

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

JUSTICE JAMAL KHAN MANDOKHAIL
JUSTICE MIANGUL HASSAN AURANGZEB

Crl.P.L.A. No.1121 of 2021

(Against judgment dated 23.08.2021 passed by Islamabad High Court, Islamabad in Crl. Revision No.29 of 2021)

Qaiser Jabbar

...Petitioner

Versus

Syed Mati Ullah Shah and others

...Respondents

For the Petitioner: Raja Muhammad Aleem Khan Abbasi,
ASC.

For the Respondents: Ms. Chand Bibi, A.P.G., Islamabad along
with Tousif Ahmed, ASI.

Date of Hearing: 02.06.2025

JUDGMENT

MIANGUL HASSAN AURANGZEB, J.- Through the instant petition, the petitioner Qaisar Jabbar, assails judgment dated 23.08.2021 passed by the Islamabad High Court, whereby criminal revision No.29 of 2021 filed by the petitioner under sections 435 and 439 of the Code of Criminal Procedure, 1898 against the order dated 30.04.2021 passed by the court of the Additional Sessions Judge-III, Islamabad, was dismissed. Vide said order dated 30.04.2021, the court of the Additional Sessions Judge had dismissed the petitioner's complaint dated 18.12.2020 ("**the complaint**") filed under sections 3 and 4 of the Illegal Dispossession Act, 2005 ("**the 2005 Act**"). The said complaint was dismissed as not maintainable.

2. The record shows that the petitioner in his complaint pleaded *inter alia* that he and his wife purchased 16 *kanals* of land

in revenue estate Tamma, Tehsil and District Islamabad in the following manner:-

- i. *Registered sale deed No.16857, dated 04.11.2015; registered sale deed No.16621, dated 03.10.2015; mutation No.4387, dated 20.09.2015; mutations No.4938, 4940 and [4884], in favour of the petitioner; and*
- ii. *Mutation No.5955, dated 24.10.2018; mutations No.5616, 5618, 5620, 5621, 5622, 5792 and 5690, dated 27.09.2017 in favour of the petitioner's wife.*

3. The petitioner claimed to be in possession of the said land which was being looked after on his behalf by a guard namely Khaliq Dad. It was alleged that on 15.09.2020 at 05:00 pm, respondent No.1, Syed Mati Ullah Shah illegally occupied the said land with the aid of his companions. It was also alleged that the matter was reported to the police. Additionally, the petitioner has taken the position that respondent No.1 is justifying his illegal act on the basis of an agreement dated 03.01.2020.

4. The trial court had through order dated 19.12.2020 required the concerned Station House Officer ("**SHO**") to submit a report, on *inter alia* the question of whether the petitioner was in possession of the property in question at or before the time of occurrence. Subsequently, after the petitioner expressed his no-confidence over the SHO, the trial court vide order dated 04.01.2021 required the Deputy Superintendent of Police ("**DSP**"), Sihala Circle, Islamabad, to investigate the matter and submit a report. The statements of Qaiser Jabbar and Rashid Rehman were recorded both of whom stated *inter alia* that the alleged act of illegal dispossession took place on 15.09.2020.

5. On 24.02.2021 a report was submitted to the court. In this report, it is mentioned *inter alia* that on 15.11.2020, information was given to Rescue-15 as to the said land being occupied; and that ASI, Rafaqat went to the site where he found respondent No.1

and his companions repairing a wall and raising its height. During the inquiry, the position taken by respondent No.1 was that he had been in possession of the said land; and that it was being looked after by a caretaker. When the inquiry officer suggested that the location of the caretaker prior to the occurrence could be traced from his cell phone, respondent No.1 did not cooperate in the matter.

6. Although in the report it was mentioned *inter alia* that on 15.11.2020, information was given to Rescue-15 as to the said land being occupied, the petitioner in his complaint had mentioned the date of dispossession to be 15.09.2020. In January, 2021 the petitioner filed an application before the trial court seeking an amendment/correction in his complaint by substituting the date of dispossession from 15.09.2020 to 15.11.2020. There is nothing on the record to show that the said application was allowed. Be that as it may, without conducting a trial, the trial court vide order dated 30.04.2021 dismissed the complaint primarily on the grounds that the petitioner and the respondents are co-owners in an un-partitioned land and there was civil litigation pending between the contesting parties.

