

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Rev. Appln. No. 03 of 2015

Date	Order with signature of Judge
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Date of hearing:- 3.3.2015.

Mr. Ghanshamdas Dherani, advocate for applicant.

Mr. Arshad Tayebally, advocate for respondents No. 1 to 3.

Ms. Seema Imtiaz, A.P.G.

ZAFAR AHMED RAJPUT, J :- Through the instant Criminal Revision Application, the applicant/ complainant has assailed the order dated 9.12.2014, passed by learned Sessions Judge, Malir Karachi, whereby the Criminal Complaint bearing No. 33/2014, filed by the applicant under section 3 of the Illegal Dispossession Act, 2005 was dismissed.

2. The brief facts giving rise to the present application are that the applicant filed the aforesaid Criminal Complaint, claiming therein that in the year 1969 his father Yar Muhammad Shah had purchased a piece of land, admeasuring one acre out of 2.38 acres, out of Survey No. 319, situated in Tapo and Deh Landhi (hereinafter referred to as the “subject property”) in auction against sum of Rs.92,478/-, such mutation was made in the record of rights. Since 1971 his father was in physical possession of the subject land and after his death the applicant being one of his legal heirs occupied the subject land and deployed private Chowkidars. It is further alleged that on

2.11.2014 the guards of M/s. Atlas Engineering Limited attempted to dispossess the applicant's Chowkidars to occupy the land illegally, however, due to resistance of Chowkidars they could not achieve their goal. The applicant made such complaint to SHO P.S. Shah Latif Town and also filed a civil Suit being No.330/2014 for permanent injunction against the respondent Nos. 1 to 3. It is case of the applicant that in the night of 11th and 12th November 2014, the respondents No. 1 to 3, and SHO P.S. Shah Latif Town alongwith his staff came at the site, they demolished the wall constructed by the applicant and by dispossessing his Chowkidars occupied the subject land illegally with the assistance of Police.

3. After admitting the said direct complaint, the learned trial Court referred the matter in terms of section 5(1) of Illegal Dispossession Act, 2005 to SHO P.S. Shah Latif Town for conducting enquiry and report. The SHO assigned the inquiry to SIP Muhammad Akbar of P.S. Shah Latif Town, who in his inquiry report has stated that the applicant instead of producing his Chowkidars named in the complaint for recording their statements had produced their unsigned written statement. The applicant in his statement has given the names of some other Chowkidars, who have not been named in the complaint. As per inquiry report, the representative of M/s. Atlas Engineering Limited in his statement has stated that the company has purchased the subject land from one Naseem Ahmed and obtained its physical possession in the month of June 2014. The Inquiry Officer has also obtained Sale Agreement

executed between M/s. Atlas Engineering Limited and Naseem Ahmed and title documents of the subject land issued in favour of Naseem Ahmed and produced the same alongwith inquiry report.

4. The learned trial Court, after hearing the counsel for the applicant/ complainant, dismissed the Criminal Complaint vide order dated 9.12.2014. The operative part of the order of learned trial Court is reproduced herein under:-

“The documents brought on record by the complainant and inquiry officer manifest a civil dispute between the parties. M/s. Atlas Engineering Limited as per inquiry report has purchased and occupied the subject land after payment of sale consideration to Naseem Ahmed, who possessed the title documents; as such no case under Illegal Dispossession Act, 2005 is made out. I, therefore, dismiss the complaint. However, the complainant would be at liberty to seek declaration of his ownership over the subject land through competent civil Court.”

This order has been impugned by the applicant/ complainant in this Criminal Revision Application.

5. The learned counsel for the applicant has contended that the Inquiry Officer, SIP Muhammad Akbar did not obtain verification report from the concerned Mukhtiarkar to ascertain the ownership of subject land and submitted an incomplete report. He has further contended that the applicant

claims his ownership on the basis of Deh Form-VII, issued in the year 1988 and 1992, showing mutation in favour of his deceased father Syed Yar Muhammad Shah, in respect of subject land. He has also contended that it is now well settled law that civil and criminal, both remedies can be availed by the parties at once but the learned trial Court wrongly observed that the document brought on record by the complainant and Inquiry Officer manifest a civil dispute between the parties. However, he has admitted that the applicant's land is situated in a joint survey i.e. Survey No. 319, and the same has not been demarcated, as such no sketch of land is available with applicant.

6. On the other hand, Mr. Arshad Tayebaly, learned counsel for the respondents No. 1 to 3 has contended that the subject land was purchased by M/s. Atlas Engineering Limited from one Naseem Ahmed and obtained its physical possession in the month of June, 2014. He has also contended that the Inquiry Officer has also recorded the statement of Naseem Ahmed, who confirmed the sale transaction of subject land in favour of M/s. Atlas Engineering Limited and he produced transfer order dated 30.6.1976, issued by Deputy Commissioner Settlement in his favour regarding subject land; N.O.C issued by the Mukhtiarkar concerned in favour of said Naseem Ahmed for the sale of subject land; schedule of payments and sketch of the subject land prepared on 6.2.1975. All these documents prima facie establish the ownership of Naseem Ahmed over the subject land and admittedly Naseem

Ahmed has sold the subject land and handed over its physical possession to M/s. Atlas Engineering Limited.

7. The learned APG has also supported the impugned order and stated that the same has been passed by the learned trial Court properly and legally and the same does not require any interference by this Court.

8. I have heard the learned counsel for applicant and the learned counsel for respondents No. 1 to 3 as well as learned APG and perused the record.

9. It appears from the perusal of record that the claim of applicant/complainant regarding the ownership and possession of the subject land is based upon Deh Form-VII, issued in the year 1988-1992, showing mutation in favour of one Syed Yar Muhammad Shah. The alleged Deh Form-VII is not a title document and after the death of said Yar Muhammad Shah, the record of rights has not been mutated in favour of his legal heirs till date. The applicant claims to be in possession of the subject land before being dispossessed, as alleged by him, but he has failed to produce any evidence in support of his claim. Even he did not produce the Chowkidars named in his complaint before the Inquiry Officer for recording their statements. Admittedly, the Survey No. 319 is a joint survey and the land claimed by the applicant as one of the successor of deceased Yar Muhammad Shah is un-demarcated. While the officials of M/s. Atlas Engineering Limited have not only produced title documents including sketch of the subject land but also produced their

predecessor Naseem Ahmed before the Inquiry Officer, who in his statement admitted the execution of sale agreement in favour of M/s. Atlas Engineering Limited and handing over the possession of the subject land in consequence thereof.

10. The Illegal Dispossession Act, 2005 was introduced in order to curb the activities of Qabza Group/ property grabbers and land mafia. In the instant case, no material is available with the applicant to establish that the respondents No. 1 to 3, the representatives of M/s. Atlas Engineering Limited belonged to any Qabza group or land mafia or that they had the credential or antecedence of being property grabbers and they have occupied the land of applicant by dispossessing him. Moreover, the title and location of the applicant's land is not clear, which can only be decided by a competent civil Court. Therefore, the impugned order of the learned Sessions Judge is proper and legal and the same does not require any interference of this Court.

11. For the foregoing facts and reasons, the Cr. Revision Application was dismissed by me, being devoid of merit, on 3.3.2015 by a short order and above are the reasons.

JUDGE