

IN THE HIGH COURT OF SINDH AT KARACHI

Before: Justice Syed Fiaz ul Hasan Shah

Criminal Appeal No.516 of 2023

Masood Ahmed Kamil s/o Muhammad Kamil
Versus
Jahangir Akber s/o Muhammad Akber and another

APPELLANT : Masood Ahmed Kamil
Through M/s. Neel Keshav and
Anwar Ali Tunio, Advocates.

RESPONDENT : Jahangir Akber
NO.1 Through Mr. Asghar Ali, Advocate.

THE STATE : Through Mr. Ali Haider Salim,
Additional Prosecutor General, Sindh

Date of Hearing : 08.12.2025

Date of Decision : 15.12.2025

J U D G M E N T

Dr. Syed Fiaz ul Hassan Shah, J :- Through this Criminal Appeal, the Appellant has challenged the Judgment of conviction dated 02.10.2023 (“**impugned Judgment**”) passed by the learned IIIrd Additional Sessions Judge, Karachi East, (“**Trial Court**”) passed in I.D. Complaint No.178 of 2021 filed by the Respondent No.1 against the appellant wherein appellant was convicted for committing offence under section 3(2) of the Illegal Dispossession Act, 2005 till rising of

the Court with fine of Rs.100,000/- to be paid within one month and in default thereof, to suffer Simple Imprisonment (“S.I”) for two months; further directed to pay compensation of Rs.15,000/- per month since the date of his illegal occupation till delivery of possession back to the complainant/respondent No.1. Further directed to hand over peaceful vacant possession of property viz. Plot No.C-264, admeasuring 150 square yards (**disputed plot**) situated at Saudagaran Cooperative Housing Society Limited, Karachi (“SCHS”) to the complainant/respondent No.1 within one month from the date of passing impugned judgment, in case of failure, Section 8(2) of the Illegal Dispossession Act, 2005 would automatically come into play thereby SHO of PS Al-Falah would be authorized to restore the possession to the complainant/respondent No.1.

2. Brief facts of the case are that complainant alleged in the complaint that through indenture of sub-lease dated 12.11.2014 executed by SCHS in favor of the Respondent No.1/complainant, he became lawful and absolute owner of disputed which was purchased by the Respondent No.1 from Ghulam Sarwar who was already in its possession and had applied for Gas connection under No-Objection Certified issued by Society. He also applied for approval of building plan to SBCA, however after approval he changed mind and had intention to sale out the same. Finally, on 23rd August, 2014 after publication in newspaper Respondent No.1 executed sale agreement, and thereafter on account of job he was transferred to Dubai. Respondent No.1 further alleged that since further process of sub-

lease from the society was yet to be completed, hence Respondent No.1 by mutual consent appointed Mr. Ghulam Sarwar as his attorney, and after executing of indenture of sub-lease possession of the property was taken by brother in law of Respondent No.1 (attorney) then Respondent No.1 erected boundary wall with main gate and put his lock. Thereafter in 2018 attorney of Respondent No.1 started construction, meanwhile police force of PS Al-Falah raided at the property and got the construction work stopped, arrested the labors and brought them at PS, and when the attorney came to know about said fact, he visited the PS and on inquiry he came to know that accused Masood Ahmed Kamil without any entitlement and with mala fide intention had lodged a false and fabricated FIR No.226/2018 against Respondent No.1, his brothers and others under Section 380, 448, 34 PPC, and after investigation I.O submitted report in "A" Class which was accepted by Magistrate which was never challenged by accused. Respondent No.1 further alleged that during investigation of above FIR, he and his attorney produced documents of entitlement i.e. lease deed, approved plan, possession letter and other relevant documents of the property which were got verified by I.O through Society and Sub-Registrar of Shah Faisal Town, and on the basis of said verification I.O recommended for disposal of case in "A" Class. Respondent No.1 further alleged that he also moved complaints to several higher authorities but no action was taken, and on 17.09.2021 at 9:00 a.m. his attorney started construction work, meanwhile the proposed accused along with his companions came and extended

threats for dire consequences and did not allow the attorney and his labor to continue the construction work, and then on same day proposed accused illegally and unlawfully with the help of his companions illegally dispossessed the Respondent No.1 and put his own lock on the main gate of property, hence this complaint.

