

**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**

No. IHC/Judl.Deptt.

**(REVISED FORM OF BLUE SLIP)**

Case No. WP- 666-12

Titled. Mumtaz Ahmed Siddique Vs. ASJ West Islamabad

a) Judgment approved for reporting

✓  
Yes/No

b) Judgment any comment upon the conduct of the  
Judicial officer for quality of the impugned judgment  
Is desired to be made.

Yes/No

(In case the answer is affirmative separate  
confidential note may be sent to the Registrar  
drawing his attention to the particular aspect).

  
Initial of the Judge.

NOTE.

1. If the slip is used, the Reader must attach on top of first Page of the judgment.
2. Reader may ask the Judge writing the judgment whether the judgment is to be approved for reporting of any comment is to be made about the judicial officer / quality of judgment.
3. This slip is only to be used when some action is to be taken.

**JUDGMENT SHEET  
IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
JUDICIAL DEPARTMENT**

Writ Petition No. 666-2012  
Mumtaz Ahmad Siddiqui-Vs-Tahir Aslam Mufti Etc:  
Writ-Petition No. 684-2013  
Mumtaz Ahmad Siddiqui-Vs-ASJ Etc:

Date of Hearing: **28<sup>th</sup> May, 2013:**  
For Petitioner: Mr. Rafaqat Islam Awan, Advocate:  
For Pvt. Respondents: Mr. Munawar Hussain Abbasi,  
Advocate:  
For State: Mr. Shabbir Ahmad Abbasi learned  
Standing Counsel.

**JUDGMENT**  
**MUHAMMAD ANWAR KHAN KASI, CJ:** The petitioner

[Mumtaz Ahmad Siddiqui], by way of captioned writ petitions, assailed the two separate orders of learned ASJ dated 13.01.2012 & 09.01.2013, whereby his two Private Complaints under sections 3, 4, 5 & 7 of Illegal Dispossession Act, 2005 [hereinafter to be referred as the Act] were dismissed. Since the parties, question of law & facts in both the petitions are identical, they are taken-up jointly for adjudication.

2- Precisely, the facts relevant for the disposal are that Shop No. 710, I&T Centre, G-6/1, Aabpara, Islamabad, was owned by Mufti Naveed Manzoor, who leased out the same to respondent No.1 [Tahir Aslam Mufti] in January, 2006. Subsequently, the owner of the suit shop Naveed Manzoor died on 07-01-2006 and his legal heirs then appointed Mufti Pervez Manzoor, as their attorney, who filed an ejectment petition against the respondent No.1 on 21.06.2008 which was allowed on 08-07-2010 and appeal against the said order was dismissed on 08-12-2010. Writ-Petition No. 116/2010, preferred against the concurrent findings was also got withdrawn by the respondent No.1 vide order dated 14.10.2011. After first round of litigation, Mufti Pervez Manzoor filed an Execution Petition through present petitioner by appointing him as



special attorney on 14-12-2010 wherein the possession was handed over to the petitioner on 12-01-2011 but, allegedly he was dispossessed on the same day. The petitioner then preferred a Complaint under the Act, 2005 which was dismissed vide impugned order dated 13.01.2012 by observing that there was no incriminating piece of evidence on the file to proceed further with the trial of the case and that complainant [petitioner herein] may seek remedy regarding possession of disputed shop from the learned Executing Court where his execution petition was pending. The said order has been challenged by way of Writ Petition No. 666-2012 [captioned above].

3- Thereafter, the petitioner moved the learned Executing Court, who issued fresh warrant of possession, and in pursuance thereof, possession was handed over to him on 11-07-2012 but again allegedly he was dispossessed on the same day and then he filed second complaint under the Act which was also dismissed by way of impugned order dated 09-01-2013 with the observation that complaint is not maintainable. However, while proceeding under Section 7 of the Act, the possession was restored to the petitioner on 04-03-2013 but he was again dispossessed third time on the same day and then filed fresh Complaint under the Act, which is still subjudice before learned ASJ.

4- It is noteworthy that two FIRs were also registered against the respondents under various sections with allegations of causing hindrance & obstruction during the process of execution.