7. Even though the trial court vide order dated 19.12.2020 required a report, on *inter alia* the question of whether the petitioner was in possession of the property in question at or before the time of occurrence, the report dated 24.02.2021 makes no mention as to who was in possession of the property in question prior to the alleged date of occurrence. Other than calling for a report (which has no findings as to whether or not the petitioner was in possession of the property in question prior to the occurrence), no effort was made by the trial court to determine as

to whether the occurrence of the petitioner's dispossession from the property in question had taken place.

8. The criminal revision petition filed by the petitioner against the trial court's order dated 30.04.2021 was dismissed by the High Court by relying on judgments of the superior courts holding that the provisions of the 2005 Act are applicable to those persons who have credentials or antecedents of *Qabza* group and are involved in illegal activities. In particular, reliance was placed on the judgments in the cases of Habib Ullah vs. Abdul Manan (2012 SCMR 1533) and Bashir Ahmed vs. Additional Sessions Judge, Faisalabad (PLD 2010 SC 661).

9. We agree with the learned counsel for the petitioner that the High Court could not have placed reliance on the judgments in the cases of Habib Ullah (supra) and Bashir Ahmed (supra) which had restricted the scope and applicability of the 2005 Act and had been declared by the five member bench of this court in the case of Gulshan Bibi vs. Muhammad Sadiq (PLD 2016 SC 769) as "*not a good law.*"

10. The 2005 Act is a remedial statute enacted for safeguarding lawful owners and occupiers against unlawful and often violent encroachments. The jurisdiction of the sessions court under the 2005 Act is not to be exercised for adjudicating complex questions of civil title but rather to assess, on the basis of available material, whether a case of illegal dispossession is made out. The broad remedial scope of the 2005 Act, as judicially interpreted, ensures that the victims of such encroachments are provided with a swift, independent, and substantial legal remedy distinct from ordinary civil processes.

11. The High Court appears to have been cognizant of the manner in which a complaint under the provisions of the 2005 Act is to be dealt with by the trial court. We say so because reference in the impugned judgment is also made to the case of Mumtaz Hussain vs. Dr. Nasir Khan (2010 SCMR 1254), wherein the following four conditions have been required to be fulfilled in order to attract the provisions of section 3 of the 2005 Act.

Firstly, the court is required to examine as to whether the property was an immovable property;

Secondly, that the person was the owner of the property or the property was in his lawful possession;

Thirdly, that the accused entered into or upon the property unlawfully; and

Fourthly, that such entry was with the intention to dispossess i.e. oust, evict or drive out of possession against the will of the person in actual possession of the property.

12. In the case at hand the question as to whether the accused / respondent No.1 had unlawfully entered into or upon the immovable property described in paragraph-2 of the complaint has not been determined either way by the trial court. As regards the ground of the contesting parties being in litigation with each other, this by itself cannot be a valid ground for the trial court not to determine as to whether in fact the act of dispossession had taken place. In the case of Muhammad Naseem vs. Fareeda Gul (2016 SCMR 1931), this court has held *inter alia* that where an act constitutes both a civil wrong under civil law and an offence punishable under the 2005 Act, the perpetrator may be subjected to both sets of proceedings concurrently as each operates within its distinct legal domain. The said judgment further underscores that no person can be permitted to take the law into his own hands by unlawfully dispossessing the lawful owner or occupier of an immovable property, and thereafter seek to defeat or frustrate criminal prosecution under the 2005 Act on the sole pretext that

civil litigation pertaining to the same subject matter is pending adjudication before a competent forum. For the purposes of clarity, paragraph-5 of the said report is reproduced herein below:-

