IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MR. JUSTICE JAVED IQBAL
MR. JUSTICE JAWWAD S. KHAWAJA
MR. JUSTICE ANWAR ZAHEER JAMALI

Civil Appeal No.16 of 2010
(On appeal from the judgment dated 29.10.2009 of the Peshawar High Court, Abbottabad Bench passed in WP No.429/2009)

Waqar Ali & others ... Appellants

VERSUS

The State through Prosecutor/
Advocate General, Peshawar & others ... Respondents

For the appellants Mr. Tariq Mahmood, Sr. ASC

For respondent 1-3: Nemo.

For respondent-2: Mr. Gulzarin Kiyani, ASC

Date of hearing: 23.11.2010

JUDGMENT

Jawwad S. Khawaja, J.- The three appellants namely Waqar Ali, Zulfiqar Ali and Sadaqat Ali who are brothers *inter se,* impugn the judgment dated 29.10.2009 passed by a learned Division Bench of the Peshawar High Court whereby Writ Petition No.429/09 filed by the appellants was dismissed. For a proper understanding of the grievance of the appellants it is necessary to set out briefly, the relevant facts which have given rise to this appeal by leave of the Court.

2. The appellants, through a registered sale deed dated 8.2.2005 purchased land measuring 150 kanals in khasra No.4729/2042 and

4730/2042 situated in *mauza* Khanpur, Tehsil & District Haripur. The authenticity of the sale deed and the validity of the title acquired by the appellants are not disputed. Respondent No.2 namely Ghulam Basit is owner of land measuring 30 kanals 6 marlas in khasra Nos. 4260/2344,4257/2339,4258/2339,4723/4259/2344/4259/2344 in the same *mauza* i.e. Khanpur. The title of the respondent Ghulam Basit in the said land is not disputed by the appellants. It is also clear that the land owned by the appellants is in *khata* No.1039/1421 while the respondent Ghulam Basit owns land in a different *khata*. These are material circumstances having a bearing on the outcome of this appeal, as will be apparent from the discussion which follows.

3. On 3.5.2008, the aforesaid respondent lodged a complaint under Section 3 of the Illegal Dispossession Act, 2005 against the three appellants and two others namely Zila Council Haripur and the Project Manager, Khanpur Dam. It was alleged therein that the appellants had committed an offence under Section 3 *ibid* and a prayer was made that they be convicted and sentenced under the said provision of law. The relevant allegations against the appellants can be gathered from paragraphs Nos.3 and 4 of the complaint which, for ease of reference, are reproduced as under:-

"3۔ یہ کہ دریں اثناء سائل جو ایبٹ آباد میں ہوتا ہے اور جس کا رقبہ موقع پر Open پڑا تھا اور جس کی رکھوالی عبدالحمید ولد مظفر خان ساکنہ سانگیاں کرتا تھا اطلاع ہوئی کہ مستغاث علیہ بمعہ بلڈوزر و Excavator سائل کی اراضی سے درختان زیتون وغیرہ اکھیڑ رہے ہیں اور ان کے ساتھ کلاشنکوف بردار لوگ موجود ہیں تو ایسے میں چونکہ مستغیث ملک منظور کے مقدمہ اور اس کے قانونی عواقب سے باخبر تھا تو مناسب سمجھا کہ اولاً حد برآری کرائی جائے لہذا 01/02/2008 کو باقاعدہ درخواست حد برآری دے دی گئی۔ نقول الف ہیں۔

4۔ یہ کہ حد برآری کا عمل جاری رہا اور رپورٹ حد برآری سے عیاں ہوا کہ بالخصوص مستغاث علیہ نمبر 1 نے جس کو اس کے بھائیوں کی اعانت حاصل تھی مستغیث کی واحد ملکیتی و مقبوضہ رقبہ 17 کنال 16 مرلے پر تجاوز کرلیا ہے۔ درختان اکھیڑ دیئے ہیں اور ایک دیوار و گیٹ کے ذریعہ رقبہ کا حصار کرلیا ہے۔ مستغیث قانون کو ہاتھوں میں نہیں لے سکتا۔ بہرحال مستغاث علیہ نمبر 1 تا 3 کی قبضہ گیری کی ہوس نے سرکاری راستہ کو بھی نہ چھوڑا اور اسے بھی بلڈوز کردیا گیا۔ یہی نہیں بلکہ خانپور ڈیم کا رقبہ بھی زیر تصرف خود لے آئے اب موقع پر سائل اپنے قبضہ اور ملکیتی رقبہ سے محروم ہوگیا ہے جسے مستغاث علیہ نے (Grab) کر کے اپنے کنٹرول میں کرلیا ہے۔"

