

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD.**  
**(JUDICIAL DEPARTMENT)**

**Criminal Revision No.115 of 2019**

Wazir Khan  
Vs.  
Nazar Jaffar and others

Petitioner By: Mr. Sher Afzal Khan Marwat, Advocate.  
Respondent No.1 By: Mr. Riasat Ali Azad, Advocate and  
Mr.Zulifqar Ali Malik, Advocate  
State By: Mr. Zohaib Hassan Gondal, State Counsel.  
Date of Hearing: 27.04.2020.

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**GHULAM AZAM QAMBRANI,J.:-**The instant criminal revision petition under section 439 Cr.P.C. has been directed against impugned order dated 09.05.2019, passed by the learned Additional Sessions Judge-IV/ Judge MCTC, East-Islamabad, whereby application under section 7 of Illegal Dispossession Act, 2005, for interim custody and restoration of possession of the disputed house, filed by respondent No.1 (hereinafter be called as "**respondent**") was allowed and possession of the said house was directed to be handed over to the respondent.

2. Briefly stated facts of the instant revision petition are that respondent has filed Complaint under Section 3/ 4 of the Illegal Dispossession Act, 2005, against the petitioner stating therein that on 19.03.2019 at about 08:19a.m, petitioner along with 9 / 10 unknown persons armed with deadly weapons entered in the house of complainant measuring 01 Kanal 14 Marlas in Khewat No.754, Khatooni No.1774 / 1778, Khasra No.744, 745, Qitta-2, Khasra No.583, 584 & 585 Qitta-3 near Kalma Chowk, Simly Dam Road within the Revenue estate of Phulgran, Tehsil, District Islamabad, forcibly to dispossess the

complainant without having any lawful authority in presence of Muhammad Akhtar, servant of complainant and when on the same date, the complainant along with Shahid Khan and Shahzad Amin after receiving information through mobile phone reached at the place of occurrence, the accused Wazir Khan and his unknown co-accused pointed fire arms weapons towards them and pushed them out of house illegally and unlawfully, hence, committed offence under Section 3/ 4 Illegal Dispossession Act, 2005. Alongwith the complaint, an application under section 7 of the Illegal Dispossession Act, 2005 has also been filed by the complainant/respondent for restoration of possession of the said house in his favour.

3. After seeking report from the S.H.O concerned and hearing learned counsel for the complainant, notices were issued upon Wazir Khan on 04.04.2019. Consequently, the accused Wazir Khan appeared before the Court on 08.04.2019 and subsequently submitted bail bonds on the direction of the Court. Thereafter, the arguments of both sides were heard and complaint was admitted for regular hearing.

4. Charge against the accused was framed on 25.04.2019. The learned Additional Sessions Judge-IV/ Judge MCTC, East-Islamabad, vide order dated 09.05.2019 accepted the application under section 7 of the Illegal Dispossession Act, 2005 filed by the respondent for interim custody of the disputed house and it was directed that the possession of the house in dispute be restored to the complainant within seven days. Hence, the instant criminal revision petition.

5. The learned counsel for the petitioners contended that the impugned order has been passed in derogation of the spirit of Section 7 of the Illegal Dispossession Act, 2005; that the learned trial Court while allowing the application of the respondent, has infact concluded the Trial

and has held that the petitioner lacks ownership credentials qua respondent and that occupation over the premises in dispute by the petitioner is illegal, unlawful and unwarranted, without examining any revenue official. Further contended that the learned trial Court has failed to appreciate that no jurisdiction is vested in the learned trial Court in terms of section 7 of the Ordinance; that there is no direct or indirect evidence available against the petitioner; that the petitioner has mentioned the boundary walls whereas the respondent has failed to mention any boundary wall in his stamp paper. Next contended that the respondent has failed to state that, on which date and time, and by whom they were dispossessed from the disputed premises. That the accused purchased an under construction house from Muzafar Iqbal, Muhammad Irfan and Allah Ditta through registered sale deed No.2948 registered and attested by Sub-Registrar, Islamabad, and peaceful possession of the said house was handed over to the petitioner by the above said persons in the presence of witnesses; that the petitioner started construction of the said house after obtaining its physical possession. Further argued that the local police/ Investigation Officer visited the disputed house and verified the possession of the said house with the petitioner whereas the respondent has a so-called agreement to sell dated 24.07.2017, therefore, the impugned order passed by the learned Trial Court is liable to be set-aside.

6. On the other hand, learned counsel for respondent contended that the respondent purchased land measuring one Kanal fourteen Marlas comprising Khewat No. 754, Khatooni No. 1774/1778, Khasra No. 744,745, Qitta-2, Khasra No. 583,584 & 585 Qitta-3, situated near Kalma Chowk, Simly Dam Road, Revenue Estate of Phulgran, Tehsil & District Islamabad, from Mst. Nawab Jan where a house was constructed vide

agreement dated 24.07.2017 and the complainant paid the whole sale consideration to the seller at the time of execution of the agreement dated 24.07.2017 and the physical and vacant possession of the said house was handed over to the respondent. Further submitted that said Mst. Nawab Jan has also executed an affidavit dated 24.07.2017 with regard to receiving of Rs.9,000,000/- from the respondent and one Khalid Mehmood also executed an affidavit regarding receiving of an amount of Rs.8,000,000/- from the respondent and handed over the possession of the said house to him, the respondent which was with Khalid Mehmood and thereafter the respondent had been enjoying the peaceful vacant possession of the said house and the respondent has appointed a person for security of the said house. Further contended that servant of the respondent namely Muhammad Akhtar informed him through his mobile phone on 19.03.2019 that some persons had entered into the said house, damaged the construction over there, the respondent reached at the spot where 10/11 persons armed with deadly weapons were present, who threatened the respondent of dire consequences, they also illegally and unlawfully pushed the respondent and others out of the said house and occupied the same forcibly without having any concern. Further contended that the respondent immediately reported the matter to the concerned police station upon which the police called both the parties, but in order to maintain the peace sealed the said house and restrained the parties from entering into the said house. Next contended that respondent had purchased the said house by paying a huge consideration and has every right to enjoy its possession, whereas the petitioner has no concern with the said house. That the acts of the petitioner and his accomplices are violative of sections 3 & 4 of the Illegal Dispossession Act, 2005, hence the learned Trial Court has rightly

accepted the application under section 7 of the Act *ibid*, filed by the respondent through impugned order dated 09.5.2019.

