

JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Criminal Appeal No.134/2018

Muhammad Ramzan Khokhar vs. Muhammad Riaz & 02 others

and

Criminal Revision No.66/2018

Muhammad Riaz vs. Muhammad Ramzan Khokhar & 02 others

Appellant by: Malik Waheed Anjum, Advocate for Muhammad Ramzan Khokhar (Respondent No.1 in Crl. Revision No.66/2018)

Respondents by: Syed Zulfiqar Abbas Naqvi, Mr. Gul Hussain Jadoon and Mr. Mudassar Hussain Malik, Advocates for Muhammad Riaz (Petitioner in Crl. Revision No.66/2018)

Mr. Hasnain Haider Thaheem, State Counsel.

Muhammad Shahid, S.H.O and Qasim Zia, S.I,
P.S. Lohi Bher, Islamabad.

Date of Decision: 23.12.2020.

JUDGMENT

MOHSIN AKHTAR KAYANI, J: Through this single judgment, I intend to decide the captioned Criminal Appeal and Criminal Revision as both have been arisen out of judgment dated 31.07.2018, passed by learned Additional Sessions Judge (East), Islamabad.

2. Through captioned criminal appeal, Muhammad Ramzan Khokhar/ appellant has called in question judgment of the learned Additional Sessions Judge (East), Islamabad, dated 31.07.2018, whereby appellant has been convicted under Section 3 of the Illegal Dispossession Act, 2005 and sentenced to two (02) years rigorous imprisonment along with payment of compensation of Rs.200,000/- to complainant, whereas through captioned

criminal revision petition, Muhammad Riaz/complainant has prayed for modification of judgment dated 31.07.2018, passed by learned Additional Sessions Judge (East), Islamabad, as well as prayed for enhancement of punishment awarded to Muhammad Ramzan Khokhar/appellant.

3. Succinctly, Muhammad Riaz (Respondent No.1) filed a complaint under Sections 3 & 4 of the Illegal Dispossession Act, 2005 against Muhammad Ramzan Khokhar (appellant) having allegations that appellant has illegally occupied the land belongs to Mst. Qaisra Mukhtar Alvi, Salma and Aspy Nariman Fatakia, situated in Mouza Hardogahar, Islamabad. After recording of cursory evidence and report from S.H.O. P.S. Lohi Bher, Islamabad (Respondent No.2), charge was framed on 10.04.2017. Both the sides recorded their evidence, whereafter the learned trial Court, vide impugned judgment dated 31.07.2018, convicted and sentenced appellant to undergo 02 years rigorous imprisonment along with payment of compensation of Rs.200,000/-. Hence, instant criminal appeal.

4. Learned counsel for appellant contends that the learned trial Court has failed to consider the documentary evidence produced by the appellant and resorted to passing of the impugned judgment, as civil suits pertaining to the suit land are already subjudice before the competent Civil Court, even otherwise, appellant is co-sharer in the suit land and he did not illegally occupy the same, per se, the learned trial Court has not taken into account all these facts and passed the impugned judgment in a slipshod manner, which is liable to be set-aside.

5. Conversely, learned counsel for respondent No.1 (complainant) opposed the filing of instant criminal appeal on the grounds that he is

owner of the farm house built on suit land, wherefrom respondent No.1 was illegally and forcibly dispossessed by the appellant, as such, Respondent No.1 has proved the case before the learned trial Court beyond any reasonable shadow of doubt by producing oral as well as documentary evidence, as such, learned trial Court has properly appreciated the facts and circumstances of the case and passed the impugned judgment in accordance with law, which is liable to be maintained.

6. Arguments heard, record perused.

7. Perusal of record reveals that PW-1 Muhammad Riaz / Respondent No.1 has lodged the complaint under Section 3 of the Illegal Dispossession Act, 2005 before the learned Additional Sessions Judge (East), Islamabad on 28.09.2016 with the allegations that Mst. Qaisra Mukhtar Alvi, Salma and Aspy Nariman Fatakia, are owners of land measuring 37-Kanals and 19 ½ Marlas, situated at Mouza Hardoghar, Japan Road, Islamabad with specific boundaries since 2005 on the basis of Exh.PA and have constructed the wall at the front of Japan Road while fenced the wall from the other side. One of the owners namely Mst. Qaisra Mukhtar Alvi is the attorney of the other two ladies namely Salma and Aspy Nariman Fatakia vide Exh.PC and Mark-A, who got the transformer and electricity meter installed in the subject premises on 05.08.2005, as evident from electricity bills, referred as Exh.PB/1 and Exh.PB/2, for the months of August and July.