4. The aforesaid averments in the complaint have special significance and will be considered later. At this stage, however, it is relevant to note that the appellants had purchased land in February 2005. It is also important that even according to the contents of the complaint the area owned by the respondent-complainant was open land without any boundary wall or other markings to identify the extent or the exact metes and bounds of the same. The respondent claims he became aware of the offence but no date or time of the alleged commission of offence has been mentioned in the complaint. The respondent's knowledge is based on a demarcation report made in May, 2008 on an application to the Tehsildar, Haripur filed by the respondent-complainant on 1.2.2008. The complaint under Section 3 *ibid* was filed in the trial Court on 3.5.2008. The appellants, on their own, and even before cognizance had been taken, appeared before the trial Court and challenged the maintainability of the complaint. It is not necessary for the present to give an account of certain proceedings which took place on the complaint, before the learned trial Court or in the Peshawar High Court between 3.5.2008 which is the date

of filing of the complaint and 15.7.2009 when the learned trial Court took cognizance by observing as under:-

> *"At this juncture, this Court is to see that whether prima facie the matter is cognizable under the Act or not. The other aspects of possession of the respondents and the correctness of the report of the local commissioner are matters of evidence to be thrashed out at proper stage. The complaint is prima facie maintainable."*
> (emphasis supplied)

This order was assailed by the appellants through the afore-noted Writ Petition No.429/09 filed before the Peshawar High Court. It was the case of the appellants that there was no basis for holding that the complaint was maintainable. The writ petition was dismissed vide impugned judgment dated 29.10.2009 on the short ground that the trial Court's order '*is not final which could be challenged in constitutional jurisdiction and in this sense the [writ] petition is premature.*' It is in these circumstances that the appellants filed Civil Petition No.2038 of 2009 wherein leave to appeal was granted to consider if the assumption of jurisdiction by the learned trial Court was violative of the Illegal Dispossession Act, 2005

5. We have heard learned counsel for both sides. We have also examined the grounds which prevailed with the learned trial Court while taking cognizance of the matter and the reasons which persuaded the High Court to pass the impugned judgment dated 29.10.2009. Although learned counsel for the appellants adverted at length, to factual controversies between the parties relating to title, possession and similar matters, it is not necessary to adjudicate on such factual aspects because

the matter before us is confined to the issue noted in the leave granting order which is in the following terms:-

> "…..
>
> *Having heard learned counsel for the appellants at some length, leave is granted to consider whether the assumption of jurisdiction by the learned Additional Sessions Judge in the circumstances alluded to in the petition is violative of the mandate of Illegal Dispossession Act, 2005."*

6. The above issue must be examined, starting with the contents of the complaint itself which highlights a mixed question of law and fact. It is clear from the complaint as already noted, that the area measuring 30 kanals 6 marlas owned by the respondent-complainant was open land without any visible identification of its limits. It also appears evident from the record that when the appellants purchased their property measuring 150 kanals, there was no construction or boundary-wall to identify the same. Even the *tatimma* khasra number in respect of the said 150 kanals was created subsequent to the purchase made by the appellants. Another important factor markedly obvious from the complaint is that the respondent was aware of certain demarcation and boundary disputes raised by Malik Manzur, another local land-owner, in respect of the area purchased by the appellants. This dispute arose and had been settled well before the filing of the respondent's complaint. Yet, no demarcation was sought nor was any other action taken by the respondent at the time to get his land demarcated. Between 2005 when the appellants purchased and took possession of their property, and the filing of the application for demarcation on 1.2.2008, the respondent himself appears not to have had any grievance let alone a cause for complaint for trespass or illegal

dispossession. Admittedly, as per paragraph 4 of his complaint (reproduced above) the respondent only became aware that the alleged offence under Section 3 *supra* had been committed by the appellants, upon receiving the demarcation report. These circumstances simplify the controversy before us.

