

ORDER SHEET
IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT

Crl. Rev. No.2454 of 2022.

Noor Khan. Vs. The State, etc.

S.No. of order/ Proceedings	Date of order/ Proceedings	Order with signature of Judge, and that of parties of counsel, where necessary.
	27.06.2024.	Mr. Sajjad Hussain Tarar, Advocate for the petitioner. Mr. Fakhar Abbas, Deputy Prosecutor General. Nemo for the respondents despite notice

Solicitation is made through this petition for revising the order dated 04.12.2021, passed by the learned Additional Sessions Judge, Chiniot, whereby, complaint of the petitioner filed under section 3 of the Illegal Dispossession Act, 2005 (the Act) was dismissed.

2. Petitioner tabled the fact of the dispossession from his landed property before the Court in terms that out of total land measuring 1642 Kanals in Khata No.117 situated in Mauza Aasian, Tehsil & District Chiniot, he along with his family members is owner of land measuring 68 Kanals 05 Marlas, whereas, respondents No.2 to 6 are illegal occupants of land measuring 12 Kanals 07 Marlas in Killa Nos.21 & 22 of square No.28 and due to said reason, Khata No.117 was got partitioned with the consent of both the parties. According to which, 12 WANDA JAAT were prepared and the petitioner along with other family members were allotted WANDA No.07, warrant of possession was issued and after completion of such proceedings and depositing their dues in government treasury by the parties, respective possession was delivered to them on 10.09.2020. Further that on 03.10.2020 at 4:00 p.m., when the petitioner along with Murtaza and Qasim Ali was present in his land, respondents No.2 to 6 armed with hatchets, clubs and firearm weapons attracted to the spot, dispossessed him from land measuring 08 Kanals 18 Marlas situated in Killa No.21 and 3 Kanals and 09 Marlas in Killa No.22 (total land measuring 12 Kanals 07 Marlas) relating to said WANDA

No.07. During the occurrence, both the parties sustained injuries, upon which, respondent No.2 got lodged FIR No.458 dated 03.10.2020 under sections 337-A(iv), 324, 337-L(2), 337-F(vi), 354, 337-A(i), 148, 149 PPC at Police Station Saddar Chiniot against the petitioner and seven others, wherein, cross-version of the petitioner's side was also recorded; petitioners' party was arrested in said FIR and respondents party destroyed their millet and maize crops and illegally took over the possession of 12 Kanals and 07 Marlas land referred above.

3. Learned Counsel for the petitioner states that since 3.10.2020, after dispossession, petitioner has been striving for return of his valuable land, deprivation is soulful and respondents while using delaying tactics have prolonged their illegal occupation which is adding insult to injury and even today, they are not before this Court. Learned counsel further states that learned Additional Sessions Judge requisitioned the revenue report which was based on the position of parties on 08.09.2021 (though dispossesion was ante-dated) whereby possession of 4 Kanal & 9 Marala land was shown in the possession of Asia Bibi, respondent No. 5, which prejudiced the mind of learned judge who held that this fact has been concealed from the Court, because neither it was mentioned in the complaint nor in the statements of witnesses, therefore, on this sole ground complaint stood dismissed. On the other hand, learned Deputy Prosecutor General states that learned Judge has not conducted the inquiry within the spirit of section 5 of the Act, and while responding to non-appearance of respondents before this Court, he has referred section 440 of Cr.P.C, stating that in criminal revision proceedings it is only optional with the courts to hear the parties.

4. Heard; record perused.

5. On receiving of complaint, private prosecution regime in vogue responds by recording cursory statements of witnesses by the Court to find out tentatively the commission of any offence. However, Court jurisprudence sometimes requires

conducting of an inquiry under section 202 Cr.P.C. with certain parameters including perusal of police record in connected state case. According to case reported as “MUHAMMAD JAWAD HAMID and another Versus Mian NAWAZ SHARIF and others” (**2019 P Cr. L. J 665**), it was held as under;

“39. Section 202 of the Code bestows vast powers upon the court to ascertain the truth or falsehood of the complaint and in this respect as it could direct any inquiry or investigation and during inquiry it could examine the police file and final reports including report of JIT to come to a definite conclusion, as it is covered under the definition of material and if felt necessary may examine the members of JIT, I.O in a private complaint or any other witness recorded during investigation of said case so that complete picture of the occurrence supported by relevant material must be before him while passing an order under section 204 (for summoning the accused), so that no innocent person should face agony of trial and no culprit should go unpunished.”

