

ORDER SHEET  
IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
JUDICIAL DEPARTMENT

**Criminal Revision No. 29 of 2021**

Qaisar Jabbar

Versus

Syed Mati Ullah Shah and another.

<b>S.No. of order/ proceeding</b>	<b>Date of order/ proceeding</b>	<b>Order with signature of Judge and that of parties or counsel where necessary.</b>
(06)	16.08.2021	Ms. Raheema Khan, Mr. Muhammad Sanaullah and Mr. Saad Javid Satti, Advocates for the petitioner. Mr. Muhammad Arshid Baig, Advocate for the applicant / Sheikh Adnan Ahmed in CM No. 291/2021. Mr. Abdul Kamran Butt, Advocate for the respondent No. 1.

Through the instant criminal revision filed under Section 435 & 439 of the Cr.P.C, 1898 read with all the enabling provisions of law, whereby the petitioner has assailed order dated 30.04.2021, passed by learned Additional District and Sessions Judge, East-Islamabad, whereby the complaint under Section 3 & 4 of the Illegal Dispossession Act, 2005 filed by the petitioner was dismissed being non maintainable and non-proceedable.

02. Succinctly stated facts of the case are

that complainant, Qaisar Jabbar filed a complaint under Section 3 & 4 of Illegal Dispossession Act, 2005 with the averments that he is a businessman and runs his business with the name and style of **QJ Builders Pvt. Ltd.** That vide registered sale deeds No. 16857 & 16621 dated 04.11.2015 and 30.10.2015, respectively, mutation No. 4887 dated 20.09.2015 and mutations No. 4938, 4940 and 4884 in favour of the complainant, he is owner in possession of land situated at revenue estate of Tammah Islamabad, in the same manner complainant's wife is also owner in possession of the land vide mutation No. 5955 dated 24.10.2018, mutation Nos. 5616, 5618, 5620, 5621, 5622, 5792, 5690 dated 27.09.2017 in the same revenue estate i.e. Tammah, Islamabad. Both the lands are adjacent and interlinked with each other. That right from the purchase of pieces of land, the complainant is occupying and enjoying the possession thereof. On 15.09.2020 at about 05:00 a.m. the respondent No. 1 along with his companions while armed with lethal weapons broke into

the property of the complainant and while holding the caretaker of the complainant on the basis of lethal weapons constrained them from one built room of the complainant and occupied half of the land illegally and unlawfully with the intention to illegally disposes the complainant for the purpose of illegal occupation and two of the representatives of the complainant forcibly ousted from the land. Complaint was filed against the respondent No. 1 / Syed Mati Ullah to SHO, Police Station Shahzad Town, Islamabad but no action was taken. Thereafter, the petitioner filed a complaint under Section 3 & 4 of the Illegal Dispossession Act, 2005 against the respondent No. 1, whereby the impugned order dated 30.04.2021 was passed by the learned Additional District & Sessions Judge-III, East-Islamabad.

03. Learned counsel for the petitioner, *inter alia*, contends that the impugned order has been passed in a slipshod & hasty manner without considering the facts and merits available on record, hence is liable to be set

aside & remanded back for decision afresh; learned Additional District & Sessions Judge has exercised his jurisdiction with material irregularity, whereby he failed to consider the fact that petitioner has not only mentioned specific date and time of the dispossession by the respondent No. 1 from the subject property but also failed to consider the question of title of the petitioner over the subject land, nor afforded an opportunity to the petitioner to further corroborate his case by producing oral as well as documentary evidence.

04. Learned Additional District & Sessions Judge has failed to consider the provisions of the Illegal Dispossession Act, 2015, which were especially applicable to the case of respondent No. 1, as it is settled law that provisions of said Act not only apply to the land grabbers, Qabza groups or other persons habitually indulging in such activities but also to all persons illegally occupying or in possession of any premises; the learned Additional District & Sessions Judge erred in law while dismissing the complaint on the

touch stone of pendency of Civil disputes without considering & appreciating the Illegal Dispossession Act, 2005 which was specially aimed to provide remedy for grievance of Illegal Possession and forcible / wrongful dispossession, therefore, such complaint would be maintainable regardless of pendency of any civil litigation; the Additional District & Sessions Judge has erred in law while not adopting due legal procedure in its true spirit and perspective and has committed material irregularity and illegality, therefore, impugned order, in circumstances could not be sustained as legal or speaking order on merits and has prayed for setting aside of the impugned order dated 30.04.2021.