8. PW-1 Muhammad Riaz in his evidence stated that Mst. Qaisra Mukhtar Alvi hired a guard namely Muhammad Rasool, who shifted to the subject premises in the year 2011, whereas Muhammad Ramzan

Khokhar/appellant purchased 12-Kanals and 12-Marlas land in same Khasra numbers and thereafter he married the daughter of Muhammad Rasool i.e. the guard appointed on farmhouse with intent to grab the land of Alvi Farms. The appellant has also filed a civil suit for declaration and injunction against Mst. Qaisra Mukhtar Alvi, Salma, Aspy Nariman Fatakia and Muhammad Rasool, titled *Muhammad Ramzan Khokhar vs. Muhammad Hameed Alvi*, Exh.PB, on 24.11.2014. The suit was contested by the said owners/defendants through their written statements, whereby Muhammad Rasool / Defendant No.5 has denied the version of appellant and acknowledged the possession of subject premises in favour of lady owners, including the built up property as well as installation of electricity transformer and electricity meter. The civil suit was withdrawn by appellant, vide order dated 27.01.2016, mainly on the ground that a compromise was executed between the parties. PW-1 Muhammad Riaz further highlighted that Muhammad Rasool lodged a criminal case vide FIR No.39, dated 27.02.2015, under Sections 452, 337H(ii), 148, 149 PPC, P.S. Lohi Bher, Islamabad, through Exh.PC, against the appellant with the allegations that the appellant intended to trespass into the house and injured him. He has also referred an agreement to sell (Exh.PF), whereby the matter was settled in the above mentioned civil suit. The appellant has transferred the land measuring 11-Kanal and 11-Marlas to nominee of respondent namely Safdar, however remaining land could not be transferred due to an injunctive order passed in suit titled *Nazir Hussain vs. Mst. Qaisra Mukhtar Alvi*. The documents of civil suit have been referred as Exh.PG and after vacation of injunctive order, an appeal was filed, referred

as Exh.PH, resultantly the matter could not be resolved. Appellant also filed application (Exh.PK) in the month of September, 2016 to the S.H.O. P.S. Lohi Bher with the allegations that PW-1 Muhammad Riaz/Respondent No.1 has taken over his land on 28.08.2016 after breaking open the locks of premises. In this regard, an inquiry was conducted by S.P., P.S. Lohi Bher, but during the course of inquiry, the appellant attacked Alvi Farms, beaten up the guard Noor Muhammad and got possession of the Alvi Farms, resultantly a complaint under Section 3 of the Illegal Dispossession Act, 2005 has been filed.

9. It has been observed from cross examination of PW-1 Muhammad Riaz that possession was taken over on Friday, the 16th of September, 2016 when the lady owners were not at Islamabad and PW-1 Muhammad Riaz are managing the affairs on their behalf, however it has been acknowledged by appellant side that PW-3 Noor Muhammad, Chowkidwar, was present at the Alvi Farms i.e. disputed land.

10. PW-3 Noor Muhammad/Chowkidwar i.e. eyewitness of the alleged incident, has made a categorical statement that he was appointed as Chowkidar by PW-1 Muhammad Riaz/complainant on 15.08.2016 at Alvi Farms, where he was residing along with two other Chowkidars namely Kamran and Tariq. On 10.09.2016, Kamran and Tariq went to their village due to Eid holidays leaving behind PW-3 Noor Muhammad to remain at the farmhouse. On 16.09.2016, at about 03 p.m., the appellant along with 8/10 persons, armed with weapons, broke the locks open of Alvi Farms and forcibly entered in the premises as they cut down the fence / wires from back side, as such, they had given him physical beating and took over

possession of the farm. He informed the complainant about the occurrence on cell phone, whereafter PW-3 Noor Muhammad along with PW-1 Muhammad Riaz submitted a complaint in police station.

11. During the course of cross-examination, PW-3 Noor Muhammad acknowledged that he filed an application for registration of FIR against said accused persons. He also confirmed that the main root cause of the dispute is the F.I.R, which was lodged by Muhammad Rasool, when the appellant attacked the farm, who is also his father-in-law. PW-3 Noor Muhammad confirmed the date and time of attack when appellant entered in the premises forcibly.

