

JUDGMENT SHEET.
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD.

Criminal Appeal No. 69/2019

Dr. Muhammad Amin

Versus

Shamiz Ahmed & others.

Appellant By : Barrister Asim Muzaffar Khan, alongwith
the appellant.

Respondent Nos. : Rana Muhammad Irshad Khan, Advocate.
1,4 & 5 By

State By : Hafiz Malik Mazhar Javed, State Counsel.

Date of Hearing : 24.01.2020

Ghulam Azam Qambrani, J. - This appeal has been directed against the order dated 20.05.2019, passed by learned Additional Sessions Judge (West), Islamabad, whereby complaint filed by appellant/complainant under Section 3 & 4 read with Section 7 & 8 of the Illegal Dispossession Act, 2005, was dismissed.

2. The brief facts of the case are that the appellant/complainant filed complaint under Section 3, 4, read with Section 7 & 8 of the Illegal Dispossession Act, 2005 with the assertions that the complainant is highly qualified employee of Zarai Taraqati Bank Limited, Head Office, Islamabad. The complainant was appointed as Assistant Director at Agriculture Technology Division ADBP, HQ Islamabad. That, the complainant applied for allotment of flat in 1996. He was allotted on merit Flat No.2, Block-F 2, ZTBL Officer Colony, G-7/2, Islamabad on 05.03.2014. He was handed over possession on 05.03.2014 by the bank and he was living peacefully and performing his duty as agronomist on place of posting as well as on malafide special assignment Gujranwala Zone. That without cancellation

or withdrawal of allotment letter an illegal notice was issued on 31.07.2015 for vacation of flat for malafide assignment at Gujranwala. The complainant filed a suit against the illegal notice dated 31.07.2015. The bank representative and counsel of the bank out of Court agreed with complainant to retain the flat and withdraw the suit to save time, as the bank will not dispossess him. So, the complainant withdrew the suit on amicable settlement. That the respondents dispossessed him on 14.09.2018 and are still illegally occupying said flat. That respondents No.1 to 4 have stolen and broken many house hold items and using complainant's house hold items. That respondents No.1 to 4 have no right with the said flat in any manner whatsoever but they are adamant to grab the said flat and want to deprive the complainant from his accommodation and service.

3. The complainant filed the complaint under section 3, 4 read with section 7 & 8 of Illegal Dispossession Act 2005 against the respondents which was dismissed by the learned Additional Sessions Judge (West), Islamabad, vide order dated 20.05.2019 hence this appeal.

4. Learned counsel for the appellant contended that the impugned order has been passed by the learned Additional Sessions Judge (West), Islamabad, without considering the facts and obtaining reply from the respondents; that the respondents without lawful authority dispossessed the appellant and that too without due course of law; that the issuance of Office Memorandum dated 15.04.2016 for dismissal of the appellant from service was on false allegations. Learned counsel further contended that the appellant was on duty when he was dispossessed illegally and he was lawfully retaining the accommodation i.e. Flat No.2, Block-F 2, ZTBL Officer Colony, G-7/2, Islamabad, and prayed for setting aside of the impugned order.

5. Learned counsel for the respondents vehemently opposed the contentions of the learned counsel for the appellant on the grounds that the appellant is not in service and has been terminated from his service; that after

lapse of grace period, the appellant could not retain the accommodation; that final notice was also issued to the appellant even then he did not vacate the premises/accommodation; that in presence of learned Magistrate the house in question was vacated; that the provisions of Illegal Dispossession Act, 2005 are not attracted in the matter and lastly learned counsel supported the impugned order passed by the learned Additional Sessions Judge (West), Islamabad. Learned counsel for the respondents has placed on record certain documents including Judgments passed by this Court.