"5. In the impugned judgment it was also held that where civil litigation with regard to illegal dispossession from immoveable property is pending between the parties, the proceedings under the Illegal Dispossession Act, 2005 cannot be maintained. This finding is also based on the decision of the Lahore High Court in Zahoor Ahmed's case (PLD 2007 Lahore 231, reasoning of which was adopted by three member bench of this Court in Bashir Ahmed's case (PLD 2010 SC 661). We are of the view that such a finding is also not sustainable in law. Any act which entails civil liability under civil law as well as criminal penalty under criminal law, such as the Illegal Dispossession Act, 2005 then a person can be tried under both kinds of proceedings, which are independent of each other. Once the offence reported in the complaint stands proved against the accused within the confines of the provisions of the Illegal Dispossession Act, 2005 then he cannot escape punishment on the ground that some civil litigation on the same issue is pending adjudication between the parties. No one can be allowed to take law in his own hands and unlawfully dispossess an owner or lawful occupier of an immovable property and then seek to thwart the criminal proceedings initiated against him under the Illegal Dispossession Act, 2005 on the pretext that civil litigation on the issue is pending adjudication between the parties in a court of law. Therefore, irrespective of any civil litigation that may be pending in any Court, where an offence, as described in the Illegal Dispossession Act, 2005, has been committed, the proceedings under the said Act can be initiated as the same would be maintainable in law."

13. This principle was further reinforced in the case of Abdul Majeed vs. The State (2017 SCMR 390), wherein this court clarified that mere pendency of civil litigation does not *per se* oust the jurisdiction of the criminal court nor does it render a criminal complaint under the 2005 Act non-maintainable. The court reaffirmed that criminal liability must be adjudged on its own merits, and civil proceedings cannot be used as a shield to defeat criminal accountability in cases of illegal dispossession.

14. Recently, in the judgment passed in Criminal Petition No.66-K & 67-K of 2024 (reported at this court's website as 2024 SCP 243), this court declined to entertain the argument that pendency of a civil suit between the parties should bar the criminal prosecution under the 2005 Act. It reiterated that the existence of

a civil dispute does not *ipso facto* nullify or suspend the jurisdiction of the criminal court, nor does it affect the maintainability of a complaint under the 2005 Act.

15. In view of the aforementioned, it follows that a complaint filed under the provisions of the 2005 Act is maintainable even where civil proceedings between the parties are ongoing. The dual-trace nature of civil and criminal liabilities permits both to proceed independently and simultaneously. Any summary dismissal of a criminal complaint solely on the ground of the existence of a pending civil dispute is legally untenable and contrary to the settled jurisdiction, unless the trial court comes to the conclusion that the complainant is abusing the process of the law or the filing of the complaint is a nefarious design to convert a civil dispute into a criminal one. On this score, the order dated 30.04.2021 passed by the trial court and the impugned judgment dated 23.08.2021 passed by the High Court are not sustainable.

16. A complainant and accused in an application under the 2005 Act may well be co-owners in un-partitioned land but this by itself would not be a plausible ground for a trial court in not inquiring into the question as to whether the complainant had been dispossessed of immovable property by the accused. In the case at hand, the specific questions posed by the trial court in its order dated 19.12.2020 on which a report had to be submitted by the police were not answered in the report dated 24.02.2021. On account of such deficiency in the said report, the trial court could have ordered for an inquiry in terms of the second *proviso* to section 5(1) of the 2005 Act. This the trial court did not do and out rightly dismissed the complaint by holding that civil litigation was pending between the contesting parties.

17. The trial court committed a jurisdictional error by not determining whether or not the complainant had been illegally dispossessed from the immovable property described in paragraph-2 of the complaint. Since the impugned order / judgment passed by the trial court and the High Court are solely based on the pendency of civil litigation between the contesting parties and the factum as to the immovable property being un-partitioned, leave to appeal is granted; the instant petition is converted into an appeal and allowed; the matter is remanded to the trial court with the direction to proceed strictly in accordance with the provisions of the 2005 Act and determine as to whether the petitioner had been dispossessed from the land particularly described in paragraph-2 of the complaint. It will be for the trial court to determine the effect of the delay, if any, with which the complaint had been filed.

18. The observations made hereinabove are tentative in nature and shall not prejudice the trial court.

Judge

Judge

Announced in an open court on .06.2025.

Judge

Approved for reporting
*Sanaullah**