12. Conversely, the appellant appeared as DW-1 and contended that he purchased 12-Kanal and 12-Marla of land on 03.12.2012, including two rooms, one kitchen, one batch, boundary wall, transformer and electricity meter from one Dr. Najam Zafar, through mark-DA. He has produced his ownership proof as Mark-DB. He also entered into agreement regarding sale of land measuring 12-Kanal and 12-Marla with PW-1 Muhammad Riaz against sale consideration of Rs.13,700,000/-, out of which earnest money of Rs.2,000,000/- was received, whereafter DW-1 Muhammad Ramzan Khokhar transferred land measuring 5-Kanal and 11-Marla on receiving additional amount of Rs.2,000,000/-, but remaining amount was not paid as per terms of agreement, as such, remaining land of 7-Kanal and 01-Marla was still owned by him as per Exh.DA i.e. proof of ownership, periodical record of right for the year 2011-12, Khasras No.317 and 318. He has further taken the stance that since balance sale consideration was not paid by PW-1 Muhammad Riaz and even then when the latter sold out the

land in question, he lodged a criminal case vide Exh.DB against PW-1 Muhammad Riaz, as such, different civil litigations, titled Muhammad Riaz v. Muhammad Ramzan (Exh.DC), Muhammad Ramzan v. Muhammad Riaz (Exh.DD) and Syed Misbah ul Hassan v. Muhammad Riaz (Exh.DE) regarding suit land are pending before competent Civil Courts. However, during the course of cross-examination, DW-1 Muhammad Ramzan Khokhar (appellant) acknowledged the pendency of civil suits and agreements. He also acknowledged that *it is correct that in the house at which I reside an electric meter is installed. It is correct that said meter is in the name of Qaisra Mukhtar Alvi.* He also acknowledged that FIR No.39/2015, dated 25.02.2015, under Sections 452, 337-H(ii), 148, 149 PPC at P.S. Lohi Bher, Islamabad has been registered against him and confirmed the agreement Exh.PF was executed and entered after registration of FIR Exh.PE. He also confirmed inquiry conducted by S.P., P.S. Lohi Bher (Exh.PK).

13. The appellant has also produced DW-2 Raja Nisar Ahmad, who contended that on 23.04.2016, he purchased a land from the appellant measuring 02-Kanal and 01-Marla against sale consideration of Rs.2,500,000/- through agreement Exh.DF, whereafter the land was demarcated vide report Exh.DG. He further stated that the appellant is owner in possession of land measuring 07-Kanal and 01-Marla, out of which the appellant sold out 02-Kanal and 01-Marla in Khasras No.317 and 318, as such, DW-2 Raja Nisar Ahmad came to know about pendency of civil litigation regarding the suit land when he contacted the appellant for transfer of his share in the suit land, whereupon he filed his application under Order I Rule 10 CPC, referred as Exh.DH.

14. Similarly, the appellant also recorded his statement under Section 342 Cr.P.C. and contended while answering Question No.2 that he purchased a piece of land on 03.12.2012 and since then he remained in possession of said land. However, while answering Question No.6, the appellant denied the entire position of execution of agreements and civil suits pending before the competent Civil Court.

15. The entire evidence reflects that the appellant claims to be owner of disputed land having been purchased from one Dr. Najam Zafar, vide agreement dated 03.12.2012, including a constructed portion, but surprisingly the appellant neither produced the said ex-owner nor is there any document through which it could be presumed that Dr. Najam Zafar was owner of the disputed land, over which Mst. Qaisra Mukhtar Alvi had installed transformer and electricity meter. On the other hand, Mst. Qaisra Mukhtar Alvi is the owner along with two other ladies since 2005 and the electricity bills confirm this aspect vide Exh.PB/1 and Exh.PB/2. Muhammad Rasool, Chowkidar, who is father-in-law of appellant, has filed his written statement in suit titled Muhammad Ramzan Khokhar vs. Muhammad Hameed Alvi and confirmed that possession was with Mst. Qaisra Mukhtar Alvi and he was their Chowkidar, whereas when the appellant tried to dispossess him, FIR No.39/2015, dated 25.02.2015, under Sections 452, 337H(ii), 148, 149 PPC, P.S. Lohi Bher, Islamabad (Exh.PE) was registered against appellant, whereafter agreement was executed by appellant with PW-1 Muhammad Riaz i.e. special attorney/complainant through Exh.PF, whereby PW-1 Muhammad Riaz intended to purchase the land measuring 12-Kanal & 12-Marla in different Khasra numbers, but

subsequently land measuring 5-Kanal & 11-Marla was transferred and remaining land could not be transferred due to pendency of civil suit titled as Nazir Hussain vs. Mst. Qaisra Mukhtar Alvi (Exh.PG). However, the appellant has withdrawn his suit on 27.01.2016, as such, it is not the case of appellant that he has ever been in possession of land in question.