6. Arguments heard, record perused with the able assistance of the learned counsel for the parties.

7. Perusal of record reveals that the appellant was in the service of ZTBL at Islamabad, he had applied for accommodation/flat in the year 1996 and was allotted the above mentioned flat where he was living. During the service, he was transferred to Gujranwala and a notice was issued to him for vacation of the said accommodation, which was challenged by the appellant by filing a Civil Suit wherein, he also sought interim injunction, which was refused up till High Court due to the reason that the maximum period for retaining the accommodation is six months, which has already elapsed and on 10.05.2018 the suit filed by the appellant was dismissed by the learned Civil Judge (West), Islamabad.

8. This Court while passing the judgment dated 08.03.2018 in *Civil Revision No. 427/2017, titled as Dr. Muhammad Amin Vs. ZTBL*, has observed that:-

"services of petitioner have already been terminated vide order dated 15.04.2016 and his stay in the allotted premises i.e. Flat No.2, Block No.2-F, ZTBL Officers Colony, G-7/2, Islamabad is illegal as period of six months has already been elapsed and he could not retain the premises in question which was earlier allotted to him but after his dismissal from service his possession of the flat is illegal and contrary to the allotment policy of respondent/ZTBL."

9. The appellant has filed complaint under the Illegal Dispossession Act, 2005 with the contention that he has been dispossessed unlawfully. The Act of 2005 is a special law and enacted to protect the lawful owners and occupiers of immoveable properties from any illegal or forcible dispossession by the property grabbers. Clause (c) of Section 2 defines an "Occupier" as meaning a person who is in lawful possession of a property while clause (d) defines an "Owner" as meaning a person who actually owns the property at the time of his dispossession, otherwise than through a process of law. Sub-Section (1) of Section 3 provides that no one shall enter into or upon any property to dispossess, grab, control or occupy it without having any lawful authority to do so, having the intention to dispossess, grab, control or occupy the property from the owner or occupier of such property.

10. The record further reveals that the learned Magistrate alongwith the police officials including the SHO went at the premises, where the appellant was in occupation of the same, as per report the appellant was not willing to vacate the said premises. Perusal of the record and judgment of this Court dated 08.03.2018 passed in Civil Revision No. 427/2017, titled as Dr. Muhammad Amin Vs. ZTBL, also reveals that the appellant had no legal right to retain the said flat/premises after lapse of initial six months of his transfer to Gujranwala and thereafter his dismissal from service. The respondent Nos. 1 & 2 on behalf of ZTBL, which presumed to be owner of that flat submitted that initially a notice was issued to the appellant for vacation of the flat/premises and thereafter approached the office of the Deputy Commissioner, ICT for providing the assistance of learned Magistrate and police, including lady police for vacation of the house, upon which the said officials went to the said flat for vacation of the same. The act of the respondents in presence of learned Magistrate and police officials cannot be said unlawful and the vacation of the flat from the possession of the appellant cannot be termed illegal dispossession. It is well settled proposition of law that he who comes to the Court must come with clean hands. The appellant himself was not entitled even to retain the flat for the

reasons, firstly, he was transferred from Islamabad to Gujranwala, but he retained the same even after lapse of grace period and secondly, his subsequent dismissal from service. When legal rights of the appellant has been settled in civil proceeding vide judgment dated 08.03.2018 in "*Civil Revision No. 427/2017, titled as Dr. Muhammad Amin Vs. ZTBL*", the question regarding claim under Illegal Dispossession Act, 2005 does not arise. The appellant was not in service, even no restraining order was in the field by any Court of law. There was no legal right or entitlement available to appellant for retaining the said flat/premises anymore. In such circumstances, the learned Trial Court has rightly dismissed the complaint filed by the appellant under the Illegal Dispossession Act, 2005.

11. The learned Trial Court, after proper appraisal of the material available on record has rightly concluded and dismissed the complaint filed by the appellant under the Illegal Dispossession Act, 2005. I have found no illegality or irregularity in the impugned order dated 20.05.2019, passed by learned Additional Sessions Judge (West), Islamabad, warranting interference by this Court. Resultantly, this Criminal Appeal having no force is **dismissed**.

(GHULAM AZAM QAMBRANI)
JUDGE

Announced in open Court on **31.01.2020**.

JUDGE

*A. Rahman Abbasi.