

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

JUSTICE MUHAMMAD HASHIM KHAN KAKAR
JUSTICE ISHTIAQ IBRAHIM
JUSTICE ALI BAQAR NAJAFI

CRIMINAL PETITION NO.562 of 2022

(Against the order dated 21.03.2022, passed by
the Peshawar High Court, Abbottabad Bench,
in Criminal Appeal No.40-A of 2019)

Muhammad Khurshid Khan, Advocate

...Petitioner (s)

Versus

Dost Muhammad Khan (since deceased),
through his LRs and others

...Respondent(s)

For the Petitioner(s): Mr. Tahir Hussain Lughmani, ASC

For the State : Mr. Zahid Yousaf Qureshi, AOR, KPK

For the Respondent (s): Sardar Tariq Mehmood, ASC

Date of hearing: 12.11.2025

JUDGMENT

ISHTIAQ IBRAHIM, J.- Muhammad Khursheed Khan (“**the petitioner-complainant**”), instituted a complaint under Sections 3 and 8 of the Illegal Dispossession Act, 2005 (“**Act of 2005**”) against Dost Muhammad Khan respondent No.1 (now deceased) as well as respondents No.2 to 5, before the Court of the learned Additional Sessions Judge-III, Abbottabad (“**the Trial Court**”). It was alleged in the complaint that the petitioner-complainant is the lawful owner of land bearing *Khasra* No. 1032, measuring 11 *Marlas* (“**land in question**”), situated within the revenue estate of *Moza Nawanshehr Janubi, District Abbottabad*, and the same was occupied illegally by the respondents on 29.03.2012 at about 2:30 p.m. by placing iron sheets thereon for the purpose of raising construction.

2. Upon conclusion of the trial, the learned Trial Court vide judgment dated 18.11.2015, convicted Dost Muhammad Khan-respondent No.1 under the relevant provisions of the Act of 2005 and sentenced him to

undergo rigorous imprisonment for three years. However, considering his advanced age and weak physical condition, the Trial Court extended to respondent No.1 benefit of placing his sentence on probation subject to furnishing surety bonds in the sum of Rs.100,000/- each with two sureties in the like amount to the satisfaction of the Probation Officer concerned within three days and further directed that he shall hand over possession of the land in question to the petitioner-complainant within a period of one month. The Trial Court further ordered that in the event of non-compliance with any of the aforesaid conditions, the concession of probation would stand withdrawn and Dost Muhammad Khan-respondent No.1 would then undergo the actual sentence awarded to him, in which eventuality the petitioner-complainant would be at liberty to approach the Trial Court for enforcement/implementation of the judgment. The respondents No.2 to 5 were, however, acquitted by the Trial Court through the same judgment.

3. Feeling dissatisfied, the petitioner-complainant assailed the judgment dated 18.11.2015 of the learned Trial Court before the Peshawar High Court, Abbottabad Bench ("**the High Court**") by filing Writ Petition No.461-A of 2016, which was subsequently converted into Criminal Appeal No.40-A of 2019. In the said appeal, besides challenging the acquittal of respondents No.2 to 5, the petitioner-complainant also sought enhancement of the sentence of convict Dost Muhammad Khan-respondent No.1 from three years to ten years' imprisonment along with fine. The convict-respondent No.1 also questioned his conviction and sentence before the High Court by filing a writ petition which was subsequently, converted into Criminal Appeal No.39-A of 2019.

4. During pendency of the appeals of both the parties, respondent-convict Dost Muhammad Khan passed away, whereupon his appeal was abated vide order dated 24.09.2020. Similarly, the appeal filed by the petitioner-complainant for enhancement of sentence of convict-respondent Dost Muhammad Khan was also abated to his extent on his demise, however, the same was kept pending to the extent of the acquittal of respondents No.2 to 5. Vide order dated 13.11.2021, the Learned High Court framed the following question in the appeal of the petitioner-complainant for consideration: -

"Whether after the sad demise of respondent No.1 (Dost Muhammad Khan), his legal heirs shall be impleaded as respondents and if so whether charge is required to be framed against them or otherwise?"