16. Another astonishing documentary evidence (Exh.PK) has been referred on record, whereby the appellant claimed that he has been dispossessed from his land on 28.08.2016 and he filed his application in the month of September, 2016, per se, the matter was inquired by S.P. P.S. Lohi Bher, Islamabad.

17. All these facts demonstrate that the land in question was owned by Mst. Qaisra Mukhtar Alvi, Salma and Aspy Nariman Fatakia, who constructed boundary wall on front side of Japan Road and also installed transformer and electricity meter in the year 2005, whereas the appellant purchased some piece of land without possession from one Dr. Najam Zafar and tried to dispossess Muhammad Rasool (Chowkidar) from subject premises, resultantly an FIR was lodged and even the appellant filed a civil suit, in which his father-in-law has not acknowledged his claim, rather recorded a written statement in favour of Mst. Qaisra Mukhtar Alvi. The appellant in order to resolve the controversy has entered into agreement with PW-1 Muhammad Riaz/complainant i.e. attorney of lady owners and has received certain payment and transferred land measuring 05-Kanal and 11 Marla, but remaining land could not be transferred, which raised a dispute. The appellant himself claims that he was dispossessed in the month of September, 2016, but later on he become

owner in possession, which has been confirmed by PW-3 Noor Muhammad / Chowkidar, who confirmed that on 16.09.2016, the appellant along with 8/10 persons entered into premises, beaten him up and taken over possession forcibly. All these undisputed facts highlight one aspect that the appellant had forcibly entered in suit premises and took over the possession of the land without any basis and as such, un rebutted claim of PW-3 Noor Muhammad/Chowkidar has not been shattered in any manner, even the S.P., P.S. Lohi Bher has declared the appellant guilty in this regard.

18. The appellant has referred numerous civil suits during the course of arguments, but it is settled law that despite pendency of civil litigations, the proceedings to the extent of offence described in Illegal Dispossession Act, 2005 are maintainable. Reliance is placed upon 2016 SCMR 1931(Sh. Muhammad Naseem v. Mst. Farida Gul), and as such, the appellant has rightly been declared unlawful occupier of land in question without any justification and the complainant is not bound to prove at the first instance that appellant possess credentials of a professional land grabber as also held in case reported as PLD 2016 SC 369 (Mst. Gulshan Bibi vs. Muhammad Sadiq), even otherwise, the appellant fulfills all the requirements to become an offender in terms of Section 3 of the Illegal Dispossession Act, 2005, per se, the appellant has taken a plea under Article 122 of the Qanun-e-Shahadat Order, 1984 that he is purchaser of land in question from one Dr. Najam Zafar in the year 2012 and he has produced his agreement Mark-DA, but same was neither justified in any manner nor was Dr. Najam Zafar produced in the Court to justify his

claim, even the stamp or proof of consideration has not been referred, therefore, the special plea raised by the appellant has not been justified, which has to be proved independently in terms of judgments rendered by the apex Court reported as PLD 2015 SC 145 (Muhammad Raheel alias Shafique vs. The State), 2015 SCMR 864 (Muhammad Javed vs. The State) and PLD 2017 SC 265 (Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Sharif). Even the appellant has not given any specific answer while recording his statement under Section 342 Cr.P.C. as to how he came into possession of Alvi Farms and even periodical record of right placed on record by him was obtained in the year 2018 and as such, no justification was given for installation of electricity meter in the name of Mst. Qaisra Mukhtar Alvi and bills referred as Exh.PB/1 and Exh.PB/2, per se, the appellant has badly failed to prove the case in his favour.

19. Besides the above referred position, it has been observed from the record that the appellant has submitted a compromise agreement, dated 28.08.2018, before this Court, executed with PW-1 Muhammad Riaz, and on the basis of said compromise, the sentence of the appellant has been suspended by this Court, vide order dated 11.09.2018, passed in C.M. No.1/2018, as such, the said document of compromise specifically highlights the fact that appellant has illegally dispossessed Mst. Qaisra Mukhtar Alvi from Alvi Farms, which has been referred as under:

۸۔ جو کہ اس تنازعہ کی وجہ سے فریق دوئم نے فریق اول / قیصرہ مختار علوی وغیرہ کے فارم "علوی فارم" پر قبضہ کیا
ہوا ہے۔

