

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Revision No.56 of 2012

Zafar Mehmood Khokhar etc.

Versus

Dr. Muhammad Afzal

Date of Hearing: 15.5.2013

Petitioners By: - Syed Zulfiqar Abbas Naqvi, learned ASC.

Respondent/Complainant By:- Qazi Naseer Ahmad, Advocate.

J U D G M E N T
MUHAMMAD ANWAR KHAN KASI, CJ:

Through this revision petition, the petitioners/accused of a complaint under Sections 3, 4, 5 & 7 of Illegal Dispossession Act, 2005 lodged by the complainant, assails order of learned Additional Sessions Judge/Trial Court dated 17.10.2012, whereby their application under Section 265-K Cr.P.C. was dismissed by observing that **the matter and assertions need evidence, therefore, at this stage accused/petitioners cannot be acquitted. While dismissing the application, the learned Trial Court further observed that admittedly the complainant has purchased the property from its legal owners so it cannot be presumed that he purchased the property for high price without possession. According to documents submitted by the petitioners, the complainant is owner of the suit property, though he may be co-sharer of meager portion, yet he is a co-sharer. As far as the other co-sharers are concerned, if they failed to challenge any illegal act that does not waive the right of complainant to protect his own rights. It has further been observed that the petitioners have failed to challenge the order of their summoning and therefore, nothing has challenged by any sort of evidence to acquit them.**

2. Precisely, the facts relevant for disposal of this revision petition, are that the respondent/complainant on 20.5.2010, filed a complaint under Sections 3, 4, 5 & 7 of Illegal



Dispossession Act, 2005, against the present petitioners alleging therein that he purchased approximately 100 kanals of land for an Oversees Foreign Investment Project by the name of International Medical & Dental College University and Hospital at Village Mouza Tarlai Khurd, situated at East Bank of River Korang Tehsil, Islamabad. This social welfare project will also include a mosque and school for orphan children and is expected to attract Millions of Foreign Exchange and much needed investment in Pakistan. It is likely to create educational facilities for thousands and job opportunities for hundreds of people. It has further been asserted that he purchased with possession approximately 100 kanals of land for the purpose and the petitioner No.1 also approached him for sale of his land, adjacent to his land, for consideration of Rs.2.5 Million, which he paid through various cheques, but the petitioner No.1 instead of transferring the land not only illegally took over its possession but also occupied his other contiguous land which was already in his possession by demolishing the peeks and troughs of beautiful landscape in order to destroy the natural land marks, by which this land was identifiable.

3. It was further alleged that the petitioner also bulldozed trees and plantation due to which the respondent sustained irreparable loss. According to complaint, the petitioner is a group of habitual land grabbers, land mafia, qabza group, who have illegally grabbed over 5000 kanals of land at this site and have deputed their gunmen and installed the road bearers to prevent access to the real owners of the land. The petitioner also extended threats of life to the complainant and his son. It has further been alleged that petitioner has posted "Khokhar Zari Farm" boards over the entire area by means of illegal qabza and is selling land through fraud, not belonging to him by making plots in a fraudulent housing scheme and scam society and selling plots to innocent citizens. It is further alleged that the petitioners in collusion with the revenue department officers and police officials are doing this illegal business, therefore, they be proceeded against under Illegal Dispossession Act and possession of his 100 kanals be restored to him.



4. On the above complaint, the learned trial court requisitioned report from the concerned SHO, who opined that complainant-respondent herein has got no concern with the suit land and number of other civil cases are pending before civil courts between the parties, but the learned trial court did not agree with the report and vide order dated 27.10.2010 summoned the accused persons/present petitioners to face the trial due to having sufficient material on record. In compliance with the order, the petitioners appeared before the learned trial court and thereafter, filed an application under Section 265-K Cr.P.C. for their acquitted, which was dismissed vide the impugned order.

5. The learned counsel, in support of this petition, submitted that there is no probability of the conviction of the petitioners and therefore further proceedings would be an abuse of process of law. In support of this ground, learned counsel further pointed out that the respondent lodged the compliant after three years of the alleged occurrence and as per contents of his own complaint, nothing had happened in his presence. As per statement of his witness Muhammad Jan, recorded on 15.6.2012, the possession was taken over one year before, whereas the other witness Imtiaz stated that the occurrence took place in May, 2007, therefore, in presence of these clear contradictions there is no probability of conviction. Learned counsel further submitted referred the report of SHO whereby it was reported that the respondent/complainant had no concern with the land in question. Learned counsel while referring suit filed by the respondent on 10.5.08 further emphasized that the respondent himself admitted the joint ownership and sought partition and also prayed for permanent injunction. Petitioner No.4 also filed a suit for permanent injunction in the year 2009, petitioner Zahid Jahangir filed a suit in the year 2009, petitioner Raja Muhammad Raza filed a suit in the year 2007 and that all these suits were filed earlier than the filing of the complaint by the respondent, therefore, due to having dispute of title and admitted joint ownership of the parties, no proceedings under Illegal Dispossession Act, could

be conducted. Learned counsel also referred entries of Khasra Gardawari showing the possession of the petitioners.

