

**JUDGEMENT SHEET**  
**IN THE PESHAWAR HIGH COURT,**  
**BANNU BENCH**  
(Judicial Department)

**W.P.No. 935-B/2019.**

1. Abdul Wahab s/o Qalam khan 2. Muhammad Farooq s/o Abdul Rehman  
both r/o Zarki Nusrati, Tehsil Takht-e-Nasrati District Karak...**Petitioners.**

Versus

Naeem Khan and 5 and others..... **..Respondents.**

**JUDGEMENT**

Date of hearing: **09.02.2022**

For petitioners: - Mr. Sawal Nazir Khan, Advocate.

For official respondents: Haji Umar Daraz Khan, Advocate.

**MUHAMMAD NAEEM ANWAR. I:-** The petitioners through instant petition filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, challenged the validity of order dated 18.05.2019 passed by learned Additional Sessions Judge, Takht-e-Nasrati in complaint case No.05/2018 whereby complaint of the petitioners filed under section 3 of the Illegal Dispossession Act, 2005 has been dismissed being not maintainable.

**02.** Brief facts of the case are that petitioners/complainants namely Abdul Wahab and Muhammad Farooq filed a complaint under section 3 of the Illegal Dispossession Act, 2005 against the respondents/accused to the effect that they are owners in possession of sufficient agricultural property situated at Minzini Banda Tehsil Takht-e-Nasrati, District Karak. Gul Mueed and Gul Sabdullah are cultivating their property. Complainant No.1 used to live in Baluchistan and Lahore in connection with his business while complainant No.2 is lawyer by profession and is practicing at Peshawar. The accused/respondents No.1 to 4 have illegally

dispossessed the complainants from the land and started construction of the house thereon. That the said act of the respondents is an offence under sections 3/4 of the Illegal Dispossession Act, 2005, hence the complaint.

03. On receipt of the complaint, learned trial Court directed the SHO concerned to inquire into the matter and submit inquiry report within the meaning of section 5 of the ibid Act. The report of SHO was received on 06.11.2018, wherein the complainant No.2 submitted an application that the SHO had not recorded their statements accordingly, the SHO was directed to record their statement. On 22.12.2018, learned counsel for complainants submitted an application for requisitioning of correct report and necessary directions were issued on the same. On 11.02.2019 respondents/accused No.1 to 4 appeared and contested the complaint through their counsel. The learned trial after hearing both the parties on the point of maintainability, dismissed the complaint of the petitioners/ complainants being not maintainable, hence the instant writ petition.

04. Learned counsel for petitioner while making reliance on case titled "Mst. Gulshan Bibi and others Vs. Muhammad Sadiq and others" (PLD 2016 SC 769) "Shaikh Muhammad Naseem Vs. Mst. Farida Gul" (2016 SCMR 1931) contended that the findings of the learned trial Court, whereby the complaint of the petitioners was declared as not maintainable on the ground that both the parties were co-sharers in the suit property, are against the law as the provisions of section 3 are the terms 'land grabber', 'Qabza Mafia' or 'Qabza Group' may not be

restricted to a trespasser, it may be even a co-sharer who by the use of force has dispossessed the other co-owner and possessed the property illegally as such he would definitely be declared as a 'land grabber', 'Qabza Mafia' or 'Qabza Group', therefore, the complaint filed by the petitioners was required to be decided after recording of evidence.

05. As against that, learned counsel for respondents while referring to the contents of complaint available at page No.24, contended that in the application/complaint no description of the property or boundary thereof were mentioned. He contended that respondents are the owners in the property regarding which earlier the petitioners have filed an application under section 3 read with sections 5 and 7 of Illegal Dispossession Act which has been adjourned *sine die* and that a suit for recovery of possession through partition was filed by the petitioners before Civil Court wherein they were directed to approach the Court of competent jurisdiction. In the plaint of civil suit, the petitioners have prayed for recovery of possession through partition and in the application filed on 20.07.2019 they have alleged their dispossession from the disputed property manifests that they were not in possession of the suit property and on one way or the other they are intending to get possession from the co-owners through process of court by filing of complaint, which is permissible only through regular suit for partition and that too from the Court of competent jurisdiction. Muhammad Farooq, petitioner No.2 also appeared before the Court and contended that he is a practicing lawyer, has been dispossessed from the disputed property and the only way is to file a complaint under the Illegal Dispossession Act, 2005 but the

learned trial Court without adverting to the legal aspect has dismissed the complaint which could only be decided after recording of evidence.

06. Arguments heard and record perused.

07. It appears from the contents of the complaint that Abdul Wahab, petitioner No.1 is running his business at Lahore whereas petitioner No.2 is a practicing lawyer and settled at Peshawar. The complaint consists upon 7-Paras but astonishingly neither any Khasra number, Khata number or the boundaries of the property, especially the portion thereof which was forcibly possessed from them by the respondents nor other particulars were mentioned in the complaint. The contents of this petition reveals that the petitioners alleged to have been dispossessed from the property measuring 21x1000 feet as per *Khaka Tasveeri*, annexed with the instant petition, but that too without giving description or any field number of the property. Moreso, no specific date is mentioned in *Khaka Tasveeri*, annexed with the instant petition or even in the contents of the complaint. However, a report submitted by Patwari dated 05.11.2018 reveals that the property bearing Khasra No.7596/6044 measuring 29-kanal 02-marla, Khasra No.6039 measuring 20-kanal 13-marla , Khasra No.6038 measuring 134-kanal 16-marla, Khasra No.6037 measuring 17-kanal 18-marla and Khasra No.6041 measuring 62-kanal 02-marla were inspected by him whereby Abdul Wahab, petitioner No.1 deposed that he is owner in possession of 11/12-kanal and Naeem Khan is in possession of 72-kanal whereas these properties are joint ownership amongst other co-owners. Learned counsel for

