

## IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No. 549 of 2021

Appellant/Complainant : Syed Nisar Raza Naqvi (since deceased through his legal heirs I to VII) through Mr.Basam Dahiri, Advocate for appellant.

Respondent No.1 : The State through Ms.Seema Zaidi, Addl. P.G.

Respondent No.2 : Jogi (Adnan) through Mr. Mazhar-ul-Islam, Advocate.

Date of hearing : 21.10.2025.

Date of judgment : 03.12.2025.

### J U D G M E N T

**TASNEEM SULTANA-J:-** This Criminal Acquittal Appeal filed by appellant/complainant Syed Nisar Raza Naqvi has been directed against the judgment dated 17.8.2021 passed by learned 3<sup>rd</sup> Additional Sessions Judge, Karachi East in Criminal Complaint No.130 of 2017 arisen out of Complaint under Section 3 of Illegal Dispossession Act, 2005 the respondent/accused Jogi (Adnan) was acquitted of the charge under Sections 3, 4, 7 & 8 of the Illegal Dispossession Act, 2005 by extending him the benefit of doubt under Section 265-H(i) Cr.P.C.

2. Brief facts of the prosecution case are that the complainant Nisar Raza Naqvi filed a criminal complaint alleging therein that he is the lawful owner of residential Plot No. A-142, admeasuring 240 square yards, situated in Chisti Nagar, Block-10, Gulistan-e-Johar, Scheme No. 36, Karachi, on the basis of Transfer Order dated 28.05.2004 and Registered Lease Deed dated 29.11.2008 issued in his name by the Karachi Development Authority (KDA). The complainant alleged that after obtaining possession, he constructed the first floor but did not shift there due to non-availability of utilities (gas, water, electricity) and appointed a watchman to look after the property. It was further alleged that on 21.08.2017, during night time, the respondent/accused along with some unknown persons illegally dispossessed the watchman by forcibly entering the said premises and issued threats to the complainant if he visited the property. The complainant attempted to lodge an FIR but was refused by the police, whereupon he filed the instant complaint under the Illegal Dispossession Act, 2005.

3. During pendency of complaint, complainant died and thereafter it was pursued by his legal heir/real son Syed Ramis Ali, present appellant.

4. Formal charge was framed, to which the accused pleaded not guilty and claimed trial.

5. In support of his case, the complainant examined himself as PW-1 and produced the Registered Lease Deed (Ex. 2/A), Transfer Order of CDGK (Ex. 2/B), and newspaper clippings (Ex. 2/C). PW-2, SIP Amir Mehmood, the Enquiry Officer, was also examined, who submitted his investigation report.

6. The accused was examined under Section 342 Cr.P.C., wherein he denied all allegations, claimed innocence, and stated that he was the lawful purchaser of the property. However, he neither examined himself on oath nor produced any defense evidence under Section 340(2) Cr.P.C.

7. After hearing learned counsel for the parties, the learned trial court acquitted the respondent/accused by extending him the benefit of doubt under Section 265-H(i) Cr.P.C vide impugned judgment dated 17.08.2021.

8. Learned counsel for the appellant contended that the learned trial court has erred in law and facts by acquitting the accused despite sufficient evidence was available on record; that the appellant produced registered lease deed and transfer order establishing his lawful ownership, which were wrongly ignored by the trial court; that the investigation officer confirmed that the complainant's documents were verified from KDA and were genuine; that the trial court erred in holding that the dispute was of civil nature when the accused forcibly dispossessed the complainant's watchman on 21.08.2017; that the trial court wrongly drew adverse inference against the complainant for not producing the watchman, despite the complainant himself deposing as PW-1; that the accused failed to prove his claim of lawful purchase and produced no credible evidence, yet was acquitted and finally urged that the impugned judgment is perverse and liable to be set aside.

9. Learned counsel for the respondent No.2/accused has opposed the appeal on grounds that the impugned judgment is well-reasoned, based on proper appreciation of evidence, and warrants no interference by this Court; that the appellant/complainant failed to prove illegal dispossession beyond reasonable doubt, as required under the Illegal Dispossession Act, 2005; that the complainant did not produce any eyewitness to the alleged incident of 21.08.2017, including the watchman who allegedly informed him of the dispossession; that the investigation report clearly established that the accused has been residing in the property since 2015 with his family, much before the alleged date of dispossession (21.08.2017); that the accused is a bona fide purchaser, having purchased the property from Ali Hussain Mirani through a sale agreement, and is in possession on the basis of valid title; that

