

**IN THE HIGH COURT OF SINDH AT
KARACHI**

Criminal Appeal No. 534 of 2024

Appellants : Javed Iqbal Ahmed Ansari,
through M/s. Sawan Menghwar,
Pervaiz Bhatti and Muhammad
Fahim Zia Advocates.

Respondents 1 & 2 : Senior Superintendent of Police
and Station House Officer,
through Mr. Muhammad Mohsin
Mangi, Addl. Prosecutor
General, Sindh

Respondents 3 & 5 : Muhammad Kashif & Sohail,
Through Mr. Imran Hussain
Qadri Advocate.

respondent No.4 : Muhammad Saleem, through
Mr. Ali Akbar Advocate.

Date of hearing : 26.06.2025
Date of order : 24.07.2025

J U D G M E N T

TASNEEM SULTANA, J: The appellant, namely Javed Iqbal Ahmed Ansari, by filing this Criminal Appeal has assailed the order dated 06.07.2024 passed by the learned Additional Sessions Judge-III, Karachi Central, (“**Trial Court**”) whereby the complaint filed under Section 3/4 of the Illegal Dispossession Act, 2005, (“**the Act**”) was dismissed and the trial Court declined to take the cognizance of the allegations that the respondent illegally occupied a room of flat No.G-1, Ground Floor, admeasuring 950 square feet in Sania Apartment, Plot No.2-P 11-D, 2/2, situated at Nazimabad, Karachi.

2. Precisely, the facts giving rise to the instant appeal are that the appellant filed a complaint under Section 3/4 of the Act against Respondents No. 1 to 5, stating that he had purchased Flat No. G-1 on the Ground Floor of Sania Apartments, located at Plot

No. II-B, 2/2, Nazimabad, Karachi, measuring 950 square yards with a 1/5th undivided share of the plot. He took possession of the flat on 15.02.2016 through a registered conveyance deed but later closed it while searching for a tenant. On 11.09.2016, Respondent No. 3 allegedly removed a wall facing the street and installed a shutter to convert one room of the flat into a shop. On 24.10.2023, wife of complainant visited the property and found that room of property was still in use of private respondents and they denying access to the room. Therefore appellant filed complaint under Section 3/4 of the Act, which was dismissed by the trial Court vide order dated 06.07.2024.

3. Learned counsel for the appellant contended that impugned order is illegal, without lawful authority and without jurisdiction; that no opportunity was given to him to prove his case through evidence and the complaint was dismissed summarily which resulted in gross miscarriage of justice; that the respondents had illegally dispossessed the appellant on 11.09.2016 from one room by removing the outer wall of the room and affixed a shutter and converted into garage where they parked motorcycles and other vehicles; that respondent No.3 and 5 (builders) and their companions occupied the subject room and trying to change the room into shop; that during preliminary enquiry the I.O. has never examined him nor verified the documents; that the impugned order is illegal, unlawful and liable to be set aside.

4. Conversely learned counsel for the respondents has supported the impugned order and has contended that the appellant concealed the real facts from the trial Court that he has already lodged F.I.R. bearing No.378/2023 under Section 448, 34 P.P.C. at P.S. Gulbahar against the respondent No.5 for the same

offence; that no prima facie case under the provisions of the Act has been made out against the respondents; that the complainant has never remained in possession of the property in dispute which he is claiming to be dispossessed; that the complainant purchased the subject flat in the year 2016 since then he is enjoying right over his own property, however the adjacent to the subject flat, the some piece of land allocated for the shop; that the appellant who is taking advantage of typographical error of 750 square feet which mistakenly mentioned as 950 square feet; that the project of Sania Apartment consists upon two flats and three shops as mentioned in the lease issued in the year 2012 to the first lessee/owner; that the said sub-lease of all the shops and flats have already been issued in the year 2012; that the appellant is illegally trying to occupy shop No.G-2 admeasuring 130 square feet; that the complainant never remained in the possession of the property in dispute; that the appellant has no cause of action against the respondents, therefore the instant appeal is liable to be dismissed.

5. The learned A.P.G. while supporting the impugned order has drawn my attention towards letter dated 20.12.2023 issued from the office of Mukhtiarkar (Revenue) Sub-Division Nazimabad District Central Karachi and contended that the flat No.G-01 Sania Apartment is in possession of appellant and one room of the flat is being occupied by the builders; that as per the report submitted by SHO of P.S. Gulbahar he visited the property in dispute and recorded the statements of witnesses and as per the statements of the witnesses flat No.G-01 is in possession of the appellant; that the space of three shops is in possession of the builders.

6. I have heard the learned counsel for the parties and perused the material available on record with their able assistance.

7. At the very outset it is noted that the learned trial Court dismissed the instant complaint before taking cognizance of the offence. After calling inquiry report as required under Section 5 of the Act and on receipt of report the trial court concluded that “the statement of witnesses does not reveal that the complainant was unlawfully or forcibly dispossessed by the proposed accused from the property in dispute (room).”