7. The legal question as to whether the trial Court had jurisdiction in the matter can thus be easily decided by referring to the above circumstances and the relevant provisions of the Illegal Dispossession Act, 2005 (hereinafter referred to as the "Act"). Section 3 of the said statute which defines the offence thereunder, is reproduced below for ease of reference:-

> *"3.* ***Prevention of illegal possession of property, etc.---*** *(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."*
>
> *(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."*
> (emphasis supplied)

We may also briefly refer to other provisions of the Act which have relevance in this appeal. Section 4 stipulates that any *"contravention of section 3 shall be triable by the Court of Session on a complaint"*. It also provides that the offence under the Act shall be non-cognizable. Section 5 empowers the Court to direct the police to make investigation. The scope of these provisions of the Act will be considered during the course of this opinion.

8. It is clear from section 3 *ibid* that in order to constitute an offense thereunder the complaint must disclose the existence of both, an unlawful act (*actus reas)* and criminal intent (*mens rea).* In view of the allegations and circumstances considered above, it is apparent that even if it is ultimately established that the appellants are in occupation of an area owned by the respondent-complainant, there is no indication that they also had the necessary criminal intent. On the contrary, the averments in the complaint point in the opposite direction and show at best, that there is a dispute of a purely civil nature between the parties as to the exact location of their respective parcels of land. It is in these circumstances, and with the aforesaid background in mind that learned counsel for the respondent-complainant was asked to state if an inadvertent encroachment would constitute an offence under Section 3 of the Act. He replied in the affirmative. We are afraid his response is against the express wording of the statute which requires the existence of a guilty intention for the purpose of assuming jurisdiction. For reasons considered above, guilty intent, does not exist in the present case. Learned counsel for the respondent did advert to some precedents in support of his submission to the contrary. However, the ratio of the cited precedents is not attracted in the present case as will be shown shortly.

9. We can now examine the grounds which found favour with the learned trial Court to justify cognizance of the alleged offence under Section 3 *ibid.* At the very outset reference may be made to the extract from the order of the learned trial Court reproduced in paragraph 4 above. From the same it appears that the learned trial Court took

cognizance of the alleged offence without making the requisite determination that the complaint disclosed the commission of such offence. The trial Court decided the question of its jurisdiction and the maintainability of the complaint unthinkingly and without, in fact, giving serious consideration to the averments made in the complaint. It has merely been observed that the "*epitome of the complaint is that the [appellants] allegedly took the possession of the property owned and possessed by the complainant*". It is implicit in this observation that the '*intention to dispossess, grab, control or occupy*' cannot be deduced from the complaint. The said observation of the trial Court represents the total consideration given by it to the contents of the complaint. The learned trial Court has also stated that "*[o]n the lodging of the complaint the mater was sent to [the] SHO for investigation twice*". The basis on which the learned trial Court took cognizance, however, is neither the complaint nor the police investigation. It is instead, the subsequent report of a Local Commission appointed by the Court.

10. The above noted observations point to the erroneous approach taken by the trial Court as to the maintainability of the complaint. The Court, it should be noted is not obliged on the filing of each complaint, to direct the police to investigate the matter. Section 5 of the Act is clear that "*upon a complaint the Court <u>may</u> direct*" the police to investigate the matter. This enabling power of the Court can only be exercised on the basis of and after considering the contents of the complaint. 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.