Further in a case reported as “MUHAMMAD IBRAHIM AND OTHERS versus QUDRAT ULLAH RUDDY AND OTHERS” (**PLD 1986 Lahore 256**), it was held;

“Looking at the provisions of section 202 from all angles, in the event of an inquiry, the person conducting the inquiry should not only record the evidence of witnesses produced by the complainant, but should also examine the Investigating Officer, or, in the alternative, call for and peruse the Ziminis.....”

6. It has been learnt that Courts while dealing with prosecution of complaint under illegal dispossession Act, 2005 follow a routine pattern to record the cursory statements of witnesses, ask for police comments and then make a mind to issue or decline process to the accused persons. Offences under the Act are non-cognizable, no FIR can be registered, and filing of a direct complaint is the remedy, therefore, if the offence seems not committed, Court is not bound to order for investigation as held by Supreme Court in a case reported as “WAQAR AKLI and others Versus THE STATE THROUGH PROSECUTOR/ ADVOCATE-GENERAL, PESHAWAR and others” (**PLD 2011 Supreme Court 181**), but if the commission of offence is apparent from the record, Courts must conduct an exhaustive inquiry or order for an investigation to get the relevant material collected for and against the commission of alleged offence, and should not go for trial mere

on the basis of cursory statements or documents uncertified. Supreme Court of Pakistan in case reported as "Mst. INAYAT KHATOON and others Versus MUHAMMAD RAMZAN and others" (**2012 SCMR 229**) has held that trial of an accused under Illegal Dispossession Act, 2005 cannot be equated as trial in a complaint under section 190 of Cr.P.C. It is a special law may override the provisions of Cr.P.C, therefore, Court may order for investigation. That is the reason in year 2017, legislator felt the need for conducting of investigation and inquiry one after another and made changes in section 5 of the Act which is reproduced for reference;

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:

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 this 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.

As object of the Act is to protect the rights of owner or lawful occupier, therefore, regime of law must be clearly understood to give a prompt response against dispossessing, grabbing, controlling or occupying of the property without lawful authority. Spirit of above section requires that on examining the complaint and attached documents, Court may direct officer incharge of police station to investigate and complete

the investigation within given or extended period; which means that on receiving such direction by officer incharge of police station, chapter 25 of Police Rules, 1934 relating to power of police officers to investigate becomes operative and it shall be followed to observe all the processes given therein including recording of statements under section 161 Cr.P.C. of witnesses other than those whose cursory statements have already been recorded, if any, plea of accused, inspection of disputed site with spot recoveries if any, preparation of site plan or seeking technical assistance by any expert (revenue, settlement or consolidation officer) after obtaining revenue record and preventing overt act from any side or further dispute except power to arrest the accused without permission by the Court because offence under section 3 of the Act is non-cognizable and Court is equipped with power to direct arrest of offenders as enunciated under sub-sections (2) & (3) of Section-4 of the Act.

7. Police can investigate the non-cognizable case on direction by Court in the same manner as meant for investigation of cognizable case. Part of relevant provision (Rule 25.11 of Police Rules, 1934) is reproduced as under;

25.11. Investigation in non-cognizable cases. - (1) No police officer shall investigate a non-cognizable offence unless ordered to do so by a competent magistrate under Sections 196-B or 202, Criminal Procedure Code.

(2) When an investigation in a non-cognizable case is thus ordered and is taken up by the police under Section 155(3), Criminal Procedure Code, it must be carried through in the same manner as if the offence were cognizable, except that no arrest shall be made without a warrant. In every such case a police officer making an investigation shall day by day enter his proceedings in a case diary and submit them daily as prescribed for cognizable cases in Police Rule 25.53. Case diaries shall be submitted through the gazetted officer concerned to the court which has ordered investigation. No copies shall be prepared or kept by the police.