7. Arguments heard, record perused.

8. The possession of the respondent over the disputed property was through legal agreement to sell dated 24.07.2017, which was executed in favour of the respondent by Mst. Nawab Jan wife of Muhammad Ashraf, after receiving an amount of Rs.9,000,000/-, who was the real owner of the said house as per revenue record for the year 1997-1998 and 2001-2002 of the revenue estate of Phulgran, Tehsil & District Islamabad. Record further shows that the respondent also paid an amount of Rs.8,000,000/- to one Khalid Mehmood for taking possession of the property in dispute as Mst. Nawab Jan and Kahlid Mehmood were in litigation against each other regarding the said house since 10.03.2010. Record further shows that Mst. Nawab Jan and Khalid Mehmood executed affidavits with regard to receiving of the above said amount from the respondent which shows that Khalid Mehmood s/o Habib Khan was in possession of the said house until the respondent was given the vacant possession of the said house after a compromise between him and Mst. Nawab Jan.

9. The petitioner submitted photocopies of the registered sale-deed executed by Zafar Ahmad, Muhammad Irfan and Allah Ditta in his favour regarding different lands. Photocopy of the alleged registered sale deed shows that the petitioner has allegedly purchased the house in dispute from three vendors whereas these three vendors independently purchased Haqooq Shamlaat in the shape of open land/plots from Muhammad Tanveer Asim S/o of Muhammad Ali Asim r/o of Asim street, Usmanaabad, Phulgran, Islamabad. The alleged sale-deeds in favour of the petitioner shows that the petitioner had purchased the house in

dispute from three vendors and those three vendors independently purchased Haqooq Shamlat in the shape of an open land from Muhammad Tanvir Asim S/o M. Ali Aslam R/o Asim street, Usmanabad, House No.3-A, P.O Khas, Phulgran, Islamabad.

10. Perusal of the record shows that Mst. Nawab Jan w/o Muhammad Ashraf was owner of the land measuring 01-K and 14-Marlas comprising in khewat No. 754, Khatooni No. 1774/18778, khasra No. 744, 745, Qitta-2, Khasra No. 583,584 & 585 Qitta -3 situated near Kalma Chowk, Simly Dam Road, Revenue Estate of Phulgran, Tehsil & District Islamabad, as per periodical record of the year 1997-1998 and 2001-2002. The said Mst. Nawab Jan was in litigation with one Khalid Mehmood with regard to the said house. Mst. Nawab Jan and Khalid Mehmood subsequently entered into an agreement and after receiving payments from the respondent they handed over the vacant possession of the disputed house to the respondent. As such, it is established on record that the respondent was given possession of the disputed house by the real owner of the house after receiving huge amount from him whereas the petitioner has produced ambiguous documents, therefore, the learned Trial Court has rightly held as under:-

*" The documents produced by the Wazir Khan are unattested photo copies and incomplete as well, however perusal of these documents reveals that M. Irfan, Zafar Ahmad and ALLAH Ditta purchased plots from Tanveer Asim, however interestingly the meats and bounds/locations of all the three plots have been mentioned the same, which is impossible practically. If there were different plots adjacent to each other even then, there meats and bounds should have been different because every plot will normally have four sides/dimensions and the other plot came be adjacent to its one said and therefore, the description of the meats and bounds will automatically different which is not the case here. It is more important to mention there that these three vendors purchased their alleged plots from one Tanveer Asim, whereas, said Tanveer Asim purchased only the rights of Shamlaat from M.Usman S/O Raja M. Shamraiz and Raja M. Shamraiz S/O Raja Abdul Rehman, whereas Raja M. Shamraiz S/O Raja Abdul Rehman R/O Phulgran, Tehsil & District Islamabad,, while appearing before the I.O, made a statement that he has transferred only rights of Shamlaat without possession."*

11. Perusal of the record further reveals that respondent was in possession of the disputed house till 19.03.2019 when the petitioner and his accomplices dispossessed him from the said house illegally, unlawfully on gun point and the petitioner managed to obtain the illegal possession of the house in dispute before purchasing shamlat rights. As such, the learned Additional Sessions Judge/Judge-MCTC, East, Islamabad, after minutely appraising the documents available on record, has rightly accepted the application of the complainant/respondent under section 7 of the Illegal Dispossession Act, 2005 and interim possession of the disputed house has been directed to be handed over to the respondent through the S.H.O, Police Station Bani Gala, Islamabad.

12. In view of what has been discussed above and since learned counsel for the petitioner has failed to point out any illegality or irregularity in the impugned order passed by the learned Trial Court dated 09.05.2019, therefore, this petition having no force, is **dismissed**. The learned Trial Court is directed to conclude the proceedings expeditiously. Parties are directed to appear before the learned Trial Court on 19.05.2020.

**(GHULAM AZAM QAMBRANI)**  
**JUDGE**

Announced in open court, on 30<sup>th</sup> April, 2020.

**JUDGE**

*"Rana.M.Ift*