

IN THE HIGH COURT OF SINDH KARACHI

*Criminal Miscellaneous Application No. S-741 of 2023.
(Muhammad Ali Saqib Vs Learned IIInd Additional Sessions Judge (East)
Karachi and others)*

DATE	ORDER WITH SIGNATURE OF JUDGES
<u>16.12.2025.</u>	Mr. Muhammad Bilal Rashid, Advocate, for Applicant. Mr. Aftab Hussain Soomro, Advocate for the Respondent No.02. Mr. Shoaib Safdar, Assistant Prosecutor General, Sindh

ORDER

Ali Haider 'Ada', J;-Through the instant Criminal Miscellaneous Application, the applicant has assailed the order dated 14.09.2023 passed by the learned Additional Sessions Judge-II, Karachi East, and has also questioned the proceedings in Criminal Complaint No. 129 of 2023, whereby a complaint under Section 3 of the Illegal Dispossession Act, 2005 was admitted to regular hearing and cognizance was taken for trial.

2. Briefly stated, the record reflects that Respondent No.02, being the complainant, instituted a complaint under Section 3 of the Illegal Dispossession Act alleging that he is the lawful and documented owner of Flat No. 22, Ground Floor, Hina Terrace, measuring 660 square feet, situated in Gulshan-e-Iqbal, Karachi. The applicant was cited as an accused on the assertion that he posed himself as a police official, committed criminal trespass by breaking the locks of the flat, and forcibly occupied the property in question. It was further stated that Respondent No.02 resides mostly in Islamabad, and the occurrence was initially conveyed to him by his brother-in-law, Ilyas. Upon receiving the information, Respondent No.02 visited Karachi and learnt that, instead of vacating the premises, the applicant instituted a civil suit for specific performance on the basis of an alleged agreement to sell. Two civil suits, bearing Nos. 1299 of 2023 and 988 of 2023, were filed in this regard. According to the complainant, both suits were founded on

forged documents. On that basis, the complaint was entertained and admitted to trial, which is now under challenge.

3. Learned counsel for the applicant argued that proceedings under the Illegal Dispossession Act are not maintainable where civil litigation regarding the same property is already pending. He submitted that an agreement to sell was initially executed between one Mst. Kiran and Muhammad Rasheed concerning the subject property, and Muhammad Rasheed thereafter transferred his rights to the applicant. According to him, the applicant entered into possession through Muhammad Rasheed, and therefore, the allegation of illegal dispossession is misconceived. He further submitted that Civil Suit No. 1299 of 2023 for specific performance is pending against Muhammad Rasheed, Mst. Kiran and Respondent No.02, and that Civil Suit No. 988 of 2023 is also pending against Muhammad Rasheed and one Mohsin regarding the same property. Reliance was placed upon the cases reported as PLD 2016 SC 769, 2010 SCMR 1254, and 2009 SCMR 1066.

4. Conversely, learned counsel for Respondent No.02 submitted that the stance taken by the applicant is wholly misconceived, and the applicant has approached this Court with unclean hands. He pointed out that neither of the civil suits relied upon by the applicant is pending. Civil Suit No. 1299 of 2023 was dismissed on 23.05.2024, whereas Civil Suit No. 988 of 2023 was dismissed on 27.01.2024. He submitted that while seeking interim relief before this Court on 23.07.2024, the applicant suppressed these material facts and insisted that both civil suits were still pending, on which basis interim protection was granted. According to him, such conduct amounts to a clear attempt to mislead the Court. It was also asserted that the applicant is a police officer involved in illegal occupation of properties through forged documents, and that neither Mst. Kiran nor Muhammad Rasheed had any lawful right, title or interest in the property, nor was there any genuine transaction between them. Learned counsel submitted that the matter before the trial Court had reached the stage of final hearing and the statement of the accused had already been recorded, but due to the

interim order granted in this matter, further proceedings were stalled. He therefore prayed for dismissal of the application.

5. Learned Assistant Prosecutor General adopted the submissions of Respondent No.02 and supported the impugned order, submitting that the applicant has failed to show any ground for interference.

6. Heard and examined the available record.

7. First of all, there is no legal support for the proposition that proceedings under the Illegal Dispossession Act, 2005 are barred merely because a civil suit concerning the same property is pending adjudication. Where a statute creates civil liability as well as criminal consequences such as the Illegal Dispossession Act, a person may validly face both civil and criminal proceedings, each operating within its own sphere. These proceedings are independent in nature, and neither is a bar to the other. Once the ingredients of an offence under the Illegal Dispossession Act, 2005, are established against an accused, he cannot evade criminal liability on the pretext that civil litigation between the parties is pending. The pendency of a civil suit does not cover a person with protection from prosecution under special criminal legislation enacted to curb land grabbing and forcible dispossession.

8. The legal position is settled that, irrespective of any civil proceedings that may be pending before a competent Court, if the conduct complained of constitutes an offence under the Illegal Dispossession Act, proceedings under that Act are maintainable, and the accused may be tried in accordance with law. Reliance be placed on the case of *Shaikh Muhammad Naseem v. Mst. Farida Gul (2016 SCMR 1931)*, wherein the Hon'ble Supreme Court held that parallel civil proceedings do not bar the initiation or continuation of prosecution under the Illegal Dispossession Act, 2005.

9. Any person who is a lawful owner or lawful occupier of a property and has been illegally dispossessed may invoke the provisions of the Illegal Dispossession Act, 2005 by filing a complaint. To make out a *prima facie* case under Sections 3 and 4 of the Act, the complainant

must demonstrate before the Court that: (i) he is the lawful owner or was in lawful possession of the property in question; and (ii) the accused entered upon the property without lawful authority, with the intention to dispossess, grab, control, or otherwise occupy it. The applicability of the Illegal Dispossession Act, 2005 is not confined only to “qabza groups” or organized land-grabbers. The scope of the Act is sufficiently broad to include any unlawful occupant who takes possession without lawful entitlement. It is therefore not necessary for the complainant to prove that the accused belongs to a recognized qabza mafia; the determining factor is the illegality of the dispossession and the absence of lawful authority. Reliance be placed on *Niaz Ahmed and another v. Aijaz Ahmed and others (PLD 2024 SC 1152)*, wherein the Hon’ble Supreme Court affirmed that the Act covers all forms of unlawful dispossession, regardless of whether the accused falls within any alleged mafia or land-grabbing group.

10. It is an admitted position that both civil suits had already been dismissed prior to the grant of the stay in the present proceedings, yet the applicant deliberately concealed this material fact. A litigant who approached the Court with “unclean hands” cannot claim any equitable relief. The act of suppressing material facts to obtain a stay order amounts to a designed abuse of the process of law, and such conduct must be dealt with strictly. A person who secures relief through misrepresentation or concealment loses the right to invoke the jurisdiction of the Court, and such litigation deserves to be thrown out at any stage.

11. From the foregoing discussion, no legal ground has been made out to disturb the impugned order. Consequently, the instant Criminal Miscellaneous Application stands dismissed.

JUDGE