

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI, HCJ
MR. JUSTICE AMIR HANI MUSLIM
MR. JUSTICE SH. AZMAT SAEED
MR. JUSTICE MANZOOR AHMAD MALIK
MR. JUSTICE FAISAL ARAB

CIVIL PETITION NO. 41 OF 2008 & CIVIL APPEAL NO. 2054 OF 2007 & 1208 OF 2015

(On appeal against the judgments dated 15.01.2008, 19.1.2007 & 17.06.2014 passed by the Lahore High Court, Lahore & Multan Benches in Writ Petition Nos. 9357/2007, 11952/2006 & 11963/2010)

1. Mst. Gulshan Bibi etc (In CP 41/2008)

2. Federation of Pakistan through Secretary
Law & Justice etc (In CA 2054/2007)

3. Muhammad Siraj ud Din Khan (In CA 1208/2015)

... Petitioners/Appellants

VERSUS

1. Muhammad Sadiq etc (In CP 41/08 & CA 1208/15)

2. Zahoor Ahmed etc (In CA 2054/2007)
... Respondents

IN CIVIL PETITION NO. 41/2008

For the Petitioners: Mr. Muhammad Aslam Zar, ASC
Sardar Abdul Razzaq Khan, ASC

For the Respondent (1): N.R.

IN CIVIL APPEAL NO. 2054/2007

For the Appellants: Mr. Sajid Ilyas Bhatti, DAG

For Respondents (1-6, 9-10): Ex-parte

IN CIVIL APPEAL NO. 1208/2015

For the Appellant: Mr. Muhammad Akram Sheikh, Sr. ASC
Mr. Mehmood A. Sheikh, AOR

For the Respondents: N.R.

For the Federation: Mr. Sajid Ilyas Bhatti, DAG

For Govt of Punjab: Mr. Mudassar Khalid Abbasi, AAG

For Govt of Sindh: Mr. Sarwar Khan, Add. A.G
Mr. Abdul Jabbar Qureshi, AAG

Date of Hearing: 15.06.2016

JUDGMENT

FAISAL ARAB, J. - The legal question before this larger bench to settle is whether anyone who commits the offence described in Section 3 of the Illegal Dispossession Act, 2005 can be prosecuted as held by this Court in the cases of *Muhammad Akram Vs. Muhammad Yousaf* (2009 SCMR 1066), *Mumtaz Hussain Vs. Dr. Nasir Khan* (2010 SCMR 1254) and *Shahabuddin Vs. The State* (PLD 2010 SC 725), hereinafter referred to as the first set of cases or the scope and applicability of the Illegal Dispossession Act, 2005 is restricted and only those can be prosecuted who hold the credentials and antecedents of a land grabber or *Qabza Mafia* i.e. those who are known, acknowledged and established property grabbers as held by this Court in the case of *Bashir Ahmad Vs. Additional Sessions Judge* (PLD 2010 SC 661) and followed in the case of *Habibullah Vs. Abdul Manan* (2012 SCMR 1533), hereinafter referred to as the second set of cases.

2. We shall examine the ratio of the second set of cases first, which as a precondition require that the complaint under Illegal Dispossession Act, 2005 can only be maintained if the accused possesses all the credentials and antecedents of being a

land grabber or member of *Qabza Group*. The terms 'land grabbers' or '*Qabza Group*' or '*Qabza Mafia*' in ordinary parlance refer to a distinct class of offenders who usurp property of others in an organized manner. They mostly target unoccupied or deserted urban properties belonging to the Federal Government, the Provincial Governments, Municipal authorities, autonomous or semi-autonomous bodies, Trusts or *Waqfs* and at times even properties belonging to private persons. By resorting to various forms of fraud and forgery the professional land grabbers or *Qabza Mafia* first get the targeted property transferred in the official records in the name of a person of their confidence and then create third party interest thereon. In doing so the face of the professional land grabbers or *Qabza Group* remains hidden. They indulge in land grabbing through their proxy so that the real beneficiary of land grabbing could not be identified. With every new act of illegal dispossession the face of the proxy keeps changing. In every case where ratio of the second set of cases is to be applied it would be incumbent upon the complainant to establish that the accused belongs to a *land Mafia* or *Qabza Group*. The accused in reply almost invariably is not going to admit that he holds such a record. The denial of such a plea would serve as best defence against his prosecution. In all such cases extrinsic evidence would be required to establish that the accused possesses all the credentials of a professional land grabber or *Qabza Mafia*. Such kind of evidence would certainly not be relatable to the incident reported in the complaint but to an offence of illegal dispossession committed by the accused sometime in the past in relation to some property. This

