

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

(Judicial Department)

Writ Petition No. 73 / 2020

Mukhtar Abbas

Versus

Mst. Nighat Laeeq and others

Petitioner By: Mr. Taimoor Aslam Khan, Advocate,

Respondent No.1 By: Mr. Zubair Shah, Advocate,

Date of Hearing: 06.02.2020.

Ghulam Azam Qambrani, J.:- Through the instant writ petition, the petitioner has assailed order, dated 10.01.2020, passed by the learned Additional District Judge-IX (West) Islamabad, whereby the learned trial Court while granting interim relief under section 7 of the Illegal Dispossession Act, 2005, the petitioner was directed to hand over the possession of the house to respondent no.1, namely Mst. Nighat Laeeq Chaudhry before the next date of hearing.

2. The facts in brief are that respondent no.1 filed a complaint under sections 3 of the Illegal Dispossession Act, 2005 stating therein that she being the co-owner of the property along with her children, entered into an agreement of tenancy on 18.04.2015 for a period of two years with effect from 01.11.2014 with the petitioner and at the time of expiry of the same, the petitioner refused to vacate the property. Thereafter, respondent no.1 filed

an eviction petition which was allowed vide judgment and decree, dated 16.04.2019. Pursuant to the judgment and decree, respondent no.1 obtained possession of the said property through execution proceedings. Again the petitioner took forcible possession of the said house. The learned trial Court sought report from the concerned Police Station. A detailed report was submitted on 13.11.2019. Pursuant to the report, charge against the petitioner was framed on 26.11.2019. Statement of respondent no.1/complainant was recorded via video link on 20.12.2019, wherein she was subjected to lengthy cross-examination. However, due to paucity of time, the case was adjourned to 03.01.2020 for remaining cross-examination. During the intervening period, the complainant filed an application under section 7 of the Act for interim relief praying therein that during the pendency of the complaint, possession of the disputed house be restored in her favour. The learned trial Court vide impugned order, dated 10.01.2020 allowed the application and directed the petitioner to restore the possession of the house to respondent/complainant by 13.01.2020. Hence, the instant petition.

3. The learned counsel for the petitioner has contended that; the impugned order is against the law and facts of the case and is liable to be set-aside; in pursuance of an 'Iqarnama' executed between the petitioner and one Laeeq Ahmed Chaudhry deceased, the possession of the property was handed over to him

on 19.01.2009 and since then he is in possession of the same; the petitioner filed a suit for specific performance of the agreement.

4. Conversely, the learned counsel for respondent no.1 vehemently opposed the contentions raised by the learned counsel for the petitioner and has contended that; respondent no.1 is the owner of the house; the petitioner was the tenant of the respondent and the rent agreement was executed on 18.04.2015, the eviction petition of the respondent was accepted vide order, dated 16.04.2019, and in pursuance of the execution proceedings, possession of the house was handed over to the respondent; after the death of husband of the respondent, the rent agreement was extended by her; the impugned order does not suffer from any illegality or irregularity.

5. Arguments of the learned counsels for the parties have been heard and record perused with their able assistance.

6. Perusal of the record reveals that there was a rent agreement between the petitioner and respondent no.1 for a period of two years w.e.f. 01.11.2014 to 30.10.2016. On the expiry of the rent agreement, the petitioner was asked to vacate the house but he refused to vacate the same. Therefore, the respondent filed an eviction petition, which was allowed vide order, dated 16.04.2019. Whereas, the stance of the petitioner is that he purchased the house in dispute and has been in possession since 19.01.2009, in pursuance of an "Iqrarnama" executed between the petitioner and husband of the respondent.

Total consideration was settled as Rs.18.7 million, out of which Rs.13.7 million was paid and remaining amount i.e. Rs.5 million was agreed to be paid at the time of registration of sale deed in favour of deceased husband of the respondent on 18.01.2010, but the deceased failed to get the sale deed registered in favour of the petitioner.

7. The respondent filed a complaint under the Illegal Dispossession Act, 2005 with the contention that she was illegally dispossessed by the petitioner from her house. It is pertinent to note that 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 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.

8. The record reveals that the respondent got possession of the disputed house through execution proceedings, as the petitioner was not willing to vacate the said premises despite the fact that the eviction petition of the respondent was accepted. The

possession of respondent no.1 over the house cannot be termed unlawful. Handing over possession of the house to respondent no.1 by the Bailiff through the execution proceedings, cannot be termed as illegal. It is well settled proposition of law that he who comes to the Court must come with clean hands.

9. In case the contents of the writ petition and averments of the respondent along with the aforementioned facts and circumstances are put in juxtaposition, then it brings the case of the petitioner in the area of disputed questions of facts. It is settled proposition of law that this Court has no jurisdiction to resolve the disputed question of facts in exercise of its constitutional jurisdiction as the same can only be done on the basis of the evidence recorded by the learned trial Court. Reliance in this regard is placed upon the judgment of the august Supreme Court reported as "*Col. Shah Sadiq Vs. Muhammad Ashiq and others*" [2006 SCMR 276] and "*Anjuman Fruit Arhtian and others vs. Deputy Commissioner, Faisalabad and others*" [2011 SCMR 279].

10. The learned trial Court, after proper appraisal of the material available on the record, has rightly directed the petitioner to hand over possession of the disputed house to respondent no.1 during pendency of the complaint filed under the Illegal Dispossession Act, 2005. I, therefore, find no illegality or irregularity in the impugned order, dated 10.01.2020 passed by the learned Additional Sessions Judge (West) Islamabad,

warranting interference by this Court. Resultantly, this petition having no force is accordingly **dismissed**.

(GHULAM AZAM QAMBRANI)
JUDGE

Announced in open Court, on 25th of February, 2020.

JUDGE/

****Rana .M. Ift*.***