11. The aim of directing an investigation by the police is not to add to the allegations or grounds raised in a complaint. The purpose of such investigation, if resorted to by the trial Court, is to inquire into the correctness of allegations made in the complaint itself. The Court need not order investigation under section 5 of the Act if it concludes from the complaint and the material furnished by the complainant in support thereof, that all essential elements of an offence under section 3 *ibid* are or are not, sufficiently disclosed and established. In the present case when we consider the order of the learned trial Court dated 15.7.2009 it becomes evident that *mens rea* has been inferred by the learned trial Court on the basis of the *musavi* prepared by a Local Commission appointed by the Court. Under the statutory scheme, the Court is not to become a party in gathering information or evidence in support of the complaint to justify the existence of *mens rea* when none can be made out

from the complaint itself. In any event, the *musavi* has no relevance in establishing *mens rea* in the circumstances noted above, even if the Local Commission's report is eventually proved correct. This is so because the report prepared by the Local Commission or the *musavi* at best shows a situation as it exists on ground in the opinion of the Local Commission. It has no intrinsic or probative value, even *prima facie,* for the purpose of showing on the facts of this case, that the appellants harboured a guilty intent.

12. There is another circumstance in the present case which has to be noted as it implies an absence of *mens rea*. It has been acknowledged in paragraph 4 of the complaint that the appellants, in particular Waqar Ali, had encroached on the complainant's land. The word '*tajawuz'* has been used by the complainant which can only be translated as 'encroachment' rather than criminal trespass or unlawful entry with the intention of grabbing the disputed land or of dispossessing the respondent-complainant. This is particularly the case, considering that the complainant claims to have become aware of the encroachment only after the demarcation made by the revenue functionaries. In these circumstances, the various "investigations" undertaken by the Police or by a Local Commission can, only be treated as *prima facie* evidence of a civil dispute between the parties. This dispute, needless to say, will be decided by the competent Civil or Revenue Courts having jurisdiction in the matter. The learned trial Court also observed that *'mere encroachment is something different from illegal dispossession as the former does not involve intentional grabbing of property'*. However, not finding the element of *mens rea* in the complaint, the learned Court travelled outside the complaint to

draw an unjustified inference from a *masavi* prepared by the Local Commission. As noted above, this course of action is not envisaged by the Act.

13. As in any criminal case, the complainant is to state the facts which, without extraneous considerations or evidence, satisfy the Court of the existence of every ingredient of an alleged offence. Without this a complainant is not entitled to invoke the aid of the Court and to foist the travails of a criminal trial on the person(s) accused by him. In a very important sense a Court empowered to take cognizance of an offence under the Act, is required to act as a sieve and to filter out those complaints which do not disclose the requisite criminal intent. Courts which have been authorized to try cases under the Act thus have a responsibility to see that the persons named in the complaint have a case to answer, before they are summoned to face trial. This course, unfortunately has not been followed in the present case. As a result the appellants unnecessarily, have had to face trouble, expense and disruption in their lives. In this process the time and scarce resources of the Court have also been wasted and its docket burdened without cause. It may be clarified that the Court may, in the first instance, issue a notice (rather than summons) to the accused person if it requires clarification or in order to ensure that cognizance is justified.

14. The provisions of the Act, in our opinion, have to be interpreted in line with established jurisprudence on criminal law. This will ensure that the process of law is not abused through filing of vexatious complaints. Courts are also duty bound to scrutinize complaints and, if necessary,

examine complainants, to protect hapless victims of false complaints or complaints which do not show the existence of all necessary elements of an alleged offence. We should also add that a bald assertion in the complaint alleging *mens rea* may not (depending on the facts of a case) justify the assumption of jurisdiction if the attendant circumstances set out in the complaint or ascertainable from material filed in support thereof, do not bear out such allegation.

15. We may now turn to the judgment of the High Court, impugned before us. Criminal proceedings initiated on the basis of a complaint entail a two-step process. In the first instance the Court has to decide if the complaint merits further action such as taking cognizance. This decision, properly speaking, cannot be equated with a mere interlocutory order because in respect of the complaint, taking or refusing cognizance brings to an end the first step of the process. The criminal trial commences and can only be said to be pending after cognizance is taken and the accused is summoned. Thus in the event the Court does not find sufficient material in the complaint to justify cognizance, it may dismiss the same without proceeding to order an inquiry or investigation and without summoning the accused. While passing the impugned judgment, the learned Division Bench of the High Court held that the order *"of the learned trial Court dated 15.7.2009 is not final which could be challenged in the constitutional jurisdiction and in this sense the petition is premature"*. We say with respect, that this is an overly simplistic remark which does not take into account the aforesaid legal aspect of the case. An interlocutory order passed by a Court competent to exercise jurisdiction in a matter, is qualitatively very different from an order passed by a Court to determine if, in the first place, the requisite jurisdictional facts exist which would enable it to proceed in the matter. Support for this legal proposition can be drawn from the case of titled *Sind*

Employees' Social Security Institution versus Dr. Mumtaz Ali Taj & another (PLD 1975 SC 450).