05. On the other hand, learned counsel for respondent No. 1 has contended that the impugned order has rightly been passed; it is admitted by the petitioner that he is co-sharer in disputed property with respondent No. 1; miscellaneous litigation between the parties is pending; no legal and cogent evidence was produced by the petitioner and has prayed for dismissal of the instant revision petition.

06. Learned counsel for the applicant, Sheikh Adnan Ahmed has contended that the petitioner has concealed the actual material facts, as the civil litigation in different civil Courts is pending between the parties and the petitioner with malafide intention did not implead Sheikh Adnan Ahmed as respondent. The petitioner is co-owner of the compact block of land mentioned in the complaint, the plot has also been sold to different parties and has stated that just in order to settle score of civil litigation the complaint was filed which has rightly been dismissed by the learned Additional Sessions Judge-III, Islamabad vide impugned judgment dated 30.04.2021.

07. Arguments advanced by learned counsel for the petitioner, learned counsel for the respondent and learned counsel for the applicant / Sheikh Adnan Ahmed have been heard, and record has been perused with their able assistance.

08. Complaint was filed on 18.12.2020, it is mentioned in Para 4 of the complaint that on 15.09.2020 at about 05:00 a.m. respondent No. 1 allegedly with unknown accused

persons armed with lethal weapons entered upon the subject land and unlawfully confined the caretaker / guard alongwith his family in a built room on the subject land. Subsequently half of land of the petitioner was illegally and unlawfully occupied, with the intention to dispossess the petitioner from subject land.

09. Cursory statement of the petitioner was recorded on 19.12.2020, the complainant has also mentioned the date of occurrence in his statement before the Court of learned Additional Sessions Judge-III, East-Islamabad as 15.09.2020 but surprisingly filed an application in the month of January, 2021 wherein it is mentioned that in the complaint due to some clerical mistakes wrong date of occurrence i.e. 15.11.2020 was mentioned rather correct date of occurrence was 15.09.2020 and has requested for correction of date of occurrence from 15.11.2020 to 15.09.2020. The reason for mentioning of wrong date of occurrence was mentioned as inadvertent / clerical mistake but the petitioner has not given any explanation that why he has stated the wrong date of

occurrence in his statement recorded by the learned Trial Court on 19.12.2020. The learned trial Court has directed vide order dated 19.12.2020 to the SHO for submission of report on the following points:

*"i. Whether complainant was in possession of the suit property at or before time of occurrence ?*

*ii. Whether the alleged occurrence took place on or prior as narrated in the complaint ?*

*iii. Whether the respondent No. 1 is occupying the suit property in consequence of the above said occurrence, if so, then in what capacity ?"*

10. The petitioner has shown his no confidence on the SHO vide his application dated 04.01.2021 and has prayed for issuance of direction to some honest senior police officer of the area, subsequently DSP of the area being senior police officer was assigned the task to submit report on the points stated above. The petitioner again has shown his no confidence on DSP of the area / Shahzad Town, vide his application dated 26.01.2021



and has prayed for assigning the task to an officer not below the rank of SP.

11. The DSP Sihala, Circle was assigned the task for the third time for submitting report regarding the above mentioned direction, who after recording the statements has not given clear report regarding the land grabbing etc. rather shows his suspicion regarding the occurrence and stated that even police could not understand the stance of the parties.

12. Learned counsel for the petitioner has verbally stated that the matter was immediately reported to Rescue 15 but neither any such record has been annexed with the instant petition nor produced before the court during recording of cursory evidence. The petitioner in his cursory statement has not even mentioned the name of respondent No. 1, that he took forcible possession rather only stated at the end of statement that respondent along with his companions has taken the possession forcibly. The petitioner has not stated in his cursory statement that respondent No. 1 was a land grabber or having any other criminal history.

13. The petitioner has admitted in Para No. 9 of his complaint filed before the Court of learned Additional Sessions Judge that *"in fact a suit for declaration and permanent injunction was filed by one Sheik Adnan Ahmed, wherein he opted that possession of the land is with him, the suit is pending adjudication before Mr. Rizwan-ud-Din learned Civil Judge, Islamabad and on the contrary a suit for cancellation of the sale deed, filed by the petitioner is also pending in the Court of Mr. Hafeez Ahmed, learned Civil Judge, Islamabad which is fixed for 07.01.2021. As mentioned above, in fact he had no occupation of 01 cm land and there was probability of filing of application for transmission of local commission to report for possession of either party hence Shiekh Adnan managed agreement dated 03.01.2020 with the respondent of the case to maneuver and knit the story of possession over the plot hence the land is illegally occupied by the respondent on the basis of lethal weapons for which they have no right whatsoever and are liable to be dealt with iron hands".*

14. Pendency of civil litigation between the parties is admitted by the petitioner, if the occurrence of forcible possession took place on 15.09.2020 then why the petitioner kept silent for more than a period of 3 months and filed a complaint on 18.12.2020.