(Emphasis is supplied)

The above rule gives a clear indication that during investigation day to day proceedings shall be entered in case diaries which shall be dispatched to the Court and no record of such diaries shall be kept by the police. Rule 25.53 (2) of Police Rules, 1934 requires that case diaries shall be as brief as

possible; shall not be swollen with lengthy explanations and theories; shall be written either in English or in simple Urdu and only such incidents of the investigation shall be included as have a bearing on the case. Of course, on close of investigation, all the outcomes suggested in Rule 25.57 of Police Rules, 1934 shall be forwarded to the Court in the form of a report under section 173 of Cr.P.C., and then Court may decide to issue process against the accused or dismiss the complaint as the case may be. It has been held in case reported as “*TAIMOR AHMAD and another Versus ADDITIONAL SESSIONS JUDGE and 9 others*” (**2018 YLR 81**) that section 4 of the Act can be equated with section 154 of Cr.P.C. and report under section 5(1) of the Act with the report under section 173 Cr.P.C. With a respectful dissent to above observation, it is held that section 4 can be equated with section 155 of Cr.P.C.

8. Investigation though provides material for trial yet its admissibility is always subject to rules of evidence and opinion of Court, therefore, legislator through section 5 of the Act has also taken care of this situation by introducing a concept of local inquiry which further empowers the Court 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 specified by the Court. Purpose of Act is as follows;

“Whereas it is expedient to protect the lawful owners and occupiers of immovable properties from their illegal or forcible dispossession therefrom by the property grabbers.”

Thus, when the circumstances of the case are of the nature that Court deems it appropriate to obtain evidence, it shall order for such inquiry because the report of the Magistrate or revenue officer, as the case may be, shall be construed as evidence in this case as per second proviso of section 5(1) of the Act, therefore, appearance of Magistrate or revenue officer before the Court as witness is not necessary. It is the like inquiry as

conducted on the direction of Sessions Judge by the Magistrate or any other person as mentioned in section 148 of Cr.P.C.

9. Section 9 of the Act says that unless otherwise provided the provisions of the Code of Criminal Procedure, 1898 (V of 1898), shall apply to proceedings under this Act; therefore, to better appreciate the situation at site Court can also go for local inspection as well at the stage of preliminary inquiry or during the trial. The relevant provision of Cr.P.C. is as follows;

539-B. Local inspection: (1) Any Judge or Magistrate may at any stage of any inquiry, trial or other proceeding, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence, given at such inquiry or trial and shall without unnecessary delay record a memorandum of any relevant facts, observed at such inspection.

(2) Such memorandum shall form part of the record of the case if the Public Prosecutor, complainant or accused so desires, a copy of the memorandum shall be furnished to him free of cost:

The practice of local inspection is approved by the Superior Courts and its evidentiary value is subject to the principles laid down in following cases;

“Judgment of Full Bench reported as “KARAMAT Versus THE QUEEN” (**PLD 1957 Privy Council 107**): “MUHAMMAD SADIQ and another versus MUHAMMAD HUSSAIN” (**PLD 1952 Azad J & K 13**) “BAZAL AHMED SOWDAGAR versus NUR MUHAMMAD” (**PLD 1963 Dacca 852**): “THE STATE THROUGH THE ADVOCATE GENERAL, PROVINCE of BALUCHISTAN, QUETTA versus JAMIL IQBAL” (**PLD 1974 Quetta 28**) “ABDUL RASHID Versus THE STATE and others” (**1999 YLR 1298 FSC**): “Sardar INAYATULLAH KHAN versus THE STATE and 3 others” (**2000 YLR 2803**): “Ch. SAJID MEHMOOD Versus INSPECTOR GENERAL OF POLICE, I.C.T., ISLAMABAD and 3 others” (**2015 YLR 81**): “ASFANDYAR and another Versus KAMRAN and another” (**2016 SCMR 2084**): “JAHANZAIB KHAN Versus SPECIAL JUDGE CNS COURT, LAHORE and another” (**2018 P Cr. L J 354**)

10. On receiving complaint, Court is bound to ascertain the truth and falsehood of the allegation, through inquiry and/or investigation. Inquiry and investigation are not mutually exclusive, Court can resort to both proceedings one after

another. Let's see what is an inquiry and investigation, and when they be resorted to;