16. In view of the foregoing circumstances, the pending criminal trial against the appellants commenced on 15.7.2009 because it is on this date "*the Court [took] cognizance of the offence*" and the matter was adjourned for framing of charge. An order passed after 15.7.2009 but before the conclusion of the trial could appropriately be termed an interlocutory order, but this would not include the said order itself. It is important at this point to bear in mind the distinction between two facets of a Court's jurisdiction under the Act. The question of jurisdiction may, in one set of circumstances, constitute a pure question of law. Thus a complaint under section 3 of the Act filed before a Judicial Magistrate will be dismissed straightaway or will be returned to the complainant for want of jurisdiction because under section 4 of the Act, the said offence is triable by a Court of Session. The second aspect of jurisdiction is highlighted by the circumstances of the present case where jurisdiction constitutes a mixed question of law and fact. Thus as a matter of law the Court of Session before which the respondent filed his complaint is the Court vested with jurisdiction under section 4 of the Act. However, in order for the Court to exercise its jurisdiction by taking cognizance, certain facts must first be held to exist. These facts which constitute an offence under section 3 of the Act have to be evident from the complaint and documents filed in support thereof. Thus, if the necessary ingredients of an offence under section 3 of the Act are not disclosed through the complaint and accompanying documents, the Court of Session will not be justified in exercising jurisdiction and taking cognizance. It will

nevertheless have the jurisdiction to dismiss the complaint on the ground that an offence under section 3 of the Act is not made out.

17. Learned counsel for the respondent-complainant referred to the cases titled *Jehandad and 2 others versus The State and another* (PLD 2006 SC 270) and *Islamic Republic of Pakistan through Secretary, Establishment Division, Islamabad and others versus Muhammad Zaman Khan and others* (1997 SCMR 1508) to urge that the order of the learned trial Court dated 15.7.2009 was only an interlocutory order and, therefore, the refusal of the High Court to interfere in the same in writ jurisdiction was unexceptionable. We have gone through the cited precedents but find that the ratio of the same has no application in the case before us. In both cited cases, the jurisdiction of the Court seized of the matter was not in dispute. As such no issue arose as to the maintainability of pending cases in which interlocutory orders were passed and were assailed in the Supreme Court. It was, in the circumstances, held that this Court would not be justified in exercising jurisdiction under Article 185 (3) of the Constitution because the Court seized of the matter which had passed the impugned interlocutory order, was vested with jurisdiction.

18. It may be noted that the Supreme Court is possessed with jurisdiction to interfere even in interlocutory orders passed by a lower Court. If any authority for this legal proposition is required, reference may be made to the case titled *Islamic Republic of Pakistan through Secretary, Establishment Division, Islamabad and others versus Muhammad Zaman Khan and others* (1997 SCMR 1508). However, in order to regulate its jurisdiction, this Court ordinarily does not interfere with interlocutory

orders passed by a Court which has rightly assumed and exercised jurisdiction in a pending matter. In the present case, however, leave was specifically granted *"to consider whether the assumption of jurisdiction by the learned Additional Sessions Judge in the circumstances alluded to in the petition" was* violative of the mandate of the Act. The issue of whether the trial Court had jurisdiction was not an interlocutory matter in the circumstances of this case considered above. At this point, however, we may add that if a proper and conscious application of mind has been made by a trial Court under the Act before taking cognizance, the High Court and this Court while regulating their jurisdiction under Articles 199 and 185 of the Constitution respectively, will not ordinarily, interfere in such actions.