8. It is worth nothing that the purpose of the Act is not to substitute the due process as a shortcut for acquiring possession of property. The aim of the Act is not only to restore possession but to punish a person, who has illegally dispossessed a lawful owner and/or occupant of a property. Hence, to move the criminal law in motion, under the Act regarding illegal dispossession, it is necessary that the person, who intends to approach the Court with a complaint, must establish:

- (i) That he was in physical or constructive possession of the property;
- (ii) that he was dispossessed of the property by the person or his agent against whom he is preferring complaint;
- (iii) That he was dispossessed of the property by the said person illegally by using force or through fraud;

If above three ingredients are satisfied, it will be said that the complainant has been illegally dispossessed of his property by the respondents or proposed accused and a complaint against such dispossession is maintainable.

9. The perusal of record reflects that the appellant purchased the flat from one Ahtesham Ahmed vide conveyance deed dated 15.02.2016. He claimed that on 11.09.2016 respondent No.3 attempted to install a shutter on one room of his property. Subsequently he has taken another stance that his wife visited the property on 24.10.2023 and found that room of the said flat was still in use of respondents No. 3, 4 and 5.

10. The inquiry report dated 06.02.2024 of SHO P.S. Gulbahar, reflects that he recorded the statement of respondent No.4 and 5, but the said inquiry report was not considered by the trial court and directed the SHO P.S. Gulbahar to conduct investigation within the preview of Section 5 of the Act as to “whether appellant has been dispossessed from the property or the respondents have illegally and without lawful authority had entered into the flat / property and occupied the same”.

11. The record further reflects on 18.02.2024 P.I. Afzal Hussain visited the property in dispute and recorded the statement of three residents of the same building. From the inspection report and statement of three residents of the building it appears that the possession of the flat is with the appellant and front portion of the ground floor (room) is in the possession of the builders since inception.

12. The investigation report dated 22.01.2024 of crime No.378/2023 reflects that SIP Syed Muhammad Aleem of P.S. Gulbahar during investigation of the above crime contacted with the previous owner of the shop Ahtesham Ahmed who has stated that in the year 2016 he sold the subject flat to the appellant, he further explained that he was not in possession of the room situated outer/front side and its possession was with the builders.

The previous owner further stated that the said room was constructed for the purpose of shop. The record further reflects that the respondent No.5 submitted three indenture of sub-lease deed of three shops viz. SG-1, SG-2 and SG-3, which are self-explanatory and verifies claim of respondents No.3 and 5.

13. The language used in Section 3 of the Act indicates that for the offence to be constituted, the complaint must demonstrate the presence of an unlawful act (actus reas) accompanied by the criminal intent (mens rea), if, upon prima facie examination, the complainant does not disclose the essential elements of the offence, the Court is not bound to mechanically register the complaint and initiate trial proceedings. Instead, it is the duty of the Court to decline the complaint at the outset if it is prima facie evident that there is no unlawful act or criminal intent involved. Here in present case the previous owner from whom appellant purchased the property in clear terms stated that at the time of purchasing the front portion (room) was not given to the appellant and site inspection report as well as the statement of three residents also corroborated the statement of previous owner.

14. Fundamental object of the Act has been exemplified by a five members of Bench of the Honourable Apex court in the case of Mst. Gulshan Bibi and others versus Muhammad Sadiq and others (P.L.D. 2016 SC 769), in terms that the issues which falls for decisions would be whether the offence against lawful owner or occupier, as described in the complaint, has taken place and whether it is the accused who has committed it without any lawful authority. Anyone found committing the offence described in Section 3 of the Act would be amenable to prosecution under the

provision of the Act and no past record of the accused needs to be gone into by the Court.

15. So, to constitute an act as an offence under the Illegal Dispossession Act 2005, it is obligatory for the complainant to enjoy lawful ownership or possession at the time of alleged dispossession through unlawful course. To determine the ownership or otherwise of the subject matter in this complaint is not the exclusive job to be conducted. Thus the underline principle for deciding complaint under the Act 2005, the complainant has to prove that the property (room) was in his possession and that he was illegally and without due course of law was dispossessed from the same at specific time and date.

16. It further reflects that the allegations as set in complaint does not disclose a case of illegal dispossession within the meaning of Section 3 of the Act. In Waqar Ali versus The state (P.L.D. 2011 SC 181) wherein the Honourable supreme Court has held that in order to constitute an offence under illegal dispossession Act, the complainant must disclose an unlawful act (actus reas) and criminal intent (mensrea) and if the facts that constitute an offence under Section 3 of the Act, are not disclosed through the complaint or documents with it, then the Court can dismiss the complaint straightaway.

17. In the light of above, I do not find any reason to interfere with the impugned order. Therefore instant Criminal Appeal is dismissed.

Announced:
24.07.2025

J U D G E