

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 233 of 2024

Appellant : Saleem Akhtar through Mr. Ayaz Ali, Advocate.
Respondents No.1 to 4: Mureed Hussain & others through
Mr. Muhammad Akbar Awan, Advocate.
Respondent No.5 : The State through Mr. Muhammad Noonari,
D.P.G. Sindh
Date of Hearing : 01.12.2025.
Date of Order : 01.12.2025.

JUDGMENT

TASNEEM SULTANA, J.— Through this Criminal Appeal, the appellant namely, Saleem Akhtar has assailed the judgment dated 23.02.2024, passed by the learned Additional Sessions Judge-II, Karachi West (Trial Court), in I. D. A. Complaint No.73 of 2019 filed under Section 3,4,7&8 of the Illegal Dispossession Act, 2005 (“the Act”), whereby respondents No.1 to 4 were acquitted under Section 265-H(i) Cr.P.C., by extending benefit of doubt.

2. Brief facts of the case are that the appellant/complainant is claiming ownership of House No.984, Block-5, Main Gali, Madina Masjid, Gulshan Sikandarabad, Karachi. According to complainant, he purchased the said property along with structure from one Imtiaz through a sale agreement dated 04.11.2013 against total sale consideration of Rs.5,50,000/-. Thereafter, the appellant made additions, renovations, and improvements to the property, spending substantial amounts, and started residing therein with his family. The appellant alleged that he obtained electricity and Sui Gas connections in his own name as well as in his spouse’s name (Gulshan Bibi), and his wife’s CNIC dated 29.12.2016 reflected the subject property as their address, demonstrating their possession. It is further alleged that the respondents/accused Nos.1 to 4 are notorious criminals and professional land grabbers who have illegally occupied numerous plots/houses in the locality. The appellant alleged that respondent No.1 fabricated documents and that respondent No.2 filed Cr. Misc. Application No.155/2014, which was dismissed on 26.02.2014, and Direct Complaint No.11/2014, which was withdrawn. Due to continuous harassment and threats, the appellant’s wife filed Cr. Petition No.189/2014, which was allowed on 07.04.2014, directing the SHO to provide legal protection. When these efforts failed, respondent No.1 filed Civil Suit No.1446/2014 for declaration, possession, mesne profits,

and permanent injunction against the appellant and others. After recording evidence, the learned Senior Civil Judge-IX, Karachi West dismissed the suit vide judgment dated 31.01.2018. The appellant further alleged that he rented out the property to one Bashir Ahmed son of Abdul Aziz, and intimation was given to the SHO under the Sindh Rented Premises Ordinance, 2015. On 04.02.2018 at 08:30 AM, when the tenant had vacated the premises, the respondents/accused Nos.1 to 4 along with companions forcibly entered the house and illegally occupied it. The appellant approached the SP Keamari and subsequently filed Constitutional Petition No. D-8909/2018 before this Court, which was disposed of with directions to seek appropriate remedy before the appropriate forum. Consequently, the present complaint was filed.

3. Upon receipt of the complaint and in pursuance of the directions issued by the learned trial Court, DSP Muhammad Azam Baloch, SDPO Frere Sub-Division, conducted an inquiry and submitted a detailed report after recording statements of the complainant, accused persons as well as other relevant witnesses. The inquiry officer, inter alia, reported that the locality of Gulshan-e-Sikandarabad is situated on land owned by KPT (Karachi Port Trust), which, according to the inquiry, had been subjected to illegal occupation by land grabbers who allegedly parcelled out and sold portions thereof to different individuals through stamp paper transactions; that property/House No. 984 was stated to have been purchased by the complainant Saleem Akhtar from one Imtiaz, who allegedly filled the land and transferred the same through sale receipt/stamp paper agreement; that the complainant thereafter constructed a structure comprising a room and shop on Plot No. 984 and resided therein with his family, in support whereof utility bills and CNIC of his spouse bearing the said address were produced; that subsequently the complainant rented out the premises to Bashir Baba through a rent agreement dated 10.10.2016, who remained in occupation for about three years; and that on 04.02.2018 at about 08:30 AM, in the absence of the tenant, the respondents namely Mureed Hussain, Sultan Ahmed, Muhammad Asif and Mst. Kulsoom Bibi allegedly broke open the locks and took forcible possession of the house and shop in the presence of eyewitnesses, whereupon FIR No. 120/2018 under Sections 147/148/149/324/337-A(i)/34 P.P.C. was registered at Police Station Jackson on the complaint of Saleem Akhtar.