the Revenue Department issued a verification letter dated 17.04.2018 confirming that challan form No. 234 was issued in favor of Ali Hussain Mirani and that the accused is residing in the disputed property since 2015; that the Registered Lease Deed (Ex. 2/A) itself mentions that it is "subject to demarcation," and admittedly no demarcation was ever carried out, thus rendering the complainant's title defective and incomplete; that the dispute is essentially a civil dispute regarding competing title documents and does not fall within the scope of the Illegal Dispossession Act, 2005; that the trial court correctly relied upon the case law PLD 2007 Lahore 231 (Zahoor Ahmed v. The State), which held that IDA does not apply to ordinary disputes between persons claiming title on the basis of documents and that in an acquittal appeal, the presumption of innocence is doubled in favor of the accused, and interference is warranted only if the judgment is shown to be perverse or wholly unreasonable which is lacking in this case, hence instant appeal being devoid of merits is liable to be dismissed.

10. Learned Addl. P.G supported the impugned judgment while contending impugned judgment passed by learned trial Court is based on cogent reasoning and do not call for interference by this Court.

11. Heard. Recorded perused.

12. The object of the Illegal Dispossession Act is to provide expeditious relief to genuinely aggrieved persons; however, such protection must not be extended to those seeking to exploit the process of law for ulterior motives or to settle personal scores into genuine disputes where both parties claim title on the basis of competing documents. Therefore, it is the duty of the Court to thoroughly examine the contents of the complaint with a judicial mind, in light of the reports from concerned functionaries and not to proceed mechanically. Any deviation from this approach may result in miscarriage of justice, especially in cases where the dispute is civil in nature. Reliance is placed in the case of **Nadeem Waqar Khan Vs Javed Masood Ahmed Khan (P L D 2020 Sindh 8)**, it has been held that:

“4. There is no cavil to the proposition that complaint under the Illegal Dispossession Act 2005 is maintainable against any person who forcibly dispossesses the occupier or owner but such remedy is never meant to settle civil dispute or a substitute for civil suit.”

Similarly in the case of **Zahoor Ahmed and 5 others v. The State and 3 others** (PLD 2007 Lahore 231), it was held:

"The Illegal Dispossession Act, 2005 does not apply to run-of-the-mill cases of alleged dispossession from immovable properties by ordinary persons having no credentials or antecedents of being property grabbers/Qabza Groups/land mafia, i.e., cases of disputes over possession of immovable properties between co-owners or co-sharers,

between landlords and tenants, between persons vying for possession on the basis of competing title documents, contractual agreements or revenue record or cases with a background of an on-going private dispute over the relevant property."

13. In the present case, the appellant/complainant alleged that his watchman deputed by him to look after his house was illegally dispossessed on 21.08.2017 by the accused/respondent No.2 and since then it is illegally occupied by him. However, the burden was upon the complainant to prove this allegation beyond reasonable doubt by producing credible and corroborative evidence. Upon careful examination of the record, it is found that entire case of the complainant rests on the allegation that a watchman was appointed by him to look after the property, and it was the watchman who was dispossessed on 21.08.2017 and who informed the complainant of the incident. However, despite this being the crux of the complainant's case, the name of the watchman was never disclosed; the watchman was never produced before the Investigation Officer; the watchman was never examined as a witness before the trial court; and no explanation was offered for the non-production of this material witness. The complainant himself admitted in his cross-examination that he did not disclose the name of the watchman and did not produce him before the court. This is a serious infirmity in the prosecution case. If such a watchman existed and was indeed dispossessed, his testimony would have been the best evidence to prove the alleged illegal dispossession. His non-production, without any plausible explanation, raises serious doubts about the veracity of the complainant's story. In this regard, the Trial Court correctly drew an adverse inference against the complainant under Article 129(g) of the Qanun-e-Shahadat Order, 1984, which provides that the court may presume that evidence which could be and is not produced would, if produced, be unfavorable to the person who withholds it.

14. Apart from the non-production of the watchman, the complainant also failed to produce any other eyewitness to the alleged incident of 21.08.2017. The complainant himself was not present at the time of the alleged dispossession. No neighbor, no local resident, and no independent witness was produced to corroborate the occurrence of any such incident. The Investigation Officer, in his statement as PW-2, clearly deposed that during the investigation, he recorded statements of witnesses from the locality, but nobody confirmed that any incident of dispossession took place on 21.08.2017. This complete absence of corroborative evidence raises serious questions about whether any such incident ever occurred.