3. Learned counsel appearing on behalf of the Appellant has contended that the appellant is the founder member of the SCHS and said SCHS allotted disputed plot to the appellant on 31.05.1982. Learned counsel has further contended that some land grabbers prepared conspiracy, whereby, disputed plot was illegally transferred from appellant in favour of Shamshad Ahmed and, thereafter, Shamshad Ahmed transferred the said plot in favour of Ghulam Sarwar, who ultimately transferred the same in the name of Respondent No.1 by fake and fictitious documents, which were produced in original before the Trial Court. He has further contended that respondent No.1 manipulated the Deed of Lease (Exh.3/D), which was executed by one Munawar Sultan, Office Clerk of the said SCHS and due to manipulation in the official record of the SCHS registration of multiple lease deeds were made in the names of different persons and for this manipulation NAB Reference No.16/2016 was filed against SCHS's officials.

4. Conversely, learned counsel for the respondent No.1 has drawn the attention of this Court towards Criminal Misc. Application filed by the appellant under section 22-A, Cr.P.C, and stated that the

appellant has admitted that on 10.08.2018 the respondent Jahangir Akber, Sarwar, Yasir, Kashif and Khurram had broken the wall and lock of the disputed plot and forcibly taken away container alongwith valuable goods and articles lying in the said plot. He has further drawn the attention of this Court to an FIR No.226/2018 lodged at Police Station Al-Falah, Karachi and states that as per its contents dispossession has been admitted by the appellant as well as record of utility bills and proposed building plan, and after consideration of all such documents and facts, the learned trial Court has rightly appreciated Para 7 of the complaint, therefore, the impugned judgment does not warrant any interference. He has further drawn the attention towards inquiry report wherein the police officer has submitted that the appellant has failed to join the investigation. Lastly he has contended that Suit No.925/2022 filed by the appellant was also dismissed.

5. I have heard the learned counsel for the parties as well as learned Additional Prosecutor General, Sindh and minutely perused the record of the case with their assistance.

6. It is an admitted fact that the Appellant is a founder member of the Cooperative Housing Society and the original allottee of the disputed plot since 1982. Conversely, Respondent No.1 does not derive any independent title but claims through the Appellant, thereby stepping into his shoes. In view of the non-assertive investigation report, complexities of evidence and conflicting claims, this Appeal

requires adjudication on the questions of lawful ownership and legal possession. Accordingly, the following **Points for Determination** arise:

- i. Whether Respondent No.1 has established lawful ownership of the disputed plot through valid allotment, transfer, or lease deed?
- ii. Whether the Appellant, being the original allottee and holder of original documents, can prosecute under the Illegal Dispossession Act, 2005?
- iii. Whether Respondent No.1 has proved lawful possession of the disputed plot, or whether the Appellant continues to hold possession by virtue of valid acknowledgement and documentary record?

7. It is observed that in the scheme of Cooperative Housing Societies or Development Authorities in Sindh, acquisition of a plot is permissible only in two situations, namely, by way of allotment or by way of transfer prior to lease. Allotment cannot be effected unless the allottee is a duly enrolled member of the Society, vested with rights and interest therein through issuance of a valid share certificate. A transfer prior to lease may be undertaken by inheritance, gift, or purchase, subject to execution of a sale agreement duly recorded in the office of the Society and upon payment of prescribed dues. However, once a lease has been executed, any subsequent transfer can only be effected through a registered instrument under the Registration Act, 1908, and thereafter the role of the Cooperative Housing Society ceases, save for mutation of the property in its record on the basis of such registered instrument.