Vide order dated 21.03.2022 ("**impugned order**"), the High Court, besides, answering the aforesaid question also decided the legal point with regard to enhancement of sentence of the deceased respondent No.1 as well as the issue of return of possession or determination of right regarding the land in question as under:-

"So far as enhancement of sentence of respondent No.1 is concerned, he has admittedly died and is no more a living person. The appeal to his extent stands abated. Impleadment of his legal heirs shall make no difference as sentence of respondent No.1 cannot be practically enhanced.

The question of return of possession or determination of rights with regard to immovable property is not falling within the purview of instant appeal. Request of learned counsel for the appellant for Impleadment of legal heirs of respondent No.1, is therefore, misconceived".

5. We have heard the learned counsel for the parties at some length and have also examined the record as well as the impugned order with their able assistance.

6. Since, from the available record, this Court was not in a position to ascertain whether convict-respondent No.1 had questioned his conviction and sentence before the learned High Court, the Office of the Additional Registrar (Judicial), Peshawar High Court, Abbottabad Bench, was contacted for requisite information. The said office duly furnished the necessary particulars, according to which the convict-respondent No.1 had also preferred Criminal Appeal No.39-A of 2019 against his conviction and sentence. However, the said appeal stood abated and was dismissed on account of his demise vide order dated 24.09.2020. The information so received further reveals that Criminal Appeal No.40-A of 2019, filed by the present petitioner-complainant at present has been adjourned *sine die* due to the pendency of the instant criminal petition before this Court. It is a matter of record that upon the death of convict-respondent No.1, both appeals stood abated to the extent of conviction of the respondent No.1, as contemplated under Section 431 of the Code of Criminal Procedure, 1898 ("**the Code**"). However, it is significant to note that while recording the conviction of the deceased respondent No.1, the learned Trial Court had also directed him to hand over possession of the land in question to the petitioner-complainant. In this view of the matter, the main question for consideration before us would be as to what would be the fate of the appeal filed by the respondent-convict to the extent of

order of the Trial Court regarding delivery/restoration of possession of the land in question to the petitioner-complainant.

7. It is to be observed that, at the inception of the Act of 2005, no statutory right of appeal was provided to the parties. The legislative scheme was subsequently altered through the insertion of Section 8-A by way of the amendment in the year 2017, whereby a substantive right of appeal was introduced by insertion of section 8-A in the Act of 2005 against any order passed under Sections 3 sub-section (2) and (3) and section 8(1) of the Act of 2005. Such appeal lies before the High Court and is required to be instituted within thirty days of the impugned order of the Trial Court. For ready reference section 8-A of the Act of 2005 is reproduced below:-

“8-A.Appeal:- Any order made under sub-section(2) and sub-section(3) of section 3 and sub-section(1) of section 8 shall, within thirty days of the order, be appeal-able before the High Court.”

Under section 9 of the Act of 2005, the provisions of the Code, have been made applicable to the proceedings under the Act of 2005 and Section 431 of the Code governs the abatement of appeal on the death of the accused except from a sentence of fine. For ready reference section, 431 of the Code is reproduced below:-

“Section 431. Every appeal under section 411-A, sub-section (2), or section 417 shall finally abate on the death of the accused, and every other appeal under this Chapter (except an appeal from a sentence of fine) shall finally abate on the death of the appellant.”

Bare reading of section 431 of the Code would reveal that the same is conspicuously silent regarding the fate of an appeal where, in addition to the sentence of imprisonment, the accused-convict has also been directed to restore or hand over possession of the property to the complainant. It does not contemplate, nor does it regulate, a situation where the convict, besides suffering conviction, has also been subjected to a civil-consequence order regarding restoration of possession of the property. The said lacuna has been addressed through Section 8-A of the Act of 2005, which for the sake of convenience and ready reference is reproduced below:-

“8. Delivery of property to owner, etc.—(1) On conclusion of the trial, if the Court finds that an owner or occupier of the property was illegally dispossessed or the property was grabbed in contravention of section 3, the Court may, at the time of passing an order under sub-sections (2) and (3) of that section, direct the accused or any person claiming through him to restore possession of the property to the owner or, as the case may be, to the occupier, if such possession has not already been restored under section 7.”

