

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Cr. Appeal No.S-06 of 2023
Sheral Shah and others Versus The State and another

<u>DATE</u>	<u>ORDER WITH SIGNATURE OF HON'BLE JUDGE</u>
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For hearing of main case.

Appellants:	1. Sheral Shah son of Soomar Shah 2. Muneer Shah son of Soomar Shah 3. Mukhtiar Shah son of Miskeen Shah 4. Yaseen Shah son of Ilyas Shah 5. Miskeen Shah son of Ilyas Shah 6. Mashooque Shah son of Peeral Shah Through Mr. Azizullah Buriro, Advocate
Complainant	Tarique Ali Khoso Through Mr. Zeb Hussain Pathan, Advocate
The State:	Mr. Sardar Ali Solangi, Deputy Prosecutor General.
Date of Hearing:	15.09.2025
Date of Order:	15.09.2025

JUDGMENT

Nisar Ahmed Bhanbhro, J. The appellants every one namely 1) Sheral Shah son of Soomar Shah, 2) Muneer Shah son of Soomar Shah, 3) Mukhtiar Shah son of Miskeen Shah, 4) Yaseen Shah son of Ilyas Shah, 5) Miskeen Shah son of Ilyas Shah, and 6) Mashooque Shah son of Peeral Shah were tried by the Court of learned Ist Additional Sessions Judge Mehar **(trial court)** in sessions case No 447 of 2021 “Re Tarique Ali Khoso Versus Sheral Shah and others”. The Appellants were burdened with charge of the offence punishable under section 3 of the Illegal Dissoession Act 2005 (IDA, 2005). They were convicted and sentenced to suffer R.I for One Year, with directions to handover the vacant possession of the land to Irrigation Department vide judgment dated 12.01.2023 **(impugned judgment)**.

2. The facts succinctly stated, leading to file the instant criminal appeal against conviction are that the Respondent No 2 / Complainant Tarique Ali Khoso filed complaint under section 3 and 4 of the IDA 2005 before the Court of Learned District and Sessions Judge Dadu, alleging therein that the complainant was owner of the landed property, admeasuring 07-29 acres, bearing survey numbers 2111 and 212 of Deh Nau Goth Taluka Mehar. He maintained that entry in the record of rights stood mutated in the name of his father. Complainant alleged that the accused had occupied the land admeasuring 2-00 acres from survey number 211 and 212 and constructed their Katcha huts there on 15.05.2021. The complainant set law into motion by lodging complaint seeking retrieval of possession and conviction of the appellants/ accused.

3. During Preliminary Enquiry Learned trial court called reports from the Mukhtiarkar Revenue Mehar and Station House Officer concerned to investigate the claim of the complainant. From the reports, it transpired that the accused were residing in the houses constructed in the Muhag of Survey No.211 and 212. The cognizance of the case was taken vide order dated 12-10-2021 and bailable warrants in the sum of Rs.50,000/- were issued against accused, pursuant to bailable warrants the appellants surrendered before Learned Trial Court to stand trial.

4. Learned Trial Court supplied set of case papers were to the appellants / accused, they were indicted for the charge to which they pleaded not guilty and claimed trial.

5. At trial, the complainant examined himself, witnesses Asghar Ali, Tapedar Buxal and ASI Muhram Ali, thereafter closed the evidence. The Statement of accused under section 342 CrPC was recorded, in which they denied charge, however, did not opt to examine themselves on oath or any witness in defense.

6. Learned Trial Court after hearing the parties through their Counsel convicted the appellants and sentenced them to suffer Rigorous Imprisonment for One Year.

7. Mr. Azizullah Buriro Learned Counsel for the Appellants argued that the Appellants were residing in the alleged property since last more than eight decades. He contended that the charge of dispossession was not proved. Learned Trial Court failed to appreciate the prosecution evidence, there was serious misreading and non-reading of the evidence on record. He argued that the prosecution was burdened to prove case beyond shadow of doubt which they failed. He argued that the findings of Learned Trial Court were self-contradictory, as observed that the complainant was not dispossessed,

therefore the appellants earned the right of acquittal. He prayed for acquittal of the appellants.

8. Mr. Zeb Hussain Pathan Learned Counsel for the Complainant argued that prosecution proved its case beyond shadow of reasonable doubt and accused were rightly convicted of the charge. He prayed for dismissal of the appeal.

9. Mr. Sardar Ali Solangi Learned Deputy Prosecutor General supported the impugned judgment on the ground that it was proved beyond shadow of doubt that the appellants had occupied government land and constructed the houses thereon. He prayed for dismissal of the appeal.