8. In the present case, the Appellant, in his statement under Section 342 Cr.P.C., produced valid documentary evidence including Allotment Order No.000292 dated 13.03.1982 (Exh.6/B), Share Certificate (Exh.6/C), Acknowledgement of Possession (Exh.6/D), and payment receipts (Exh.6/E to Exh.6/H), all corroborated by the Verification Report dated 28.11.2018 (Exh.6/M) issued by SCHS confirming him as the last recorded owner of the disputed plot. Conversely, Respondent No.1 and his predecessor in interest failed to produce any original share certificate duly endorsed in their favor, nor did they adduce evidence of the Appellant's consent for sale of the disputed plot or proof of payment of sale consideration. The alleged predecessors Shamshad Ahmed and Ghulam Sarwar did not appear before the trial Court to affirm any purchase from the Appellant, and no evidence was produced to establish the alleged chain of three Pre-Lease Transfers. The only document tendered, Allotment Order No.000293 dated 31.05.1982 (Exh.3/G), differed in serial number and date from Exh.6/B, rendering it doubtful, while Acknowledgement of Possession (Exh.3/F) produced in favor of Ghulam Sarwar was incomprehensible in view of Exh.6/D already issued to the Appellant in 1989, making issuance of another acknowledgement in 2014 not only irregular but a fraudulent act, particularly as SCHS was not in possession of the disputed plot at that time. Moreover, all documents relied upon by Respondent No.1 were issued during the tenure of an Official Administrator of the Cooperative Department, Government of Sindh, who was never called to verify their authenticity. Under

cooperative societies laws such administrators are empowered only to manage day-to-day affairs until election of a new Managing Committee, not to create substantive rights in favor of outsiders.

9. Upon calling the Honorary Secretary of the SCHS he has filed a report confirming that the appellant is the founder member of the Society and genuine allottee of the plot in question while the NAB Prosecutor has confirmed that NAB Reference No.16 of 2016 filed against the Management of said Cooperative society, however, during investigation, the disputed plot was not enlisted as NAB investigation was mainly against double leases.

10. The trial Court erred in placing reliance solely upon the registered Lease Deed (Exh.3/D) executed by a Senior Clerk of SCHS in favor of Respondent No.1, without examining the pre-lease factual matrix and legal requirements. No findings were recorded as to the authority under which the Lease Deed was executed, particularly in the absence of valid authorization by the Managing Committee, in the absence of a lawful Pre-Lease Transfer Order in favor of Respondent No.1, and in the absence of cancellation of the ownership documents of the last recorded owner, i.e., the Appellant. The trial Court also failed to give reasons regarding the ownership documents produced by the Appellant and the Verification Report (Exh.6/M), which confirmed his recorded ownership. Mere execution of a Lease Deed by a Cooperative Housing Society or Public Housing Authority cannot confer lawful ownership when its veracity is disputed and

contradicted by cogent documentary evidence. The trial Court ignored the fact that NAB had filed a Reference against the management of SCHS for issuance of double leases, and that the said management had entered into plea bargain by admitting guilt. None of the Members of the Managing Committee appeared before the trial Court to affirm the Lease Deed in question. In light of Exh.6/M and the report submitted by the Secretary of SCHS before this Court, the Lease Deed (Exh.3/D) is irregular and improper, and Respondent No.1 failed to establish its validity. The fact that the original documents — Share Certificate, Allotment Order, Acknowledgement of Possession, and other relevant papers pertaining to the disputed plot — remain in the possession of the Appellant, further signifies that he is the lawful owner of the disputed plot, a fact confirmed both in Exh.6/M and in the report submitted by the Secretary of SCHS before this Court. In view of the above, the first two points of determination are answered in the negative.

11. Now moving to third point of determination, it is observed that, except for the Lease Deed (Exh.3/D), Allotment Order (Exh.3/G), and Acknowledgement dated 16.07.2014 (Exh.3/F), Respondent No.1 has failed to produce any relevant evidence demonstrating lawful or rightful possession of the disputed property. The Lease Deed (Exh.3/D) does not record handing over of possession in favor of Respondent No.1. The documents Exh.3/G and Exh.3/F, produced by PW-1 (attorney of alleged transferee/lessee Jahangir Akbar), consist merely an allotment order with endorsement of transfer instead of an

independent transfer order, which is differed in its serial number and date of actual allotment as produced by Appellant at Exh.6/B. In the normal course of business, a Cooperative Housing Society or any other public Development or Housing Authority issue a single allotment and single acknowledgement of possession at the time of allotment, and it is not possible to issue a second Allotment Order or acknowledgement of possession upon transfer of any plot. The acknowledgement of possession Exh.3/F issued by the Official Administrator in 2014 in favour of Respondent No.1 directly contradicts Exh.6/D issued on 17.11.1989 in favour of Appellant. The acknowledgement Exh.6/D confirmed delivery of possession of the disputed plot to the Appellant in 1989, and it is incomprehensible that once possession had been handed over, the Society could again purport to deliver possession to Respondent No.1 in 2014 through Exh.3/F. The contention of learned counsel for Respondent No.1 that the Appellant admitted Respondent No.1's possession in his Criminal Misc. Application or FIR is misconceived; the Appellant merely complained of an attempted forcible occupation in 2018, not lawful possession. Therefore, the Appellant's possession of the disputed property stands established by virtue of Exh.6/D.