petitioners is correct to the extent that as per the law settled by the apex Court that 'land grabber', 'Qabza Mafia' or 'Qabza Group' shall not be restricted to a trespasser but a co-sharer may fall within the definition of land grabber but the question before this Court as to whether without description of the property and the alleged encroachment with reference to the particular area, complaint was maintainable and could be decided on the basis of recording of evidence. It was for the petitioners to have specifically mentioned that which portion of the property was forcibly/illegally possessed from them as mentioned in the instant petition. We are of the view that without mentioning the description of the property, the person against whom the allegations were leveled even cannot defend his possession. *Khasra Girdawari* in the instant case is available on record which shows the possession of respondents. Rel: "**Gulfam Ahmed Versus Additional Sessions Judge, Gujranwala and 3 others**" (2011 P. Cr. L.J 487), "**Azizullah Versus Nizamuddin and another**" (2021 YLR 2327).

08. Furthermore, the suit for partition was filed by the petitioners, was returned to them with the direction to submit the same before an appropriate forum. The application earlier filed by the petitioners seeking initiation of criminal proceedings under sections 3, 5 and 7 of the Act of 2005 refers that the respondents are in possession of the property whereas the petitioners are not. They have tried to get the possession of the property through a suit for recovery of possession but was not filed before the Court of competent jurisdiction as such it was returned to them. They have also submitted earlier an application in which the

proceedings were adjourned *sine die* and thereafter the instant petition. The aim of the petitioners by filing the complaint is nothing but to get the possession of their property but the nature of it is joint and their suit for recovery of possession was returned with the direction to file it before proper forum. It is settled position of law that what is not permitted to be done directly cannot be achieved through circumvention of law by indirect means. Rel: "Muhammad Hanif Abbasi versus Imran Khan Niazi and others" (PLD 2018 SC 189). & Zulfiqar Ahmed Bhutta and 15 others Versus Federation of Pakistan through Secretary Minister of Law, Justice and Parliamentary Affairs and others" (PLD 2018 SC 378), "Muhammad Saeed Versus. The Secretary Health and others" (2018 PLC (CS) N 39), "Shahzadi Umerzadi Tiwana Versus Province of Punjab and others" (2018 CLC 641), "Azad Government of The State Of Jammu And Kashmir through its Chief Secretary, Muzaffarabad and 2 others versus Muhammad Hameed Mughai, Forest Ranger, Reforestation Bagh and 19 others" (1994 MLD 632 SC AJK), "Karamat Ali Khan and another versus Sardar Ali and 29 others" (PLD 2001 SC AJK 30), "Messrs. Dewan Petroleum (Pvt.) Limited Versus Executive Director, SECP and another" (2017 CLC 1237). Though proceedings could be initiated against the land grabber and a co-sharer may be included in the definition of 'Qabza Mafia' but for which the complainant must place before the Court with reference to a specific area, alleged to have been encroached upon/illegally possessed from the complainants but nothing is there available on record even to support the contention of the petitioners. The possession of the respondents being recorded in

*Khasra Girdawari* and the above narrated facts led to a definite conclusion that respondents are in possession of the property and petitioners are intending to recover it from them, to the extent of their proprietorship but the modus operandi is not correct. It was essential for the complainants to give all the material particulars with regard to act of illegal dispossession in the complaint itself. In the absence of material particulars, exact time and date of the alleged act of dispossession, no inquiry is to be conducted by the learned trial Court to ascertain whether or not the complainants were dispossessed in terms of Illegal Dispossession Act, 2005.

09. Though the petitioner pressed it hard that they will prove their case through recording of evidence however, when the particulars of dispossession were not given in complaint no useful purpose will be served by remanding the matter to the lower Court. Learned trial court has properly assessed the fact of the case to which the learned counsel for the petitioners could not point out any illegality. Admittedly, respondents are the owners on the strength of certain mutations whereby they have purchased the property from the owners in possession reference whereof is available in column No.5 as "*Badastoor*". The vendors of the petitioners were the owners in possession from whom the respondents have purchased the property through different mutations and this version is supported by the *Khasra Girdawari*.

10. Learned counsel for petitioners has not been able to point out the grounds under which the instant petition could be entertained without specification of particulars i.e., the property, the date of dispossession, the details of area illegally

possessed/Khasra numbers and other necessary elements.

Likewise, the petitioners have not able to point out any illegality,

irregularity or jurisdictional defect in the impugned judgments as

such this petition being without substance is hereby dismissed.

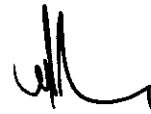
**Announced.**

09.02.2022.

Ihsan\*



**JUDGE**



**JUDGE**

office  
1/03/2022

(D.B) Hon'ble Mr. Justice Sahibzada Asadullah &  
Hon'ble Mr. Justice Muhammad Naeem Anwar

SF 1/03/2022

01 MAR 2022

