

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 763 OF 2024

Appellant : Riaz Uddin through Mr. Farhan-ul-Hassan Minhas, Advocate.

Respondent No.1 : Mohammad Ayaz through Mr. Maroof Hussain Hashmi, Advocate.

Respondet No.2 : The State, through Mr. Mohammad Noonari, D.P.G.

Date of Hearing : 09.12.2025

Date of announcement of Judgment : 25.02.2026

JUDGMENT

TASNEEM SULTANA-J:- Through this Criminal Appeal, the appellant/complainant has assailed the order dated 28-10-2024 passed by the learned Xth Additional Sessions Judge, Karachi East, (Trial Court)in Criminal Complaint No. 159/2024 under Sections 3, 4 & 7 of the Illegal Dispossession Act, 2005, (I.D.A) whereby the complaint filed by the appellant was dismissed and cognizance against the proposed accused persons was declined.

2. Briefly stated, the appellant/complainant asserts that he is lawful owner and in possession of House No. C-04, Korangi No. 1-1/2, measuring 480 square yards, on the basis of an agreement to sell dated 10-05-2005 allegedly executed in his favour, tracing title through previous transactions to one Ali Muhammad. It is his case that since purchase he remained in peaceful possession, raised construction, installed utility connections and resided therein along with his family. He alleged that on 18-07-2024 at about 11:30 p.m., the proposed accused persons, along with their associates, forcibly entered the premises, broke open the locks, trespassed and dispossessed him with intent to grab the property. A complaint under the Illegal Dispossession Act, 2005 was thereafter filed seeking prosecution of the accused and restoration of possession.

3. At the threshold of proceedings, the learned trial Court, in exercise of powers under Section 5(1) of the Illegal Dispossession Act, 2005, called for an investigation report from the Station House Officer, Police Station Zaman Town. The report so furnished reflected that the property in question had remained subject to prior disputes and litigations between the parties; that FIR No. 355/2021 had earlier been registered in respect of the same subject matter which was subsequently compromised; and that no material was found during

inquiry to prima facie establish the complainant's exclusive lawful possession over the disputed premises. Upon consideration of the said report and the material placed on record, the learned trial Court found no sufficient ground to proceed under the Act and dismissed the complaint, observing that the controversy appeared to be civil in nature.

4. Learned counsel for the appellant contended that the impugned order is contrary to law and facts; that the appellant had established his ownership and possession through documentary evidence; that forcible entry and dispossession were duly reported and supported by witnesses; that the respondents illegally occupied the property with malafide intention, therefore, the ingredients of the Illegal Dispossession Act, 2005 stood satisfied; that the learned trial Court misdirected itself in placing reliance upon the police report at the preliminary stage; that the complaint, on its face, disclosed commission of an offence under the Illegal Dispossession Act, 2005; that the question of lawful possession could not be conclusively determined without recording evidence; and that dismissal of the complaint without affording opportunity to substantiate the allegations amounted to premature termination of proceedings. It was argued that the material placed on record prima facie warranted cognizance under the Act.

5. Conversely, learned counsel for the respondents supported the impugned order and contended that the appellant failed to establish exclusive lawful possession so as to attract the penal provisions of the Illegal Dispossession Act, 2005; that the property in question had remained subject to prior disputes and litigations, thereby negating the element of settled possession; and that the controversy, in substance, is civil in nature for which appropriate remedy lies before the civil forum.

6. Learned D.P.G., while assisting the Court, also supported the impugned order and submitted that the learned trial Court, upon appraisal of the material available on record, rightly declined to take cognizance; that impugned order is well reasoned and calls for no interference by this Court.

7. Heard. Record perused.

8. The Illegal Dispossession Act, 2005 is a special enactment providing summary and speedy remedy against illegal and forcible dispossession from immovable property. For constituting an offence under Section 3 of the Act, the complainant is required to establish: (i) that he is the actual owner or occupier in lawful possession of the property; (ii) that the accused entered upon the property; (iii) that such entry was without lawful authority; and (iv) that such entry was with intent to dispossess, grab or control the property. It is well-settled that unless all the ingredients co-exist, no offence under the Act is

made out. In ***Mst. Naseem Aziz v. The State and others (2016 P Cr. L J 786 Sindh)***, it has been held that if even one ingredient is missing, the offence cannot be said to be established.

9. The foundational requirement, therefore, is lawful possession. The expression “occupier” under clause (c) of Section 2 of the Act means a person in lawful possession of the property. The protection of the Act extends to lawful owner or lawful occupier, and not to a person whose possession itself is doubtful, disputed or unsupported by cogent documentary title.