15. The petitioner has also not stated in his cursory statement that he filed any application to the concerned police station. In cursory statement the petitioner has mentioned that he has produced 12 documents which were exhibited from Ex.C-1 to C-11 and Mark-A, but the said documents have not been annexed with the instant petition, even certified copies of different petitions filed in the Court, order dated 04.01.2021 passed by learned Additional Sessions Judge have not been enclosed with the petition rather photocopies of the judicial record / orders with a stamp of certified true copy by the learned counsel has been annexed which are not permissible under the law.

16. There is no cavil to the proposition that complaint under Illegal Dispossession Act, 2005 is maintainable against any person who

forcibly dispossess the occupier or owner but such remedy is never meant to settle civil dispute or substitute for civil dispute herein this case the petitioner has admitted that the litigation / civil suits are pending between the parties.

17. Further provision of Section 3 is applicable only to land grabbers. Reliance is placed on the case titled as **"Habibullah and others Vs. Abdul Manan and others"** **(2012 SCMR 1533)**, wherein it has been held as under:

***"it is established that the said law is applicable only to those accused persons who have the credentials or antecedents of Qabza Group and are involved in illegal activities and belong to the gang of land grabbers or land mafia."*** Reliance is also placed on a case titled as **"Zahoor Ahmed and 5 others Vs. The State and 3 others"** **(PLD 2007 231 [Lahore])**.

18. In a case titled as **"Mumtaz Hussain Vs. Dr. Nasir Khan and others"** **(2010 SCMR 1254)**, the Hon'ble Supreme Court of Pakistan has provided guidelines for the Courts to examine that:

***"For the purposes of attracting***

***provisions of S.3 of Illegal Dispossession Act, 2005, court is required to examine as to whether property was an immovable property; secondly that the person was owner or the property was in his lawful possession; thirdly that accused entered into or upon the property unlawfully; fourthly that such entry was with intention to dispossess i.e. ouster, evict or deriving out of possession against the will of person in actual possession or to grab i.e. capture, seize suddenly, take greedily or unfairly, or to control i.e. to exercise power or influence over regulate or govern or relates to authority over what is not in one's physical possession or to occupy i.e. holding possession, reside in or something".***

19. It has been held by the Hon'ble Supreme Court of Pakistan in a case titled as **"Bashir Ahmed Vs. Additional Sessions Judge, Faisalabad and 4 others" (PLD 2010 SC 661)**, that:

***"It has been conceded before us by the learned counsel for the petitioner that no material is available with the petitioner to establish that respondents Nos. 2 to 4 belonged to***

*any Qabza group or land mafia or that they had the credentials or antecedents of being property grabbers. In view of the discussion made above the impugned acquittal or respondents Nos. 2 to 4 recorded by the learned Additional Sessions Judge, Faisalabad upon acceptance of their application submitted under section 265-K, Cr. P. C. has been found by us to be entirely justified and dismissal of the petitioner's writ petition by the learned Judge of the Lahore high Court, Lahore has also been found by us to be unexceptionable. In the circumstances of this case mentioned above we have entertained an irresistible impression that through filing of his complaint under the Illegal Dispossession Act, 2005 the petitioner had tried to transform a bona fide civil dispute between the parties into a criminal case so as to bring the weight of criminal law and process to bear upon respondents Nos. 2 to 4 in order to extract concessions from them. Such utilization of the criminal law and process by the petitioner has been found by us to be an abuse of the process of law which cannot be allowed to be perpetuated".*

20. As the petitioner has failed to produce any legal and cogent evidence in support of

his contention, mentioned different dates of occurrence and has also not filed documents with the instant petition in accordance with law, civil litigation is pending between the parties, hence the instant Revision Petition is **dismissed being meritless.**

**(TARIQ MEHMOOD JAHANGIRI)  
JUDGE**

**Announced in open Court on this 23<sup>rd</sup> day of August, 2021.**

**JUDGE**

Bilal /-

**Approved for reporting.**