karachi 94. Furthermore, it was submitted that the disputed property is joint property among co-sharers and has never been officially demarcated, making the allegations of specific dispossession legally untenable. The learned advocate for the applicants further contended that the Mukhtiarkar's reports reveal significant discrepancies in the complainant's claims, particularly showing that the proposed accused Abdul Sattar had validly purchased 50 Paisa area through registered sale deed bearing Jaryan No.804 dated 02nd June, 2006; which has been duly mutated in the revenue records. It was emphasized that the applicants do not belong to any "*Qabza Mafia*," which counsel argued is a necessary ingredient for prosecution under the Illegal Dispossession Act, and that no prior complaints of similar nature have been filed against them. Counsel also submitted that the learned trial court passed the impugned orders without proper verification of the complainant's legal standing and that the proceedings constitute an abuse of the process of law.

5. On the contrary, learned counsel Mr. Ghulamullah Memon, representing respondent No.1, staunchly defended the impugned orders and submitted that the complainant, acting on behalf of her elderly mother who is the actual owner, has every right to seek protection under the Illegal Dispossession Act, 2005. Counsel argued that the accused persons have unlawfully occupied the disputed land without any legal authority and that the record of rights clearly establishes the ownership of the complainant's

mother in the revenue records. It was contended that the learned trial court correctly exercised its jurisdiction in taking cognizance after examining the documentary evidence and reports submitted by the revenue officials, which prima facie established a case of illegal dispossession. Counsel further argued that the interim relief granted under Section 7 was justified to prevent any further deterioration of the situation and to protect the rights of the actual owner.

6. Mr. Mansoor Ahmed Shaikh, learned Deputy Prosecutor General appearing for the State, supported both the cognizance order and the interim possession order, submitting that the learned trial court had sufficient material before it to conclude that a prima facie case was established against the accused persons under the provisions of the Illegal Dispossession Act, 2005. The learned DPG contended that the reports of the Mukhtiarkar Revenue Moro and the inquiry conducted by the concerned authorities provided adequate foundation for the trial court to exercise its jurisdiction under the Act. It was submitted that the interim relief under Section 7 was properly granted as the circumstances warranted immediate intervention to prevent perpetuation of the alleged illegal occupation.

7. Upon thorough examination of the facts and circumstances of this case, coupled with careful consideration of the legal principles governing the Illegal Dispossession Act, 2005, several critical aspects emerge that require judicial determination. The fundamental question centers around the maintainability of the complaint filed by Mst. Khalida Begum when the disputed property admittedly stands recorded in the

name of her mother, Mst. Zaib-un-Nisa, who remains alive and has not been shown to have authorized these proceedings through any legal instrument or process. However, the complainant's assertion that she was looking after the disputed property due to the old age of her parents, coupled with the fact that she was allegedly in possession and cultivation of the land through her Hari/peasant, creates a factual matrix that requires careful legal analysis. The legal framework established by the Superior Courts of Pakistan consistently emphasizes that the Illegal Dispossession Act, 2005, while being remedial legislation designed to provide speedy relief to victims of illegal dispossession, cannot be invoked without satisfying the fundamental requirements prescribed by the statute. The Honorable Supreme Court of Pakistan in *Mumtaz Hussain vs. Dr. Nasir Khan and others* (2010 SCMR 1254) has clarified that while the remedy under the Act is not restricted solely to cases involving professional land grabbers, the essential elements of lawful possession and unlawful dispossession must be clearly established. The Court has consistently held that anyone found committing the offence described in Section 3 would be amenable to prosecution under the provisions of the Act, but this does not dispense with the procedural and substantive requirements for maintainability.

8. Furthermore, the doctrine of representation in legal proceedings, particularly in matters involving property rights, requires either express authorization or circumstances that legally justify such representation. In the present case, while the complainant may have been looking after the property due to her parents' old age, this factual assertion alone does not automatically confer upon her the legal standing to invoke

the special jurisdiction under the Illegal Dispossession Act without proper legal authorization from the actual owner. However, the revenue records and reports submitted by the Mukhtiarkar Revenue Moro indicate that someone was indeed in cultivating possession of the disputed land, and according to local inhabitants, it was Ayaz Mallah who had cultivated the Barseem fodder crop, though he possessed no title documents.