12. Under Article 129(g) of the Qanun-e-Shahadat Order, 1984, the Court may presume that evidence which could be and is not produced would, if produced, be unfavorable to the party withholding it, thereby rendering the prosecution narrative unreliable. Furthermore, Article 71 of the Qanun-e-Shahadat mandates that oral evidence must be

direct and consistent, yet PW-2 (Investigation Officer) admitted, ***“It is correct to suggest that I have not written any letter to verify the title of complainant vol. says I relied upon the investigation of IO of FIR number 226/2018,”*** which demonstrates the weakness of the prosecution’s case and the failure of the Presiding Officer to appreciate the legal requirements. The Hon’ble Supreme Court in PLD 2009 SC 5 and 2020 SCMR 755 has consistently held that material contradictions between prosecution witnesses erode the credibility of the case and entitle the accused to acquittal, and in the present matter Respondent No.1 has failed to discharge his legal and factual burden of proving ownership of the disputed plot.

13. A careful reading of Section 3 of the Illegal Dispossession Act, 2005 demonstrates that the Legislature has employed broad and inclusive terminology such as *“dispossess,” “grab,” “control,”* and *“occupy”* to criminalize all forms of unlawful interference with property rights. The expressions *“no one”* and *“whoever”* used in subsections (1) and (2) signify the widest possible scope, thereby making every person who commits such an offence amenable to prosecution, without distinction or qualification. The larger bench of the Hon’ble Supreme Court in ***Gulshan Bibi v. Muhammad Sadiq (PLD 2016 SC 769)*** has clarified that the Court’s inquiry is confined to determining whether the accused has entered upon or taken control of the property of a **lawful owner** or **lawful occupier**, or in **unlawful possession** by depriving **lawful owner** or **lawful occupant** in which case liability under the Act arises. Conversely, the provision does not

extend protection to those who occupy or control property without lawful authority. The purpose and object of Section 3(2) is to safeguard the valuable rights of lawful owners and occupants against unlawful interference, not to penalize them. The cumulative scheme of the Act is directed at curbing illegal dispossession and unlawful possession, and at preventing properties from being usurped by qabza groups or individuals, thereby ensuring efficacious relief to genuine owners and occupiers.

14. In the present case, respondent No.1/complainant has failed to establish that he is the lawful owner of the disputed plot and have failed to discharge his burden of prove that the Appellant has handed over the possession of the disputed plot to the said Respondent No.1 through his predecessor-in-interest and he is lawful occupant of disputed plot. The foremost important aspect of “legal possession” and subsequent dispossession has not been established. The Respondent No.1 has failed to produce any convincing and cogent evidence that in the light of Exh.6/D, the possession was ever legally transferred to him through his predecessors-in-interest.

15. Accordingly, in view of the material discrepancies, absence of lawful pre-lease transfer, failure to produce original ownership documents, adverse possession of original title document of disputed plot in custody of the Appellant and contradictions in the prosecution evidence, it is held that Respondent No.1 has failed to discharge his legal and factual burden of proving ownership of the disputed plot.

The claim of Respondent No.1 for purchase of disputed plot through predecessors is unsupported and irregular, while the SCHS record and Verification Report (Exh.6/M) unequivocally establish that the Appellant remains the last recorded owner, holding all original documents in respect of the disputed plot (property).

16. For the reasons recorded hereinabove, the instant appeal is allowed. The impugned judgment of the trial Court is set aside and the Appellant is acquitted from the charges and I.D. Complaint No.178/2021 stands dismissed.

17. Let the copy of Judgment be sent to the Secretary Cooperative Department, Govt. of Sindh for departmental proceedings against the Official Administrator of M/s. Saudagaran Cooperative Housing Society Ltd. appointed during 2014 with directions to submit compliance report within three (03) months for perusal in chamber through MIT-II of this Court.

J U D G E