15. The Investigation Officer, SIP Amir Mehmood (PW-2), conducted a thorough investigation and submitted a detailed report. His findings are crucial and cannot be ignored; he verified the documents of both parties from the

relevant authorities; although he confirmed that the complainant holds a Transfer Order dated 28.05.2004 and Registered Lease Deed dated 29.11.2008 from KDA however, he also confirmed that the accused has been residing in the disputed property **since 2015** with his family and the Revenue Department issued a verification letter dated 17.04.2018 (annexed with the investigation report) confirming that paid challan No. 234 was issued in favor of Ali Hussain Mirani from whom allegedly accused purchased the subject property and that the accused has been residing in the property since 2015. The complainant's allegation of illegal dispossession on a specific date (21.08.2017) stands contradicted by the investigation report. Besides it is crucial to note that the complainant's own case is that he never resided in the property and had only appointed a watchman whose name was never disclosed by complainant nor he was examined at the trial despite being star witness of alleged illegal dispossession.

16. The appellant relies heavily upon the Registered Lease Deed dated 29.11.2008 (Ex. 2/A) and Transfer Order dated 28.05.2004 (Ex. 2/B) to establish his title and ownership. In this regards, certain aspects can not be overlooked like the Registered Lease Deed (Ex. 2/A) itself contains a specific clause stating that the lease is "**subject to demarcation**"; the complainant admitted in his cross-examination that no demarcation of the plot has been carried out to date and the complainant also admitted that he is not aware of the properties situated around the disputed plot and does not know its exact boundaries. The complainant's title, therefore, remains incomplete and is subject to actual demarcation on the ground.

17 The accused/Respondent No.2, on the other hand, claims to have purchased the property from Ali Hussain Mirani and has been residing there since 2015 i.e. two years prior incident of alleged incident of illegal dispossession. Record reflects that the Revenue Department has also issued verification in favor of the accused. While it is true that the accused's sale agreement may not be a registered document, the fact remains that he has been in open, continuous, and peaceful possession since 2015 as maintained in investigation report, therefore, question of dispossession in 2017 does not arise. Reliance is placed on the case of **Khadim Ali v. Hakim Ali and another (2021 YLR 1556)** in which it was held as under:

18. The conduct of the complainant also raises doubts about the genuineness of his case: despite claiming to be the owner since 2004/2008, the complainant admittedly never physically occupied the property or resided there; if the complainant was so concerned about his property, why did he not take immediate steps to secure possession between 2008 and 2017; the complainant claims he filed an earlier IDA case (No. 36/2008) and obtained

possession, but then again failed to actually occupy the property; If the complainant obtained possession through court order in 2008, why did he again abandon the property and merely appoint a watchman (whose name he did not disclose at any stage) creating serious doubt into the veracity of prosecution story. In view of these circumstances, the story of dispossession in 2017 appears to be an afterthought.

19. It is well settled by now that the scope of appeal against acquittal is very narrow and there exists a double presumption of innocence in favour of the accused, and that the appellate Court generally is not to interfere with such acquittal judgment unless it is found to be perverse, arbitrary, foolish, artificial, speculative or ridiculous which is lacking in the case in hand. Reliance is placed in the cases reported as **State versus Abdul Khaliq and others (PLD 2011 SC 554)** and **Syed Aijaz Ali Shah v. Iftikhar Unar (2019 YLR 2333)**.

20. It is a cardinal principle of criminal jurisprudence that the prosecution must prove its case beyond reasonable doubt, and if a single doubt arises, it must be resolved in favour of the accused, not as a concession but as a right. Reliance is placed on Reliance is placed in the case of **Ghulam Qadir Vs. The State (2008 SCMR 1221)** and **Muhammad Zafar and another v. Rustam and others (2017 SCMR 1639)**.

21. After careful consideration of the entire record, the arguments advanced by both sides, and the applicable law, I am of the considered opinion that the appellant has failed to prove charge against the accused/respondent No.2 Jogi (Adnan) beyond reasonable doubt. The investigation report clearly established that the accused has been residing in the property since 2015. The non-production of the watchman, absence of eyewitnesses, and lack of corroborative evidence have created serious doubts about the claim of appellant regarding illegal dispossession from subject property. Learned trial Court has rightly acquitted the accused and concluded that the dispute appears to be of a civil nature involving competing title claims, which does not fall within the ambit of the Illegal Dispossession Act, 2005, therefore, impugned judgment does not suffer from any material illegality, perversity, or misreading of evidence and I find no justification to interfere with the well-reasoned judgment of acquittal.

22. For the reasons stated above, this Criminal Acquittal Appeal is **dismissed**. The judgment dated 17.08.2021 passed by the learned 3rd Additional Sessions Judge, Karachi East in Cr. Complaint No. 130 of 2017 arisen out of Complaint under Section 3 of Illegal Dispossession Act, 2005, is maintained and the acquittal of the respondent/accused Jogi (Adnan) son of Abdul Hameed is **upheld**. The parties are, however, left free to pursue their

civil remedies before the competent civil court for determination of their respective title claims, which is already filed by appellant vide Civil Suit No.836/2022.

**JUDGE**

Shabir /P.S