When Inquiry may be conducted

An inquiry is made in order to determine the truth or falsity of a certain fact before an accused is charged with an offence. Object of an inquiry is to determine the truth or falsity of certain facts in order to take further action thereon; reliance is placed on case reported as "MIR SANAD KHAN and 6 others Versus THE STATE" [PLD 2014 Baluchistan 113]. An inquiry may start with shadowy beginning. During the inquiry, accused can be given opportunity to submit his stance and it would not be an illegality. Case reported as "ALLAHYAR Versus THE STATE" [1968 P Cr. L J 1526] is referred. Scope of Section 202 of Cr.P.C. is to hold a preliminary inquiry and it does not contemplate that a notice be issued to the accused person before issuing a process but If the Court holding such inquiry issues a notice to the accused before issuing process, it would not vitiate the inquiry. Reliance is placed on cases reported as "ANWAR ALI KHAN and others versus WAHID BUX and others" [1991 SCMR 1608] & "MUHAMMAD PANJAL Versus GHULAM SHABBIR JAT and 6 others" [2004 YLR 967 (LHR)]. In an inquiry, Court has to ascertain the truth or falsehood of the complaint which means that it would attend both aspects i.e., truth and falsehood.

When investigation may be conducted

Investigation starts when a police officer forms a definite opinion that there are grounds for investigation of a crime. Reliance is placed on case reported as "ABHINANDAN JHA & ORS. Vs. DINESH MISHRA" [AIR 1968 Mad 117] and it is meant for collection of evidence. On the similar principles, when any complaint is received by the Court, it starts inquiring as to ascertain the truth or falsity of facts contained therein; if, it comes to the conclusion that complaint is based on truth and an offence appears to have been committed, and sufficient

material is available to proceed with the trial, it issues process against the accused; but if it has no sufficient material or evidence, it can order an investigation for the purpose of collection of evidence. Court can direct inquiry or investigation one after another and its necessity can be summarized by explaining some situations in an inquiry and need for investigation thereafter, it is as follows;

What is an inquiry?

An inquiry is the process of reviewing an allegation to determine;

1. whether the allegation is responsible;
2. the particular law or laws that may have been breached; and
3. whether an investigation is warranted based on the information provided in the allegation.

Below is a table describing examples of possible outcomes of an inquiry;

Situation	Outcome
If the allegation is not responsible.	The allegation is dismissed and the matter concludes at inquiry.
If the allegation is responsible but a breach of law is not substantiated.	The allegation is dismissed and the matter concludes at inquiry.
If a breach is substantiated, and the respondent accepts responsibility, and further investigation would not uncover any new information pertinent to the matter.	The matter concludes at inquiry.
If a breach is substantiated but the respondent does not accept responsibility.	An investigation is initiated.
If any issues identified through the inquiry warrant an investigation (e.g., other individuals in addition to the respondent involved in the breach; other possible breaches suspected).	An investigation is initiated.

What is an investigation?

An investigation is a systematic process, conducted by an authorized person for the purpose of determining the validity of an allegation. An investigation involves collecting and examining any evidence related to the allegation and making a

decision as to whether a breach of law has occurred. Investigation must be conducted when:

1. the inquiry has not established whether or not a breach of law has occurred;
2. a breach is substantiated at the inquiry stage but the respondent denies/contests responsibility for the breach; or
3. additional issues are identified through the inquiry.

The investigation process provides both complainant and respondents with an opportunity to be heard as part of the process of determining the validity of an allegation. This generally triggers rights of due process under the law on how to address allegations. That is the reason an investigation is necessary or essential because it is conducted for collection of evidence and parties have full opportunity to produce every sort of material legally admissible or not. In this way issues are narrow down by investigator with an opinion for and against the commission of offence and Court is loaded with tangible evidence as well.

11. In the present case, Court has neither conducted the inquiry properly nor ordered for investigation, so much so on the day of dispossession an FIR was also registered with corresponding cross version but Court did not even bother to summon the police record despite the fact that motive of the occurrence was dispossession. Court has also not attended the fact that possession was handed over to the complainant through warrant of possession issued by a competent authority, therefore, order impugned is set aside, complaint filed by the petitioner shall be deemed pending and learned lower Court after feeling the necessity either of investigation or inquiry, if any shall proceed with the complaint in due course of law as delineated above.

**(MUHAMMAD AMJAD RAFIQ)
JUDGE**

APPROVED FOR REPORTING

JUDGE

Signed on 26.07.2024.
*Gulzar**