9. The complexity of this matter is further compounded by the fact that the disputed property appears to be joint property among co-sharers, with multiple transactions recorded in the revenue records over the years. The Mukhtiarkar's compliance report dated 31st July, 2025 reveals a series of transactions involving Survey No. 410, including entries showing that Abdul Sattar, one of the applicants, had purchased 50 Paisa area through a registered sale deed, and subsequently, this share had passed through several hands via registered transactions. This factual matrix suggests that the matter involves complex questions of title and possession that may be better suited for determination through regular civil proceedings rather than the summary procedure under the Illegal Dispossession Act.

10. Nevertheless, the fundamental principle that governs the jurisdiction under the Illegal Dispossession Act is the establishment of prima facie unlawful dispossession of a person who was in lawful possession of the property. The learned trial court, after examining the reports of the revenue authorities and conducting the prescribed inquiry, formed the opinion that prima facie case was established against the applicants. The Mukhtiarkar's report specifically indicates that Ayaz

Mallah was found in cultivating possession without any title documents, while the record of rights shows entries in favor of the complainant's mother. These findings, when viewed in totality, provide a reasonable basis for the trial court's conclusion that there was sufficient material to take cognizance under the Act. Regarding the application under Section 7 of the Illegal Dispossession Act, 2005, the provision empowers the court to grant interim relief where it is satisfied that a person has been prima facie unlawfully dispossessed without lawful authority. The learned Additional Sessions Judge, Moro, after considering the reports and evidence before the court, concluded that the complainant had succeeded in making out a prima facie case of unlawful dispossession, which justified the grant of interim possession pending final adjudication. The court's reasoning that the balance of convenience lay in favor of the complainant, and that denial of interim possession would perpetuate the alleged illegal occupation, reflects a proper application of the discretionary power under Section 7 *ibid*.

11. The legal precedent established by this Court consistently demonstrates that the revisional jurisdiction under Sections 435 and 439-A of the Criminal Procedure Code is discretionary and is exercised only when the lower court has acted without jurisdiction, with material irregularity, or when there has been a manifest miscarriage of justice. The scope of interference in revisional jurisdiction is limited, and the superior court does not act as an appellate court to re-examine the evidence or substitute its own findings for those of the trial court unless there are compelling reasons to do so.

12. In the present case, while the applicants have raised legitimate concerns regarding the complainant's locus standi and the complex nature of the property ownership, the learned trial court's decision to take cognizance and grant interim relief appears to be based on material available on record and follows the procedural requirements prescribed under the Illegal Dispossession Act, 2005. The reports of the Mukhtiarkar Revenue, the inquiry conducted, and the documentary evidence examined by the trial court provide a reasonable foundation for the impugned orders. The question of ultimate title and the complainant's authority to represent her mother are matters that can be properly adjudicated during the trial proceedings, where full evidence can be led and examined. After careful consideration of all the arguments advanced by learned counsel for the parties, the documentary evidence on record, the applicable legal principles, and the scope of revisional jurisdiction, this Court finds that the impugned orders do not suffer from jurisdictional defects or material irregularities that would warrant interference in exercise of revisional powers. The learned Additional Sessions Judge, Moro, appears to have acted within the bounds of his jurisdiction and in accordance with the procedure prescribed under the Illegal Dispossession Act, 2005. While the questions raised by the applicants regarding maintainability and locus standi are substantial, these are matters that require determination on the basis of full evidence during trial proceedings rather than being conclusively decided at the preliminary stage of cognizance and interim relief.

13. The reports submitted by the Revenue authorities, the inquiry conducted, and the prima facie material available on record provided

sufficient foundation for the trial court to exercise jurisdiction under the Illegal Dispossession Act, 2005. The grant of interim relief under Section 7 appears to be justified in the circumstances of the case, particularly considering the need to maintain status quo pending final determination of the rights of the parties. The applicants' remedies lie in defending the case on merits during trial proceedings, where they can establish their title and challenge the complainant's case through proper evidence.

14. Consequently, after thorough examination of the record and consideration of all relevant factors, this Criminal Revision Application is hereby dismissed. The impugned orders dated 13th May 2025 and 22nd August 2025 passed by the learned Additional Sessions Judge, Moro, in Illegal Dispossession Complaint No.35 of 2025 are upheld and maintained. The learned trial court shall proceed with the case on its merits in accordance with law and decide the same expeditiously as envisaged under Section 5 of the Illegal Dispossession Act, 2005. The interim possession granted to the complainant under Section 7 of the Act shall continue pending final adjudication of the matter.

J U D G E