The mandate of Section 8-A read with Section 8(1) of the Act of 2005, makes it evident that an appeal challenging an order of restoration of possession survives independently of the personal criminal liability of the accused. Such order imposes obligations not only upon the accused but also upon any person claiming through him. Consequently, the death of the convict does not extinguish the controversy regarding possession of the property. While the penal aspect of the appeal abates under Section 431 of the Code, the appeal does not abate to the extent that it assails the civil-consequence direction for restoration of possession under Section 8(1). To hold otherwise would defeat the very object and purpose of the Act of 2005, which is a special law enacted for the protection of lawful owners against illegal dispossession and the restoration of property to them. Accordingly, Section 8-A of the Act of 2005 appropriately caters to the situation where the convict-appellant dies pending appeal. The abatement is confined to the portion relatable to his sentence; the appeal, however, survives and remains maintainable to the extent of the order regarding delivery or restoration of possession, which the appellate Court is competent to adjudicate on merits notwithstanding the demise of the convict.

8. It is a well-entrenched and consistently followed principle of statutory interpretation that *a special law overrides the general law*. Reference may be made to the judgment of this Court rendered in case titled, “SNGPL Vs M/S SK Private Limited” (2005 SCMR 570). Where the legislature, in its wisdom, enacts a special statute to address a particular mischief or to provide a distinct procedural or substantive framework, such special enactment must prevail in the event of any inconsistency or overlap with the general law. This rule, grounded in the maxim *generalia specialibus non derogant*, has repeatedly been affirmed by this Court. Examined in this perspective, Act of 2005 is a special enactment designed to curb the menace of land-grabbing and illegal dispossession, and to ensure expeditious restoration of possession to the lawful owner. The scheme of the Act of 2005 is self-contained and reflects a legislative intent to depart, wherever necessary, from the ordinary criminal procedure embodied in the Code. Indeed, Section 9 of the Act of 2005 renders the provisions of the Code applicable only insofar as they are not inconsistent with the provisions of the Act of 2005, thereby acknowledging the primacy of the latter.

9. Accordingly, in circumstances where the Code is either silent or its provisions do not fully address the consequences arising under the Act of 2005, the special statutory framework must govern. The introduction of Section 8-A through the 2017 amendment is a clear manifestation of the Legislature's intention to provide an independent and comprehensive appellate mechanism in respect of orders passed under Sections 3(2) and (3), and section 8(1) of the Act of 2005. The purpose was to ensure that the remedial objectives of the Act, particularly the restoration of possession, are not frustrated by procedural lacunae in the general criminal law. The Act of 2005, being a special law with its own remedial purpose, must prevail. The abatement under Section 431 is confined to the penal aspect of the matter; it does not, and cannot, divest the appellate forum of jurisdiction to examine the legality and propriety of an order passed under Section 8(1) concerning restoration of possession, a matter that extends beyond the personal culpability of the deceased convict and directly affects proprietary rights. Therefore, applying the settled principle that *the special law overrides the general*, the provisions of the Act of 2005 must be given full effect in preference to the general provisions of the Code wherever the two intersect. Consequently, the appeal survives to the extent of the civil-consequence direction for restoration of possession, notwithstanding the demise of the convict-appellant.

10. For the reasons discussed hereinabove, this petition is converted into an appeal and disposed of in the terms that the impugned order dated 21.03.2022 of the learned High Court, passed in Criminal Appeal No.40-A of 2019 to the extent of dismissal of prayer of the petitioner-convict for enhancement of sentence of the convict-respondent No.1, is upheld, while to the extent of dismissal of the prayer of the petitioner-complainant in respect of restoration of possession of the land in question, is set-aside. It is necessary to clarify that Cr.A. No.40-A of 2019, against acquittal of respondents No.2 to 5, is still pending and has been adjourned *sine die*, which shall be resurrected and fixed for hearing on receipt of this order.

11. Criminal Appeal No.39-A of 2019, filed by convict-appellant Dost Muhammad Khan deceased and abated on his death vide order dated 24.09.2020, is restored but only to the extent of the determination of question relating to possession of the land in question and to that extent order of the High Court dated 24.09.2020 is set aside.

12. The learned High Court while deciding Cr.A. No.40-A of 2019 to the extent of acquittal of respondents No.2 to 5 along with Cr.A. No.39-A of 2019, shall also determine the issue pertaining to restoration of possession of the property in question. In doing so, the legal heirs of the deceased respondent No.1 shall be afforded a fair and adequate opportunity of hearing in accordance with law.

Judge

Judge

Judge

Islamabad
12.11.2025
Approved for reporting.
M.Siraj Afzali PS