10. Reappraisal of the evidence revealed that the PW1 Complainant Tarique Ali, PW2 witness Asghar Ali deposed in evidence that the Tarique Ali was the owner of the landed property survey number 211 and 212 of Deh Nau Goth. He was dispossessed from the property by the accused/appellants on 15.05.2021. PW3 Tapedar Buxal in his evidence, denied the case of complainant and deposed that the accused had constructed houses in the muhag of survey number 211 and 212. The evidence of PW3 Tapedar Buxal revealed that the Petitioner had constructed houses over irrigation land and offence of dispossession was not committed. Learned Trial Court on appraisal of evidence found appellants guilty of the charge. In para No 13 of the judgment Learned Trial Court observed as under:

“13. The complainant has proved the case against the accused to the extent that the houses of accused are constructed in Muhag of his Agricultural land bearing survey numbers 211 and 212.”

11. This finding of the fact by Learned Trial Court leads to an irresistible conclusion that the Complainant was not dispossessed. It is pertinent to mention that Learned Trial Court observed in concluding Para No.19 of the Judgment that complainant cannot be allowed to control the area of irrigation land under the possession of appellants, evidencing that appellants did not dispossess the complainant as alleged by him. Para 19 of the judgment reads as follows:

“19. Further it has been established that the accused have occupied that Government land belongs to Irrigation Department which land comes under Muhag of S. Nos.211 and 212 situated in Deh Nau Goth was illegally dispossessed and the property was grabbed in contravention of section 3,

of illegal Dispossession Act, 2005, therefore, accused persons are directed to restore the possession of the property in favor of Irrigation Department. It is directed, the applicants to get measured S. Nos.211 and 212 and after measurement if any area comes under occupation same will be vacated and applicant/complainant is not allowed to control the area of Irrigation Department under his possession in the name of Muhag of his agricultural land. In case the accused fail to restore possession the SHO P.S Mehar is duty bound to provide required assistance to applicant as well as Irrigation Authority for restoration of possession of the property in favor of Irrigation department”.

12. IDA, 2005 is a special legislation aimed to safeguard lawful owners and occupiers of immovable properties from being unlawfully or forcibly deprived of possessions. IDA 2005 specifies the category of persons who are the owners or occupier of the immoveable property and were dispossessed of the property except in accordance with law competent to approach the court seeking relief of retrieval of possession and conviction of the perpetrators. "Occupier" and "Owner" for the purpose of applicability of the provisions of the IDA, 2005, are defined by clauses (c) and (d) respectively of Section 2, which reads as under-

"2(c) "occupier" means the person who is in lawful possession of a property;

"2(d) "Owner" means the person, actually owns the property at the time of his dispossession, otherwise than through a process of law."

The definition clause makes it crystal clear that any person who is lawful owner or lawful occupier of the property and he has been illegally dispossessed can bring a complaint under the provisions of IDA, 2005.

13. Further IDA 2005, is enacted to protect the lawful owners and occupiers of immovable properties from their illegal or forcible dispossession at the hands of property grabbers. Section 3 of IDA 2005, provides that 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 owners or occupier of such property and in case of contravention, the punishment is provided under subsections (2) and (3), as the case may be. Section 3 reads 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 owners 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 provision of section 544A of the Code.

[(3) Whoever forcibly and wrongfully dispossesses any owner or occupier of any property and his act does not fall within sub-section (1), shall be punished with imprisonment which may extend to three years or with fine or with both, in addition to any other punishment to which he may be liable under any other law for the time being in force. The person dispossessed shall also be compensated in accordance with provisions of section 544A of the Code.

14. Perusal of the above provision of law made it vivid and crystal clear that to establish the charge of an offence under section 3 of the IDA 2005, the aggrieved person has to prove beyond shadow of the doubt that he was lawful owner or occupier of the property and was disposed illegally. IDA 2005, empowers the Court seized of the matter to investigate the complaint of dispossession in terms of Section 5, which envisaged that upon a complaint, the Court may direct the officer-in-charge of a police station to investigate and complete the investigation and forward the same within fifteen days to the Court, Section 5 reads as under:

5. Investigation and procedure. *(1) Upon a complaint the Court may direct the officer-in-charge of a police station to investigate and complete the investigation and forward the same within fifteen days to the Court: Provided the Court may extend the time within which such report is to be forwarded in case where good reasons are shown for not doing so within the time specified in this sub-section 1*

[Provided further that whenever a local inquiry is necessary for the purpose of this Act, the Court may direct a Magistrate or a revenue officer in the district to make inquiry and submit report within a period as may be specified by the Court. The report of the Magistrate or revenue officer, as the case may be, shall be construed as evidence in the case.]