20. This Court when confronted the parties as to whether they are still interested to proceed on the basis of said compromise, they answered in

negative, whereupon this Court then also confronted the appellant as to whether he is interested to settle the issue in hand on the basis of previous agreement executed between the parties, referred as Exh.PF, whereby the respondents are ready to pay additional amount for land measuring 07-Kanal & 01-Marla, but the appellant has categorically denied this aspect and contended that litigation with respect to those agreements are pending before the competent Civil Courts. In view of above position, it is high time to decide the matter as the parties are not interested to settle their issue on the basis of post dispute compromise document, although the illegal possession of land in question has been acknowledged in the said documents, which further substantiates the case of PW-1 Muhammad Riaz / complainant that the appellant has illegally taken over the land by force. This Court also issued notice to S.H.O., P.S. Lohi Bher, who appeared before this Court on 21.12.2020 and explained the circumstances with the contention that report submitted in this case in previous round was prepared by some other police official, who has not submitted a detailed report and as such, it amounts to negligence on the part of said official, even a demarcation report submitted by DW-2 Raja Nisar Ahmad in his evidence reflects that a small piece of land has been demarcated vide Exh.DG, which prima facie demonstrates that same was managed by the revenue department, therefore, notice was issued to Halqa Patwari, who prepared this report, to appear in-person. The conduct of the then S.H.O. of P.S. Lohi Bher as well as of the revenue officials is not up to the mark, who have protected the appellant, who has illegally dispossessed the complainant from Alvi Farms, even the appellant has taken contradictory stances by claiming that he purchased the land from one Dr. Najam Zafar

and on the other hand he filed a complaint that he was dispossessed and again that he is in possession of land, such conduct of appellant is in contradiction with his plea in his own civil suit. Similarly, appellant's father-in-law has also filed a written statement against him and denied his version. All this background left nothing in favour of the appellant, rather it appears that he has not only illegally taken over the suit land of Mst. Qaisra Mukhtar Alvi, but also managed the affairs with police as well as with the revenue authorities being resident of same area. The compromise so executed by him also reflects that despite his conviction passed by learned Additional Sessions Judge, dated 31.07.2018, he remained fugitive from law and after settlement of his claim with PW-1 Muhammad Riaz / complainant by way of compromise, he surrendered himself, whereas the S.H.O. has shown his ignorance that he has not been communicated with any order to arrest him for onward transmission to jail authorities for completion of his sentence, though such stance of S.H.O. is not legally justifiable from record, therefore, he has been warned to remain careful in future.

21. The learned Trial Court has rightly appreciated the evidence available on record and convicted the appellant, but the sentence awarded to appellant is on lesser side, rather the appellant deserves maximum sentence as he despite not owner of suit premises had forcibly expelled the legitimate owners from Alvi Farms and even on the basis of his sheer blackmailing, he compelled PW-1 Muhammad Riaz/complainant to enter into agreement and claimed an amount, which had nothing to do with the land belonging to real owners i.e. Mst. Qaisra Mukhtar Ali and others. This entire scheme of documentation prepared by the appellant demonstrates

that he with mala fide entangled the complainant and owners of suit premises in unnecessary civil litigation for more than 07 years, in such circumstances the appellant has to be dealt with no leniency, even the S.H.O., P.S. Lohi Bher has also not performed his duties in accordance with law, especially when the reports submitted by S.H.O., P.S. Lohi Bher are vague, rather he intended to protect the appellant indirectly and such kind of police officer is liable to be proceeded against on its departmental side, even one nominated accused was not referred in this case, who otherwise could not be involved at this stage. This Court has also called a report from S.H.O., P.S. Lohi Bher, vide order dated 06.11.2020, which has been placed on record by the S.H.O., P.S. Lohi Bher on 21.12.2020, which categorically confirmed the entire situation on site. The report has not been objected to by any of the party and in this backdrop also, the appellant has failed to prove his case, therefore, the captioned Criminal Appeal No.134/2018 (Muhammad Ramzan Khokhar v. Muhammad Riaz & 02 others) is hereby **DISMISSED** and Criminal Revision No.66/2018 (Muhammad Riaz v. Muhammad Ramzan Khokhar & 02 others) is **ALLOWED**. Accordingly, the sentence of 02 years awarded to Muhammad Ramzan Khokhar/appellant is enhanced to 05 years rigorous imprisonment and the compensation already awarded is enhanced to Rs.1.0 Million, which has to be paid by Muhammad Ramzan Khokhar/appellant to PW-1 Muhammad Riaz/complainant, failing which the appellant has to serve further 06 months simple imprisonment, however benefit of Section 382-B Cr.P.C. is extended to Muhammad Ramzan Khokhar/appellant. Appellant shall be taken into custody and transmitted to jail for completion of his remaining

sentences. S.H.O., P.S. Lohi Bher, Islamabad is directed to restore the possession of land in question in favour of PW-1 Muhammad Riaz/ complainant, under intimation to this Court.

(MOHSIN AKHTAR KAYANI)
JUDGE

Khalid Z.

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