evidence would depend on the testimony of persons who may not be known to the complainant at all. The only alternative to this would be that in some judicial pronouncement, the accused has already been declared to be a known, acknowledged and established land grabber or member of *Qabza* Group. Anything short of classifying the accused as a known, acknowledged and established land grabber would not be sufficient to prosecute him under the provisions of Illegal Dispossession Act, 2005. The complainant would thus be required to cross this hurdle first before the court assumes jurisdiction over the accused with regard to the incident reported in the complaint. Failure to do so would result in the dismissal of the case without even examining the truthfulness of the complaint that was filed for adjudication. Thus in every case where the ratio of the second set of cases is to be applied, the existence of judicially acceptable material on the record would be necessary to satisfy the Court that the accused possesses all the credentials and antecedents of being a member of 'land grabbers' or '*Qabza Group*' or '*Qabza Mafia*' otherwise the complaint filed under the provisions of Illegal Dispossession Act, 2005 would not be maintainable. In putting such a restricted interpretation on the scope and applicability of the Illegal Dispossession Act, 2005, the second set of cases has cast an arduous burden upon the complainant to establish existence of a fact of which he may not even have any knowledge or the means or the capability to prove it in a court of law.

3. Now the question that needs to be examined is whether the Legislature did intend that the complainant shall first establish that the accused possesses the credentials or antecedents of land grabbers or *Qabza Group* before his complaint could be entertained by the court. In order to examine this question we shall first examine the contents of the Working Paper for the reason that the Working Paper has been discussed in one of the impugned judgments, reasoning of which was adopted by this Court in the second set of cases. This Working Paper was prepared by the law ministry at the time of laying the Illegal Dispossession Bill before the parliament. It was captioned *"The object of the proposed Bill is to provide deterrent punishment to the land grabbers and Qabza Group and to provide speedy justice and effective and adequate relief to the victims dispossessed of immovable property by unlawful means...."* The terms '*land grabbers*' and '*Qabza Group*' appearing in the Working Paper were heavily relied upon in one of the impugned judgments in reaching the conclusion that the accused must possess the credentials or antecedents of land grabbers or *Qabza Group* before his complaint could be entertained by the court. However, the terms '*land grabbers*' and '*Qabza Group*' appearing in the Working Paper did not find their way in any provision of the Illegal Dispossession Act, 2005. Not even in its preamble. Only the term '*property grabbers*' was used in the preamble and even this term was not used anywhere else in the entire enactment. By mere use of the term '*property grabbers*' in the preamble, the scope and applicability of the Illegal Dispossession Act, 2005 was restricted by the second set of cases to a certain class of offenders and the relief

sought in the complaint was held not to be available to the victims of illegal dispossession against those who do not fall under such class of offenders. In our society the acts of illegal dispossession are largely committed at the behest of the persons who are rich, powerful feudal lords, politicians, builders, government functionaries or the persons who head large communities and on account of their influence and power are placed in domineering positions either over their fellow community members or over less powerful communities living in the area of their influence. In terms of the ratio of the second set of cases not every influential, rich or powerful person who illegally grabs someone's property is amenable to the provisions of the Illegal Dispossession Act, 2005 unless, as a condition precedent, he possesses the credential and antecedents of 'land grabber' or '*Qabza Group*' or '*Qabza Mafia*'. We may mention here that before the Illegal Dispossession Act, 2005 was enacted, any person who illegally dispossessed a lawful owner or occupier used to face either civil litigation which takes years together before justice is delivered. Even where criminal proceedings were lodged they were initiated under the provisions of Pakistan Penal Code in the court of a Magistrate, which too did not prove to be an effective remedy. Thus until the Illegal Dispossession Act, 2005 came into effect, the acts of dispossession continued to take place without any efficacious, effective and speedy remedy made available to the victims. Such acts at times translated into serious criminal offences including murders. To suppress such mischief was the main object that was to a greater extent achieved through Illegal Dispossession Act, 2005.