4. Based on the inquiry report, the learned trial Court took cognizance on 15.01.2020 and ordered the case to be brought on regular file. The respondents appeared and furnished surety. After completing codal

formalities and supplying case papers, formal charge was framed on 24.09.2020, to which the accused pleaded not guilty and claimed trial.

5. The prosecution/complainant examined four witnesses PW-1: Saleem Akhtar (complainant) who produced sale agreement (Ex.4/A), Sui gas bill (Ex.4/B), electricity bill (Ex.4/C), and various certified court documents (Ex.4/D), PW-2: Imtiaz son of Wazir (vendor), PW-3: Muhammad Jamsheed son of Abdul Razzaq (witness), PW-4: Bashir Ahmed son of Abdul Aziz (tenant).

6. The accused persons in their statements under Section 342 Cr.P.C., denied the allegations and claimed innocence, stating they had been falsely implicated. After hearing arguments and examining the evidence, the learned trial Court acquitted the accused persons vide judgment dated 23.02.2024, which is challenged in this appeal.

7. Learned counsel for the appellant has mainly contended that the learned trial Court erred in law and on facts by acquitting the accused persons despite overwhelming evidence of illegal dispossession; that the inquiry report clearly established that the accused persons forcibly entered and occupied the appellant's property on 04.02.2018 in the presence of eyewitnesses; that the appellant proved his possession through utility bills, CNIC of his wife, rent agreement, and testimony of witnesses including the tenant Bashir Ahmed; that the civil suit filed by respondent No.1 was dismissed on merits, confirming the appellant's rightful possession; that minor discrepancies regarding the precise plot number or witnesses' signatures on the sale agreement are immaterial when the fact of illegal dispossession is otherwise established; that under the Illegal Dispossession Act, 2005, the trial court's jurisdiction is limited to determining whether illegal dispossession occurred or otherwise and not to adjudicate title or ownership in detail; that the learned trial Court erred in placing undue emphasis on title documents when possession was the primary issue; that the impugned judgment is against the weight of evidence and applicable law, the impugned judgment is liable to be set aside.

8. The learned counsel for the respondents/accused persons duly assisted by learned A.P.G. has supported the impugned judgment and submitted that the appellant has failed to prove ownership or lawful possession of the subject property; that the sale agreement is defective, bearing no plot number and no proper attestation by witnesses; that the appellant has taken contradictory stands claiming purchase from a private person in this complaint whereas he claimed purchase from Government of Sindh in the civil suit; that the appellant admitted that Plot No. 984 does not

exist in government records; that no title document was produced by appellant establishing his right over the property; that the ingredients of the Illegal Dispossession Act were not established beyond reasonable doubt; the learned trial Court correctly appreciated the evidence and rightly acquitted the accused persons, therefore, instant appeal merits no consideration and it does not call for interference by this Court.

9. Heard. Record perused.

10. The Illegal Dispossession Act, 2005 (“the Act”) is a special enactment designed to provide speedy remedy against illegal dispossession from immovable property. The essential ingredients required for invoking relevant provision under the Act are:

- (i) That the complainant is the actual owner (or occupier i.e. in lawful possession) of the immovable property in question.
- (ii) That the accused has entered or upon the said property.
- (iii) That the entry of the accused into or upon the said property is without any lawful authority; and
- (iv) That the accused has done so with the intention to dispossess the complainant, to grab or to control or to occupy the property.