5- Learned counsel, in support of his submissions, referred to case laws cited as PLD 2010 SC 725, 2010 P Cr L J 666 Quetta, 2010 YLR 3161 Lahore, PLD 2012 Balochistan 189, 2010 YLR 2383 Lahore, PLD 2011 Peshawar 86, 2009 P Cr L J 864 Lahore, 2012 MLD 1652 Peshawar, PLD 2012 Sindh 399, 2011 P Cr L J 1300, 2011 P Cr L J 666 and 2009 P Cr L J 864 Lahore. It was the stance of the learned counsel that several remedies could be availed under the Civil or Criminal Law at the same time and a person who had been dispossessed, could have recourse to any remedy, such as filing of civil suit u/s 9 of Specific Relief Act, 1877, which prescribes

summary procedure; filing of civil suit for possession under Civil Procedure Code; criminal proceedings under section 145 & 146 Cr. PC. initiation of criminal prosecution under section 448 PPC; Illegal Dispossession Act had been specifically enacted to provide speedy, effective and easy relief to the owners as well as to the lawful occupant of the property. According to him, if the law had provided more than one remedy to the aggrieved person then it was his own choice to avail any one of those or all other remedies. No bar or restriction could be placed upon the complainant or the aggrieved person to approach different forums at the same time to avail respective remedies. It has further been contended that lodging of FIR is not a bar to avail remedy under the Act, 2005 and vice versa. Proceedings relating to the act of dispossession pending before the Trial Court are altogether different and same could proceed, despite other proceedings pending in different forums, which could not be stopped or stayed. Much stress had been on the point that there was/is a constant disobedience on the part of respondents towards the court orders, which otherwise deserves stern action. He, therefore, prays for acceptance of both the petitions.

6- Learned counsel for the private respondents, on the other hand, strongly repelled the above arguments by maintaining that the spirit of the Act, 2005 is to proceed against persons who are professional land grabbers or members of land mafia and not against a person accused of a solitary act of illegal dispossession, therefore, both the impugned orders are well justified and do not call for any interference. He further contended that respondent filed a suit for specific performance and during the pendency of the said suit; the captioned petitions are not maintainable. It is further added that the attorney/respondent could not have filed the captioned petitions on behalf of landlord [Mufti Pervez Manzoor] as the landlord revoked/cancelled all the Special-General Power of Attorneys vide Revocation-Cancellation Deed dated 13.05.2013. In addition, it is also submitted that the matter is of civil nature, but

the landlord intentionally converted the same into criminal action just to pressurize the respondent not to pursue the matter relating to the shop-in-question. At the end, learned counsel emphasized that the Act, 2005, is a special enactment, therefore, the captioned petitions are not maintainable, as such, the same may be dismissed.

7- Learned Standing Counsel, in his arguments, supported the impugned order of learned ASJ to the extent whereby possession under section 7 of the Act was restored to the petitioner. According to him, the proper course for the learned Trial Court was to proceed with the complaints instead of dismissing the same in summary manner as the law does not prohibit simultaneous proceedings and especially keeping in view the peculiar facts & circumstances of this case, whereby the alleged accused/respondents are flagrantly violating the orders of the Court and their act, prima facie, attracts proceedings under the Act, 2005.

8- Heard & record perused.

9- The pivotal question which requires determination is as to whether the facts & circumstances of this case deserve initiation of proceedings under the Illegal Dispossession Act, 2005 or otherwise? I have consulted the relevant law. For resolving the controversy, guidance may be implored from case of **Shahabuddin [PLD 2010 Supreme Court 725]**, wherein the Hon'ble Apex Court held that there is no requirement in the Act that one must have grabbed at least so many properties and only then he will be proceeded against; no doubt in the preamble, the words 'land grabbers' have been used and they have been used in the plural, but firstly the preamble must be given due weight, it does not have the same weight as the word used in the Act. Under the Illegal Dispossession Act, 2005 even if an individual is illegally dispossessed, he has a right to have a recourse to the provisions of Illegal Dispossession Act, 2005 without prejudice to such other remedies that may be simultaneously available to him under other laws.