4. The legislature while enacting a special law for awarding punishment for a crime, in its wisdom, may or may not describe any particular category of persons who could be prosecuted. Where a special law after making a particular act an offence also describes the category of persons who could only be prosecuted then unless such person falls within the described category, he cannot be prosecuted. Where the special law only describes the offence or a set of offences and seeks to punish any person and every person who is found to have committed the described offence then the terms like 'anyone', 'any person' 'whoever' and 'whosoever' are used for the offenders in order to include all offenders without any distinction. In such a case, the offender may belong to any class of offenders, he as an accused can be prosecuted under such law. It can be seen that the Illegal Dispossession Act, 2005 has defined the offence but has not categorized any class of offenders who only could be prosecuted for committing the defined offence. This is evident from the provisions of subsections (1) and (2) of Section 3 of the Illegal Dispossession Act, 2005 which read as follows:

Section 3 (1): *No one shall enter into or upon any property to dispossess, grab, control or occupy it without having any lawful authority to do so with the intention to dispossess, grab, control or occupy the property from owners or occupier of such property.*

Section 3(2): *Whoever contravenes the provisions of the subsection (1) shall, without prejudice to, any punishment to which he may be liable under any other law for the time being in force, be punishable with imprisonment which may extend to ten years and with fine and the victim of the offence shall also*

be compensated in accordance with the provision of section 544-A of the Code.

(Underlining is ours to lay emphasis)

5. A bare reading of sub-sections (1) of Section 3 the Illegal Dispossession Act, 2005 shows that terms like *dispossess, grab, control or occupy* have been used which clearly mean that illegal dispossession in all forms have been made an offence and by the use of the terms '*no one*' and '*whoever*' in sub-sections (1) and (2) of Section 3, anyone and everyone who commits such an offence was made liable for punishment. The very use of the terms like '*no one*' and '*whoever*' are clearly intended to convey the widest possible meaning for the offenders. Thus without any distinction any person who illegally dispossesses, grabs, controls or occupies property of a lawful owner or occupier shall be liable for prosecution under the provisions of the Illegal Dispossession Act, 2005. The second set of cases has however restricted the scope and application of the Illegal Dispossession Act, 2005 to a particular class of offenders only i.e. those who possess the credentials or antecedents of being 'land grabbers' or *Qabza Group* by placing reliance on the term 'property grabbers' that appears in the preamble of the Illegal Dispossession Act, 2005. From the mere use of the term 'property grabbers' in the preamble one cannot reach the conclusion that the legislature intended that a complainant must first establish that the accused possesses the credentials or antecedents of being a professional land grabber or member of a *Qabza Group* in order to maintain his complaint under the said Act. The term '*property grabber*' can be construed to refer to anyone who has committed the act of grabbing

someone's property illegally. Limiting the scope and application of the provisions of the main enactment to a particular class of offenders and that too on the basis of a term used in the preamble would not only deflect the Court to go into issues which are not subject matter of the complaint that is before it but at the same time such an interpretation would violate the cardinal principle of the statutory construction that where the language of the substantive provision of an enactment is clear and not open to any doubt then the preamble cannot be used to curtail or enlarge its scope. Thus where the enactment is clear and unambiguous, the preamble cannot be used to undermine the clear meaning of the provisions of the Act or give it a different meaning. Only where the object or meaning of an enactment is not clear, the preamble may be resorted to in order to explain it. So the preamble is to be resorted only to explain and give meaning to any provision of the enactment where its language is open to doubt or is ambiguous or susceptible to more than one meaning. In the presence of the general terms like '*anyone*' or '*whoever*' that have been used to describe the offender, which are clear and wide in their application, the scope of the Illegal Dispossession Act, 2005 cannot be confined to any particular class of offenders.