To invoke the provisions of Illegal Dispossession Act, 2005, it is obligatory for the complainant to make out all abovesaid ingredients or elements. In this connection, reference may be made to the case of **Mst. NASEEM AZIZ Vs. The STATE and 7 others**, reported in 2016 P Cr. L J 786 [Sindh], wherein it was held as under:

“On the contrary it is pre-requisite of the Act, 2005 that all the ingredients or elements must be made out before it is established that the offence has been committed by the accused person. If even one of the ingredients or elements is missing, then no offence is made-out and in this context, I may refer to the decision as appeared in 2010 P Cr. L J P.1046.”

Now, it is to be adjudged as to whether the appellant / complainant has been succeeded in making out all the aforesaid ingredients.

As regards the first ingredient, it may be observed that in subsection (1) to Section 3 of the Illegal Dispossession Act, 2005, protection has been provided to the “**owner**” and “**occupier**”, against illegal and forcible dispossession. Clause (c) of Section 2 of the Act, 2005 defines “**occupier**” to be “*person who is in lawful possession of a property*”. The claim of the

appellant / complainant in instant case is that he being **lawful owner**, could not be illegally and forcibly dispossessed by the respondents.

11. The core question involved in the appeal in hand is whether the learned trial Court was justified in acquitting the accused persons on the ground that the complainant failed to establish the ingredients of illegal dispossession beyond reasonable doubt. It is to be seen whether the appellant established that he was in lawful possession of House No. 984 before the alleged illegal dispossession on 04.02.2018.

12. Perusal of the record reflects that, to substantiate his alleged possession, the appellant primarily relied upon a Sale Agreement dated 04.11.2013 (Ex. 4/A), purportedly evidencing purchase of the subject property from one Imtiaz for consideration of Rs.5,50,000/-. However, the said document is fraught with serious legal infirmities. It neither mentions any plot number nor contains a proper or identifiable description of the property. Furthermore, it does not bear the signatures of the alleged marginal witnesses, namely Yar Muhammad and Ali Mallah, as candidly admitted by the appellant during cross-examination, and remains an unregistered instrument executed merely on stamp paper without attestation or legal authentication. The appellant also produced utility bills, namely Sui Gas Bill (Ex. 4/B) and Electricity Bill (Ex. 4/C), in his own name as well as in the name of his spouse. While such documents may serve as indicative proof of residence, they do not constitute conclusive evidence of ownership or even lawful possession, particularly in circumstances where the very existence of the property in official government record is doubtful. Likewise, the CNIC of his wife reflecting the disputed address is merely corroborative of residence and does not establish lawful title or possessory rights. Additionally, the appellant placed reliance upon a Rent Agreement dated 10.10.2016 (Ex. 7) executed with Bashir Ahmed, suggesting that he had rented out the premises. However, the evidentiary value and legal validity of such tenancy arrangement is contingent upon the appellant first establishing his lawful entitlement to lease the property a foundational requirement which remains unproven in the present case.

13. Perusal of record further reveals that there are contradictory claims regarding purchase of the disputed property. The appellant admitted in cross-examination that he had filed Civil Suit No. 1510/2015 wherein appellant stated that he purchases the subject property from Government of Sindh, Board of Revenue, Land Utilization Department and had even annexed an allotment order in support thereof. This stance stands in direct conflict with his present claim of having purchased the same property from

