

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Criminal Revision No. 19/2013

Waseem Habib

Versus

Malik Ikram, etc.

Petitioner by: Mr. Qaiser Imam Ch., Advocate.

Respondents by: Malik Awais Haider, State Counsel.
Mr. Rizwan Shabbir Kayani, Advocate.
Khalid Awan, S.I, P.S. Sihala, Islamabad.

Date of Decision: 21.11.2019.

MOHSIN AKHTAR KAYANI, J. Through this criminal revision, the petitioner has assailed the order dated 04.01.2013, passed by learned Additional Sessions Judge-II (East), Islamabad, whereby application U/S 3, 4, 5, 6 & 7 of the Illegal Dispossession Act, 2005 filed by the petitioner was dismissed.

2. Learned counsel for the petitioner contends that petitioner purchased five shops situated in Mouza Sihala at G.T. Road near Agha Jee Hotel vide agreement dated 10.07.2012 from Abdul Rasheed after payment of Rs.47,00,000/- by way of different cheques and pay orders, the said constructed property was transferred in the name of Waseem Habib through registered sale deed registered at S.No.9449, dated 10.07.2012, before Sub-Registrar, Islamabad and it was agreed between petitioner and Abdul Rasheed to execute new lease agreement with the tenants; that petitioner after receiving two months rent was dispossessed from the subject premises on 13.09.2012 by

respondents with unknown armed persons and locked the subject shops and dispossessed the tenants; that complaint was filed to the SHO P.S. Sihala which was not entertained despite best efforts and petitioner filed a complaint U/S 3, 4, 5, 6 & 7 of the Illegal Dispossession Act, 2005, which was dismissed by the learned trial Court mainly on the ground that dispute is regarding ownership of land of two rival claimants and the same could not be settled without proper demarcation of the property by the Revenue department; that learned Additional Sessions Judge, Islamabad had passed the impugned order on wrong premises, whereby trial Court has considered the title of the case as most important factor, whereas actual position has to be dealt in terms of Section 3 of the Illegal Dispossession Act, 2005; that trial Court has converted the criminal case into civil dispute and petitioner has been deprived of his legitimate right against respondents/accused who have dispossessed the petitioner from the subject premises despite the fact he has paid Rs.47,00,000/-.

3. Conversely, learned counsel for respondents No.1 to 6 contends that respondents are co-sharer and claims to be owner of the subject premises on the basis of their title document and police after thorough inquiry and probe has given its opinion that property claimed by petitioner is situated in different field number and as such no incident took place as alleged in the complaint; that matter in dispute could only be resolved through the competent civil Court and different civil proceedings have been filed by the petitioner's side which was dismissed; that different inquiries were conducted by different police officials in which the possession of petitioner has not been justified.

4. Arguments heard, record perused.

5. Perusal of record reveals that trial Court through impugned order has only based its findings on short point that matter in dispute could only be resolved after demarcation by the Revenue authority and determination of the ownership of the parties and unless the decision of the Civil Court has not been passed regarding determination of the title, it was further held that "it is required first in such type of proceedings to establish the title along with valid possession." Such findings on the part of learned trial Court are in violation of the basic provisions of Section 3 of the Illegal Dispossession Act, 2005, whereby in terms of Section 2(c), "Occupier means the person who is in lawful possession of the property" and in terms of Section 3, "No one shall enter into or upon any property to dispossess, grab, control or occupy it without having any lawful authority to do so with the intention to dispossess, grab, control or occupy the property from owners or occupier of such property." This aspect clearly establishes that any party who was in possession of the disputed premises is considered to be occupier and if said party was dispossessed, Section 3 of Illegal Dispossession Act, 2005 comes into play. The report dated 23.09.2012 submitted by Muhammad Iqbal, S.I. P.S. Sihala reveals that:-

الزام علیہ فریق ملک اکرام نے ثبوت ملکیت خسرہ نمبر 3721 پیش کیا جس میں وہ علی اصغر سے تین کنال مورخہ 28.09.2011 کا خریدار مالک ہے۔ دکانوں کے قبضہ کا کوئی بیان حلفی اقرار نامہ وغیرہ پیش نہ کیا۔ الزام علیہ کو زمین فروخت کنندہ مسی علی اصغر کو دریافت کیلئے بار بار تھانہ طلب کیا گیا جو حاضر تھانہ نہ آیا۔