19. In view of the foregoing discussion relating to the jurisdiction of the trial Court and the reasons which prevailed with the High Court while passing the impugned judgment of 29.10.2009, interference in these orders was warranted under Article 185 of the Constitution. Being aware of the problems faced by accused persons in criminal trials, Courts have to be sensitive to their difficulties. Such difficulties can be avoided or mitigated through the proper and conscious exercise of the power to take cognizance of a complaint under the Act. It was felt necessary by us to highlight the legal issues which arise in this case and to thereby also enunciate the law in terms of Article 189 of the Constitution.

20. In view of the forgoing circumstances, we are not left in any doubt that jurisdiction was assumed by the learned trial Court on an erroneous premise while the learned Division Bench in the High Court also fell in

error by declining to exercise writ jurisdiction on the premise that the order of the learned trial Court dated 15.7.2009 was not final and that, therefore, the writ petition filed by the appellants was premature. However, in order to ensure completeness of this judgment it is necessary to discuss further case law cited at the bar by learned counsel for the parties.

21. Learned counsel for the respondent-complainant firstly referred to the case titled *Muhammad Abbasi Vs. S. H. O. Bhara Kahu and 7 others* (PLD 2010 SC 969) to support the impugned judgment. In the cited case cognizance had not, by then, been taken by the trial Court and it was also observed that the provisions of section 249-A of Cr. P.C. constituted an adequate remedy for redressal of the grievance of the petitioner in the circumstances of the said case. It may be noted that in the present case, the learned trial Court had assumed jurisdiction without the existence of the requisite jurisdictional fact i.e. *mens rea.* The cited precedent is, therefore, distinguishable on facts and is thus of little help to the respondent.

22. Learned counsel for the respondent-complainant also referred to the case titled *Shahabuddin Vs. State* (PLD 2010 SC 725). The facts of the cited precedent are also distinguishable. Firstly it is to be noted that the petitioner therein had been convicted after due trial. A factual determination had been made that he had illegally dispossessed the complainant from the property in question. Another important point of distinction is that there was no controversy at all as to the identity of the property in contention which had well defined and undisputed

boundaries. In the present case, it is quite evident that the metes and bounds of the respondent's land were not identifiable on site and he had to resort to the revenue authorities for the purpose of a *prima facie*, determination in respect of the exact location of his property. Yet another feature which distinguishes the cited precedent on facts is that the petitioner was proved not to have any title in the contested property. In the present case we have already noted that the sale deed in favour of the appellants and the title acquired by them is not disputed by the respondent-complainant. Only the location and boundaries of the said property appear to be in contention between the parties. The case of Shahabuddin *supra*, therefore, does not advance the respondent's cause.

23. Cases titled *Mumtaz Hussain Vs. Dr. Nasir Khan & others* (*2010 SCMR* 1254) and *Muhammad Akram & 9 others Vs. Muhammad Yousaf & another* (2009 SCMR 1066) were then cited by learned counsel for the respondent-complainant in support of his submissions. We have gone through these precedents and find the same to be inapplicable to the circumstances of the present case. In the cited cases, the question as to assumption of jurisdiction and taking of cognizance on the basis of the contents of the complaint had not arisen before the Court. The said precedents, therefore, have no application in this case.

24. Lastly, the case titled *Rahim Tahir Vs. Ahmed Jan & 2 others* (PLD 2007 SC 423) was referred to by learned counsel for the respondent. This case primarily involved the question as to whether the Act was applicable retrospectively. For reasons discussed above, we are not called upon to answer this question in the present case. We are conscious that a

general observation has been made in paragraph 6 of the cited judgment to the effect that the Act *"would reveal that all cases of illegal occupants without any distinction would be covered by the Act."* The issue of *mens rea* appears not to have arisen and was not discussed in the said case as the matter primarily focused on the retrospective effect of the Act. The cited case, therefore, does not help the respondent even though there may be aspects in the judgment which require elaboration. This, however, can be attended to in an appropriate case as and when it comes before us.

25. In view of the foregoing discussion, this appeal is allowed. As a consequence the impugned judgment of the High Court dated 29.10.2009 and the order of the learned trial Court dated 15.7.2009 are set aside, with the result that the complaint filed by the respondent is dismissed. There shall be no order as to costs.

Judge

Judge

Judge

Islamabad

Announced on _____

M. Azhar Malik/*

Approved for reporting.