a private individual, namely Imtiaz, through an unregistered sale agreement. A person cannot, in law or on fact, claim title to the same property from two distinct sources; such inherent inconsistency strikes at the very root of the appellant's credibility. Furthermore, the appellant conceded that Plot No. 984 does not exist in government records. He also failed to produce any site plan, map, or survey document to establish either the existence or demarcation of the disputed property. It is equally significant that the police inquiry report specifically records that the entire locality of Gulshan-e-Sikandarabad, Madina Masjid, Main Gali Block-5 is situated upon KPT (Karachi Port Trust) land, allegedly encroached upon by land grabbers who have been selling parcels through stamp papers to various persons. Such findings of the inquiry officer cast serious doubt upon the legitimacy of any private proprietary claim in the said area. Moreover, despite opportunity, the appellant did not produce any allotment order, registered sale deed, mutation entry, property tax receipt, or any other legally recognized title document to substantiate his lawful entitlement to the property. Even PW-2 Imtiaz, the alleged vendor, failed to produce any document of title demonstrating his ownership prior to the purported sale, thereby further weakening the appellant's claim.

14. Even otherwise, if the appellant had established some form of possession over the subject property, the pivotal question that still requires determination is whether he succeeded in proving his alleged illegal dispossession at the hands of the respondents/accused on 04.02.2018. The police inquiry report does, to some extent, lend support to the appellant's version inasmuch as it records that the respondents/accused allegedly occupied the property on the said date by breaking open the locks during the absence of the tenant. Statements of certain witnesses were also recorded by the inquiry officer to that effect. PW-4 Bashir Ahmed (tenant) deposed that he had taken the property on rent from the appellant and that during his visit to Punjab in connection with his daughter's marriage, the accused persons occupied the premises. However, a material inconsistency emerges from the record in that the respondents/accused persons, in their statements before the inquiry officer, referred to Plot No. 985, whereas the dispute in the present complaint pertains to Plot No. 984. This discrepancy creates serious ambiguity regarding the demarcation and identity of the property allegedly dispossessed whether the parties were, in fact, contesting the same property or adjoining parcels of land. Furthermore, the inquiry report also reflects that both sides have instituted civil litigation in different courts and have registered counter criminal cases against each other at Jackson Police Station, thereby indicating the existence of a protracted and multifaceted dispute wherein rival

claims over properties in the locality are being asserted. Such background circumstances dilute the conclusion of the allegation of unilateral illegal dispossession.

15. From the foregoing discussion, it emerges that the land/property forming the subject matter of the dispute falls within the domain of Karachi Port Trust (KPT). The material available on record indicates that the entire locality has been subjected to illegal encroachments, with parcels of land allegedly occupied and transferred through informal instruments by land grabbers. Admittedly, neither the appellant nor the respondents have produced any lawful allotment order, lease, or title document issued by KPT in support of their respective claims. It has further come on record that the property in question does not find existence in government record. The appellant's own mutually inconsistent assertions regarding the source of his alleged purchase further cast serious doubt upon the authenticity of his claim of title.

16. In such circumstances, it cannot be held that the appellant succeeded in establishing lawful possession to attract the protective umbrella of the Illegal Dispossession Act, 2005. At best, his status appears to be one among several unauthorized occupants in an area comprising disputed and illegal settlements over government land, unless and until his claim of ownership is conclusively adjudicated by a competent court of law. Where possession itself is prima facie unlawful or founded upon encroachment over public property, invocation of summary criminal proceedings may not be legally sustainable. The Illegal Dispossession Act is neither designed to legitimize illegal occupation of state land nor to resolve intricate disputes between rival unauthorized occupants. Its object is confined to providing expeditious relief in cases of manifestly illegal dispossession where the complainant's lawful possession stands established a prerequisite which is conspicuously lacking in the present case.

17. It is essential to understand the nature and scope of the Illegal Dispossession Act, 2005. This special legislation under Illegal Dispossession Act, 2005 was enacted to curb the menace of land grabbing and to provide expeditious remedy to people who are illegally dispossessed from their properties. In proceedings under the Illegal Dispossession Act, the court is not required to embark upon an elaborate inquiry into title or ownership. The primary focus is on possession and whether dispossession, if any, was illegal. Questions of title, if complex, fall within the domain of civil courts. However, complainant must demonstrate that he was in lawful possession, not necessarily by proving absolute ownership, but by showing

possession backed by some considerable claim of right which is lacking in the case in hand at this stage.