جبکہ مسی عبدالرشید ولد محمد شریف سے بھی دریافت عمل میں لائی گئی۔ جس نے بھی درخواست گزار کے بیان کی تائید کی ہے۔

دوران دریافت درخواست گزار فریق کی ملکیتی مقبوضہ دکانوں جن فروخت کنندہ عبدالرشید۔ سابقہ کرایہ دار حمام محمد ارشد، ڈیپٹر

ذوالفقار، ڈیزل مکینک مبشر خان نے درخواست گزار کے بیان کی تائید کی ہے۔ الزام علیہ فریق نے مورخہ 14.09.2012 کو حکم

امتناعی بعد الت جناب سنیز سول جج اسلام آباد (ایسٹ) سے حاصل کر رکھا ہے۔ مناسب حکم صادر فرمایا جاوے۔ فریقین کے مابین

انسدادی کارروائی زیر دفعہ 107/150 ضف عمل میں لائی گئی ہے۔

6. The above referred report *prima-facie* establish that Malik Ikram has not produced any document of possession whereas case of petitioner/complainant is based upon the statement of last seller Abdul Rasheed, ex-tenants Muhammad Arshad (Hamam), Zulfiqar (Denter), Mubashir Khan (Diesel Mechanic) but all these aspects have not been considered by the learned trial Court and declared the said event as of civil dispute due to some pending civil litigations.

7. Learned counsel for the respondents has been confronted regarding pending civil litigations, who tried to convince this Court for civil litigation but surprisingly civil suit was filed after the dispossession of the petitioner. Similarly, learned counsel for the respondents has also highlighted that disputed property was purchased by petitioner in different field number. All these facts could only be considered in the trial Court as the petitioner has placed lease agreement with tenants including the last vendor Abdul Rasheed who acknowledged the right of petitioner at the initial stage of inquiry and recorded his statement on 26.09.2012 but subsequently he retracted from his statement dated 26.09.2012 despite receiving Rs.47,00,000/- from the petitioner, hence, *prima-facie* requirement of maintainability of criminal complaint is visible, which has not been considered by the trial Court in proper manner, even the law laid down in cases reported as 2016 SCMR 1931 (Shaikh Muhammad Naseem Vs. Mst. Farida Gul).

8. In view of above discussion and precedents of the superior Courts, this Court is equipped with the powers to set aside the orders, passed by the trial Court, if the same have been passed in violation of settled principles of law, therefore, this Court in exercise of its powers referred in Section 435 & 439 Cr.P.C. comes to the conclusion that learned trial Court has passed the order without jurisdiction through a non-speaking order which is not maintainable,

hence, instant criminal revision is allowed. Resultantly, impugned order dated 04.01.2013 is hereby set aside and matter is remanded to learned Sessions Judge (East), Islamabad and criminal complaint filed by the complainant shall be deemed to be pending, whereas learned trial Court seized with the matter is directed that after issuance of notice to the respondents, proceed with the matter in accordance with law and decide the same within period of 03 months under intimation to this Court.

9. Before parting with this judgment, it is important to note that learned counsel for private respondents Mr. Rizwan Shabbir Kayani, Advocate has misbehaved in the Court when the order has been announced in open Court after hearing the parties and as such conduct of counsel for respondents is of unbecoming advocate, however, this Court has shown restraint not to pass any adverse order against the counsel who was warned time and again that order has been announced in open Court but he has raised his voice and shouted in an indecent manner which cannot be expected from an advocate of High Court. The conduct of Mr. Rizwan Shabbir Kayani, Advocate is against the court decorum and he has violated the norms of this profession, therefore, he is warned to remain careful in future and copy of this order be transmitted to the worthy President District Bar Association, Islamabad, Vice Chairman, Islamabad Bar Council as well as to Members Islamabad Bar Council for their indulgence and counseling of Mr. Rizwan Shabbir Kayani, Advocate.

(MOHSIN AKHTAR KAYANI)
JUDGE