(2) On taking cognizance of a case, the Court shall proceed with the trial from day to day and shall decide the case within sixty days and for any delay, sufficient reasons shall be recorded.

(3) The Court shall not adjourn the trial for any purpose unless such adjournment is, in its opinion, necessary in the interest of justice and no adjournment shall in any case be granted for more than seven days.

[(4) On conclusion of the trial, if the complaint is found to be false, frivolous or vexatious, the Court may award compensatory cost to the person complained against which may extend to five hundred thousand rupees

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15. The above provision of law articulated that on taking cognizance of a case, the Court shall proceed with the trial from day to day and shall decide the case within sixty days and for any delay, sufficient reasons shall be recorded, with a further rider that on conclusion of the trial, if the complaint is found to be false, frivolous or vexatious, the Court may award compensatory cost to the person complained against which may extend to five hundred thousand rupees.

16. On institution of present complaint, an investigation was conducted by Learned Trial Court and reports from the concerned Mukhtiarkar and SHO of Police Station were called. The inquiry reports controverted the allegations of complainant. It came on record during investigation stage that the convicts/appellants had not dispossessed the complainant from Survey No.211 and 212 but they were residing there since long and had constructed houses in the muhag of survey numbers 211 and 212.

17. During the proceedings in the instant appeal, this Court called for the fresh report from Mukhtiarkar Mehar. In its report Mukhtiarkar Mehar disclosed that there was an old village consisting of 40 houses in the muhag of survey numbers 211 and 212 and hundreds of the people including appellants were residing in the said village.

18. It is further noticed from the record that no witness from the irrigation office was examined before trial court to say that the appellants had occupied any property owned by the Irrigation Department. Since the appellants were residing in the disputed property, as per the evidence of the Tapedar and report of the Mukhtiarkar for last about 80 years. If the irrigation department lawfully owned the lands under possession of the Appellants, they can get it evacuated by adopting the due process of law envisaged under Sindh Public Property (Removal of Encroachment) Act, 2011.

19. The reappraisal of the evidence on record revealed that the Complainant failed to discharge its burden of proving that he was lawful owner of the property under possession of the appellants, further, that he was dispossessed from the property forcibly

and without due course of law. On the contrary sufficient evidence was available on record to say that the Appellants were in possession of the property since last more than 80 years and there was a village comprising of more than 40 houses, but complainant for personal grudge and to satiate his thirst of evacuation of the appellants filed the vexatious complaint before Learned Trial Court. Complainant did not fall within the definition of the occupier and owner articulated under section 2 of the IDA 2005, his complaint was not tenable under the law.

20. This view finds support from the dictum laid down by Honorable Supreme Court of Pakistan in the case of Niaz Ahmed and another Versus Aijaz Ahmed and others reported as P L D 2024 Supreme Court 1152, wherein it is held that:

7. It is settled principle of law that in order to make out a case under sections 3 and 4 of the IDA, 2005, complainant has to prima facie establish before the court that he is the lawful owner or was the occupier of the subject property; that accused had entered into or upon the said property without having any lawful authority; that the accused had done so with the intention to dispossess or to grab or to control or to occupy the said property.

21. It is an axiomatic principle of law that benefit of doubt if any arising out of the prosecution case must be resolved in favor of the accused not as a matter of grace but as a matter of right. Multiple circumstances were not necessary to bring a case within the ambit of doubt, single circumstances creating reasonable doubt in the prudent mind was sufficient to discredit the prosecution story.

22. For what has been discussed hereinabove, the prosecution (complainant) has failed to prove its case against the appellants beyond shadow of reasonable doubt. Consequently; this appeal is allowed, impugned judgment dated 12.01.2023 passed by Learned Trial Court in sessions case No 447 of 2021 “Re Tarique Ali Khoso Versus Sheral Shah and others” for the offence punishable under section 3 of the Illegal Dispossession Act 2005. is hereby set aside. The appellants every one namely 1) Sheral Shah son of Soomar Shah, 2) Muneer Shah son of Soomar Shah, 3) Mukhtiar Shah son of Miskeen Shah, 4) Yaseen Shah son of Ilyas Shah 5) Miskeen Shah son of Ilyas Shah and 6) Mashooque Shah son of Peeral Shah are acquitted of the charge.

23. The appellants are present on bail, their bail bonds cancelled and sureties are discharged. Office to send copy of the judgment to Learned Trial Court for perusal and compliance.

JUDGE

Asghar Altaf/P.A
Larkana
Approved for reporting
15.09.2025