18. The crucial legal question that arises for consideration is whether a person, who himself lacks lawful title and is alleged to be in illegal occupation of government land, can invoke the protective jurisdiction of the Illegal Dispossession Act, 2005 against another alleged unauthorized occupant. The scheme and object of the Act do not extend protection to a trespasser or to one whose own possession is founded upon illegality. The possession contemplated for protection under the statute must be lawful in character either supported by colour of title or, at the very least, established through long, continuous and peaceful occupations not tainted by manifest illegality. Where both contesting parties are unauthorized occupants over government land and neither can demonstrate any lawful allotment, lease, or proprietary right, the remedy provided under the Illegal Dispossession Act, is not attracted in favor of either side. Disputes of such nature fall outside the ambit of the special statute and are required to be addressed either by the government authority vested with ownership and regulatory control of the land or through appropriate civil proceedings before a competent forum. Reliance is placed on the case of **BARKAT ALI and 2 others Vs. The STATE and another, 2025 P Cr. L J 41 [Sindh]**, it has been held that:

“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, this Illegal Dispossession Act, 2005 does not apply to run-of-the-mill cases of alleged dispossession from immovable properties by ordinary persons having no credence 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 for possession.”

19. Agreements, revenue record, or disputes arising out of competing claims over immovable property, particularly those rooted in an ongoing private contest regarding possession, fall outside the mischief sought to be remedied by the Illegal Dispossession Act, 2005. Furthermore, a complaint under the said special enactment is not maintainable where the question of possession of the relevant property is already sub judice or otherwise being regulated and adjudicated by a competent civil or revenue Court. Similarly, view was taken in the case of **Zahoor Ahmad and 5 others v. The State (PLD 2007 Lah. 231)** as well as **Muhammad Azeem and 3 Others Vs the State (2023 M L D 823 [Sindh])**.

20. It is also a settled principle of law that an appeal against acquittal has distinctive features and the approach to deal with the appeal against conviction is distinguishable from appeal against acquittal, because presumption of double innocence is attached in the latter case. An order of acquittal can only be interfered with when it is found on the face of it as capricious, perverse, arbitrary or foolish in nature, which are lacking in this case. Reliance is placed on *Inayatullah Butt v. Muhammad Javed etc.* (**PLD 2003 SC 563**), *Mst. Anwar Begum v. Akhtar Hussain alias Kaka and 2 others* (**2017 SCMR 1710**) and *State v. Abdul Khaliq and others* (**PLD 2011 SC 554**).

21. It is well settled principles of law that burden of proving the case is always upon the shoulders of prosecution and prosecution is bound to prove the case beyond shadow of a reasonable doubt, and if a single circumstance creates doubt in the case of prosecution it goes in favor of accused and the benefit of doubt shall be extended to the accused not as a matter of grace but as a matter of right as laid down by Honorable Supreme Court of Pakistan in case of *Tariq Pervaiz v. The State* (**1995 SCMR 1345**), *Muhammad Akram v. The State* (**2009 SCMR 230**) and *Muhammad Zafar and another v. Rustam and others* (**2017 SCMR 1639**).

22. After careful consideration of the evidence and applicable legal principles, I find that the learned trial Court has not committed error in acquitting the respondents/accused; the appellant has failed to establish his lawful possession over the subject property beyond reasonable doubt and the finding of the trial Court does not call for interference by this Court.

23. For the foregoing reasons, this Criminal Appeal was dismissed and impugned judgment dated 23.02.2024 passed by the learned Additional District & Sessions Judge-II, Karachi West in Direct Complaint No.73/2019 acquitting the respondents/accused Nos.1 to 4 under Section 265-H(i) Cr.P.C. read with Section 9 of the Illegal Dispossession Act, 2005 was maintained by short order dated 01.12.2025 and these are reasons thereof.

JUDGE