6. Lastly, by placing reliance upon **Zahoor Ahmad case (PLD 2010 Supreme Court 661)**, **2007 P.Cr.L.J 1299 & PLD 2007 Lahore 231**, prays for acceptance of this revision petition on the points that civil disputes cannot be regulated through the Act and the complaint under Illegal Dispossession Act could not be entertained where the matter is regulated in civil and revenue courts. According to him, it is a fit case for exercise of powers under revisional jurisdiction due to abuse of process of law.

7. Learned counsel for the respondent/complainant vehemently repelled the above arguments by maintaining that the admitted fact is that the respondent purchased about 100 kanals of land between the period 2003 to 2006 through various sale deeds and as a result of those purchases, got the possession of each piece of plot. According to learned counsel, ipse dixit on the part of police is not binding upon the Courts, therefore, the report of SHO retains no value as the police is not competent to advance any opinion in revenue matters, which exercise can only be made by Senior Revenue Officers. The respondent by spending huge amount, raised superstructure, buildings, electric polls and wires and developed it. The preliminary evidence has been recorded and this is not a stage of nicety. Learned counsel fortified his arguments by placing reliance upon **2008 P.Cr.L.J 1309**, **2009 P.Cr.L.J 491 & PLD 2009 Karachi 350**, which are on the point that Illegal Dispossession Act, 2005, had been promulgated to protect the rights of the owner and of the lawful occupant of the property, as against the unauthorized and illegal occupants and all cases of illegal occupants were covered by the said Act except the few cases where such issue has already been taken-up and that there is no bar on the aggrieved person for availing remedy against the offender under any other law as well as Illegal Dispossession Act. In case **PLD 2009 Karachi 350**, it was held that lodging of F.I.R. by the complainant/aggrieved person under general law would not act



as a bar to avail remedy under Illegal Dispossession Act, 2005 nor the availing of remedy under said Act, would act as bar from initiating proceedings under any other law for the time being in force.

8. Heard & record perused.

9. After giving due consideration to the arguments advanced by both the sides, I have also scanned the material available on record so as to ascertain whether further proceedings in the complaint lodged by the respondent would be a futile exercise and abuse of process of law and whether the case deserves exercise of jurisdiction under 265- K Cr.P.C.

10. There is no denial to the fact that the respondent purchased various lands through registered sale deed and in his cursory evidence also specifically asserted that he purchased land during the period 2003 to 2007 and also took over its complete possession and in his absence in May 2007, the petitioners illegally took over the possession of his property and also demolished a constructed room and by converting the shape of the land into a housing society, started its illegal alienation. According to the respondent, the property is exclusively owned by him, which has illegally been occupied by the petitioners. His witnesses Muhammad Jan and Mumtaz Ali also supported his version, therefore, in such state of affairs, it would not be in the interest of justice to put an end to the proceedings as, apparently, there exists sufficient material and any comment upon the merits of the case, at this stage, would not be in the interest of justice as it may cause prejudice to the case of either side. The police report is not conclusive and has no binding effect as the complaint will be decided on the basis of its own merits and the evidence advanced by both the sides. The petitioners, of course, will have full opportunity to adduce their version in defence. The circumstances of the instant case do not deserve cursory disposal of the matter. There is also no bar on the aggrieved person from availing remedy against the offender under any other law as well as under the Act as Sub Section 2(3) is very much clear in this respect, so pendency of



civil suits inter se the parties creates no embargo for proceeding under the special law.

11. The Illegal Dispossession Act, 2005, had been promulgated to protect the rights of the owner and of the lawful occupant of the property as against the unauthorized & illegal occupants and all cases of illegal occupants are covered by the said Act, except a few cases where such issue has already been taken-up. A person not in legal possession would be possessing the property illegally and would fall within the ambit of Illegal Dispossession Act, 2005. Such type of activities, deserve special care and caution as the rationale behind the enactment is to discourage the land grabbers and to protect the rights of owner and lawful occupants of the property and against the unauthorized and illegal occupants. The provisions of the Act, cover all cases of illegal occupants without any distinction.

12. In view of above, I find no force in this revision petition and the same is therefore dismissed but with observation that the learned trial court shall proceed with the trial without being influenced by this order and decide the same on its own merits, after giving due opportunities to both the sides. Copy of this order be sent to the learned Trial Court for information.

(CHIEF JUSTICE)

Announced in open Court ~~22nd~~ day of May, 2013

(CHIEF JUSTICE)

M.Suhail*

APPROVED FOR REPORTING