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10- It is also settled law that lodging of FIR is not a bar to avail remedy under the Act, 2005 and would not attract the rule of double jeopardy because the said rule is attracted where the accused had been tried for the offence charged with by a competent court and there is a judgment or order of conviction or acquittal. For guidance see **PLD 1990 Supreme Court 1, PLD 2012 Balochistan 189.**

11- Now I advert to the impugned orders. The reasons advanced in the 1<sup>st</sup> impugned order dated 13.01.2012, in no way, can be termed as justified or result of proper appreciation of record because the learned ASJ proceeded to decide the complaint without holding due trial on the sole reason that the petitioner failed to bring the incident of dispossession into the notice of learned Executing Court. The learned ASJ fully relied upon the proceedings conducted in Execution Petition, and failed to consider other important material i.e. Statement of the complainant and the report of SHO concerned and the fact that allegedly the incident took place in consequence of execution proceedings. There was a specific allegation of dispossession after the execution of warrant of possession, so in presence of these serious allegations, there was no rationale for the learned ASJ to decide the complaint in a cursory manner without affording opportunity to the petitioner to advance his case as it was not a case of simple dispossession but dispossession had been alleged to have been made after process of execution of court order.

12- The second impugned order dated 09.01.2013 is also not sustainable in the eyes of law as the Act 2005 is not only meant for land mafia but also provides protection to lawful owners and occupants of the property as against the unauthorized and illegal occupants. Restoration of possession under Section 7 of the Act itself is an admitted fact of dispossession and, therefore, the complaint could not have been dismissed without proper trial.

13- As mentioned in Para 2 above, the case holds incomparable circumstances as there is allegedly continuous

defiance of Court orders and alleged simultaneous dispossession, first on 12.01.2011, second on 11.07.2012 and then on 04.03.2013 and the third Complaint under the Act, 2005 is also pending adjudication before the learned ASJ.

14- The stand of the respondent that he has instituted a suit for specific performance against the owner of the suit shop and in presence of said suit, proceedings in question cannot proceed, is devoid of force as the dispute contained in the lis-in-hand is entirely different than the one referred by the respondent and has no nexus with each other. The respondent, for re-dressal of his grievance if any, may avail proper remedy before appropriate forum under the relevant statute but it does not mean that he can take the law into his own hands. If this practice is allowed, then there will be no end to any litigation and the result would be that ultimately the citizens, who have just gained confidence in judicial system of our country, once again shall be losing their hopes, which in no way can be allowed or even predicted. A society can survive with curse but cannot with injustice. This Court is also under obligation to protect & preserve the Constitution and the law besides guarantees provided under the Constitution. The litigants cannot be allowed to make decisions parallel to one administered by the courts after due process of law. The law provides the remedies to every mischief. If a person is aggrieved, he may move the proper forum and may get relief. If the respondent is aggrieved of any act or has any right or title whatsoever in the shop in question, the proper course for him is to avail the legal remedy before the proper forum. Continuous and flagrant defiance of the Court orders and alleged act of simultaneous dispossession reflects lawlessness and also shows the sluggish attitude of the law enforcing agencies and, therefore, in no way can be dittoed because it is against the spirit of law.

15- The result would be that both the impugned orders dated 13.01.2012 & 09.01.2013, are set-aside and the matter is remitted to the court of learned ASJ, who is presently seized of the third



complaint under the Act, 2005, with direction to proceed with all the three complaints, strictly in accordance with law after providing full opportunity of hearing & adducing evidence to both the sides and decide all the three petitions, on their own merits, within shortest possible time, but before that the possession of the shop-in-question shall be restored forthwith to the person, having lawful decree in his possession, after complete verification & digging out the truth. The learned ASJ shall ensure the application of rule of law at all costs and shall submit weekly report to this Court through the Registrar, for perusal in Chambers. Copy of this order be also sent to IG, ICT with direction to take immediate steps for implementation of Court orders and if there is any violation from anyone, he should be taken to task and should be dealt with an iron hand. While taking it as an opportunity, the learned MIT of this Court is directed to procure reports from both the learned D&SJs, as to how many execution petitions and complaints under the Act, 2005 are pending adjudication. The complete details in the shape of a statement showing present status and reasons for delay be requisitioned, which shall reach this Court within one week. A copy of the order be also sent to both the learned D&SJs [East & West] for information & compliance.

16- The petitions allowed in above terms with no orders as to costs.

MUHAMMAD ANWAR KHAN KASI  
CHIEF JUSTICE

Announced in Open Court, on this 17th day of June, 2013:

CHIEF JUSTICE

M. Suhail

APPROVED FOR REPORTING