10. In the present case, the documents relied upon by the appellant consist primarily of agreements to sell and exchange letters tracing previous transactions. Admittedly, no registered conveyance deed stands in the name of the appellant. The initial documents themselves reflect that the land belongs to KDA. No mutation in favour of the appellant has been shown. The material produced consists of utility bills and a single bill of comparatively recent period, which by itself does not conclusively establish continuous lawful possession since 2005. The inquiry report also notes prior disputes and litigation regarding the same property.

11. It is also borne out from record that FIR No.355/2021 was earlier lodged between the parties and was compromised. The inquiry officer observed that the dispute between the parties over the subject property had been ongoing and that no unimpeachable proof of exclusive lawful possession was available. The learned trial Court, upon scrutiny of documents and report, found that the appellant failed to demonstrate that he was in settled lawful possession at the time of alleged incident.

12. The core question in this appeal is whether the learned trial Court was justified in declining cognizance on the premise that the appellant failed to establish the essential ingredients of the offence beyond reasonable doubt. It is to be examined whether prima facie lawful possession stood established.

13. Upon careful re-appraisal of the material, it appears that the claim of ownership rests on unregistered agreements. The land admittedly pertains to KDA and no registered title in favour of the appellant is forthcoming. In absence of documentary evidence showing transfer of title or lawful mutation, and in view of admitted prior disputes, the possession claimed by the appellant cannot be termed unequivocally lawful within the meaning of the Act. Where the very foundation of lawful possession is clouded by serious civil dispute and absence of registered title, invocation of the Illegal Dispossession Act, 2005 would not be warranted.

14. It is settled principle that the Act is not intended to resolve complicated questions of title nor to adjudicate civil disputes of ownership. Where the

dispute revolves around competing claims arising from agreements to sell and unregistered documents, the proper remedy lies before a competent civil Court. Criminal proceedings under the Act cannot be employed as substitute for civil adjudication. Reliance is placed on the case of **Syed Abdul Wahab Vs VIIIth Additional District and Session Judge, Karachi And 6 Others (2021 M L D 395 [Sindh])**, wherein it has been held that:

“Thus, the dispute between the parties over the subject property was bona fide civil dispute, which was already subjudice before this Court in different suits. It has been held by the Full Bench of the Lahore High Court, Lahore in the case of **Zahoor Ahmad and 5 others v. The State reported in PLD 2007 Lah. 231** that the Illegal Dispossession Act, 2005 has no application to cases of dispossession between co-owners and co-sharers and also that the said act is not relevant to bona fide civil disputes, which are already subjudice before civil or revenue Courts. It has also been declared by the Full Bench of the Lahore High Court, Lahore in that case that the Illegal Dispossession Act, 2005 was introduced in order to curb the activities of Qabza groups/property grabbers and land mafia. During the course of arguments, it has been conceded by the learned counsel for the appellant that no material is available with the appellant to establish that respondents belonged to any Qabza group or land mafia or that they had the credentials or antecedents of being property grabbers.

9. In the circumstances of this case mentioned above, I have entertained an irresistible impression that through filing of his complaint under the Illegal Dispossession Act, 2005, the appellant has tried to transform a bona fide civil dispute between the parties into a criminal case so as to bring the weight of criminal law and process to bear upon respondents in order to extract concessions from them. Such utilization of the criminal law and process by the appellant has been found by this Court to be an abuse of the process of law which cannot be allowed to be perpetuated.”

Similarly, reliance is placed on the case of **Waqar Ali and others Vs The State through Prosecutor/Advocate-General, Peshawar and Others (P L D 2011 Supreme Court 181)** honourable Supreme Court held that:

“...The power to direct an investigation under section 5 ibid is to be exercised judicially and not as an unconsidered or mechanical action undertaken on every complaint filed under the Act, regardless of the merits of the same. The purpose of the investigation under the aforesaid statute is to ascertain prima facie, the authenticity of what has been stated in the complaint. The complaint itself has to show that an offence cognizable by the Court has been committed by the accused person(s) named therein. In the present case, from the order of the learned trial Court dated 15-7-2009 it is obvious that the matter was sent to the police "on the lodging of the complaint". If the learned trial Court had gone through the complaint, in particular, paragraphs 3 and 4 thereof it would have become apparent to it that the dispute between the parties was not of a criminal nature, and as such cognizance was not required to be taken.”

15. The appellant has not been able to point out any patent illegality, misreading/non-reading of record, or jurisdictional defect in the impugned order warranting interference. In the above circumstances, I am of the considered view that the learned trial Court was justified in holding that the matter did not fall within the ambit of the Illegal Dispossession Act, 2005 and in declining to take cognizance against the proposed accused persons. Consequently, instant Criminal Appeal being devoid of merit is dismissed. The impugned order dated 28-10-;2024 is maintained.

JUDGE

Nadeem