6. It would also be not out of place to mention here that reference to Legislative history is permissible only as an aid to construction of legislation which is ambiguous or obscure or the literal meaning of which leads to an absurdity i.e. from the text of a statute, the court is unable to decipher the real intent of the

Legislature. Where the text is clear and there exists no ambiguity, resort to the legislative history may actually be counter-productive. This is because legislative history contains sporadic accounts and arguments made by the parliamentarians and the final outcome of debates and arguments made in the parliament could be much different. Therefore, the real intention of the parliament is to be first and foremost ascertained from the provisions of the enactment itself and frequent resort to the legislative history is not warranted. In this regard the case of *Pepper Vs. Hart [1992] 3 WLR 1032*, a judgment from English jurisdiction, can be referred with considerable advantage.

7. From what has been discussed above it is evident that no provision of the Illegal Dispossession Act, 2005 imposes any precondition on the basis of which a particular class of offenders could only be prosecuted. The Act aims at granting efficacious relief to lawful owners and occupiers in case they are dispossessed by anyone without lawful authority. Section 3(1) of the said Act by using the terms '*anyone*' and '*whoever*' for the offenders clearly warns all persons from committing the offence described therein and when found guilty by the court are to be punished without attaching any condition whatsoever as to the maintainability of the complaint. So all that the Court has to see is whether the accused nominated in the complaint has entered into or upon the property in dispute in order to dispossess, grab, control, or occupy it without any lawful authority. Nothing else is required to be established by the complainant as no precondition has been attached under any

provision of the said Act which conveys the command of the legislature that only such accused would be prosecuted who holds the credentials and antecedents of 'land grabbers' or '*Qabza Group*'. It does not appeal to reason that for commission of an offence reported in the complaint filed under the Illegal Dispossession Act, 2005 the Legislature would intent to punish only those who hold history of committing a particular kind of offence but would let go an accused who though has committed the offence reported in the complaint but does not hold the record of committing a particular kind of offence. In our view trial of a case is to be relatable to the property which is subject matter of the complainant, pure and simple. Any past history of the accused with regard to his act of dispossession having no nexus with the complaint cannot be taken into consideration in order to decide whether the accused stands qualified to be awarded a sentence under the Act or not. Once the offence reported in the complaint stands proved against the accused then he cannot escape punishment under the Illegal Dispossession Act, 2005.

8. In view of the above discussion we conclude that in any proceedings initiated under Illegal Dispossession Act, 2005, the issues which fall for decision would be whether the offence against a lawful owner or occupier, as described in the complaint, has taken place and whether it is the accused who has committed it without any lawful authority. Anyone found committing the offence described in Section 3 would be amenable to prosecution under the provisions of Illegal Dispossession Act, 2005 and no past record of the accused needs to be gone into by the court.

9. In view of the above conclusion, we hold that the first set of cases *Muhammad Akram Vs. Muhammad Yousaf* (2009 SCMR 1066), *Mumtaz Hussain Vs. Dr. Nasir Khan* (2010 SCMR 1254) and *Shahabuddin Vs. The State* (PLD 2010 SC 725) is good law whereas the finding arrived at in the second set of cases i.e. in the case of *Bashir Ahmad Vs. Additional Sessions Judge* (PLD 2010 SC 661) and followed in the case of *Habibullah Vs. Abdul Manan* (2012 SCMR 1533) which restrict the scope and applicability of the Illegal Dispossession Act, 2005 is not a good law. Resultantly, Civil Petition No. 41 of 2008 is converted into appeal and allowed. Likewise, Civil Appeal Nos. 2054/2007 and 1208/2015 are also allowed. The impugned judgments in all three connected cases are set aside and the cases are remanded back to the High Court for their decision afresh on merits in accordance with law.

CHIEF JUSTICE

JUDGE

JUDGE

JUDGE

JUDGE

Islamabad, the
Announced on _____ by Hon’ble Mr. Justice Faisal Arab

Approved For Reporting
Khurram