

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Rev. Appln. No.S-151 of 2016

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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KATCHA PESHI.

14.02.2018.

Mr. Mian Taj Muhammad Keerio, Advocate for applicant.

Mr. Shahzado Saleem Nahiyoon, D.P.G

None present for respondent No.2.

ORDER

AGHA FAISAL, J. This criminal revision application has been preferred impugning the order of the learned VIIIth Additional Sessions Judge, Hyderabad, dated 11.04.2016, passed in Criminal Complaint No. 64 of 2015 wherein he had dismissed a complaint filed under the Illegal Dispossession Act, 2005, on the grounds of the same having not been maintainable.

2. The facts of the case are as follows:-

- i. The applicant had purchased property being House No.52-B, Al-Mustafa Homes, Deh Gidu Bandar, Unit No.9, Latifabad, Hyderabad (hereinafter referred to as the "Subject Property") from (1) Junaid Abdul Basit and (2) Muhammad Badar Alam, both sons of Zainul Abadin (hereinafter collectively referred to as the "Sellers") by virtue of a Sale Deed dated 07.05.2015.

- ii. The applicant stated that he had obtained peaceful possession of the Subject Property on 15.04.2015, whereafter he put his own locks upon the said premises.
- iii. The applicant states that subsequent thereto, when the applicant visited the Subject Property for the purpose of repair and renovation work, it was discovered that the locks had been changed and it appeared that the Subject Property was under habitation.
- iv. Upon inquiry the applicant came face to face with the respondent No.2, who had apparently taken unlawful possession of the Subject Property and threatened the applicant with dire consequences, if the applicant did not remove himself therefrom.
- v. The applicant states that he made several attempts to get the matter resolved by the concerned area police but such efforts were to no effect.
- vi. The applicant also submitted that he attempted to ameliorate his grievance by seeking the assistance of area notables but once again to no avail.
- vii. The applicant claimed that the property remained in the illegal possession of the respondent No.2 and hence the applicant preferred Criminal Complaint No.64 of 2015 before the Court of learned VIIIth Additional Sessions Judge at Hyderabad.

3. The aforesaid complaint was instituted before the learned Trial Court on 10.09.2015 and in furtherance thereof the learned Trial Court was pleased to issue an order dated 14.09.2015, seeking inquiry reports from the concerned SHO as well as from the concerned Mukhtiarkar.

4. The SHO of Police Station B-Section, Latifabad, Hyderabad, filed a report dated 18.12.2015, wherein *inter alia* he confirmed that the possession of the Subject Property vested with the respondent No.2 and that the title to the Subject Property stood conveyed to the applicant.

5. The Mukhtiarkar Taluka Hyderabad also submitted a report dated 30.03.2016, wherein he reported that the Subject Property remains in the possession of the respondent No.2, whereas the relevant record showed that the title to the Subject Property had been entered in the name of the applicant.

6. The learned Trial Court heard the learned Counsel for the complainant and the learned Counsel for the respondents and considered the record alongwith the reports of the concerned SHO and Mukhtiarkar and passed the impugned order dated 11.04.2016, wherein the said complaint was dismissed as being non-maintainable on two primary grounds.

7. Firstly that the dispute appears to be that of a civil nature and hence not amenable to the limit of the Illegal Dispossession Act, 2005.

8. Secondly that since there was no allegation or evidence connecting the respondent No.2 to any qabza group or land mafia or property grabbers, hence the matter would not attract the provisions of the Illegal Dispossession Act, 2005.

9. The learned Counsel for the applicant argued that a perusal of the record shows that the respondent No.2 did not claim to have any right of the ownership to the Subject Property and hence the matter was not one of the conflicting claims to the title of a property and therefore could not be deemed to be a civil dispute.

10. With respect to the contention of the learned Trial Court regarding the applicability of the Illegal Dispossession Act, 2005, solely in cases where such dispossession was caused by land mafia / land grabbers / qabza group, it was submitted that the said contention was perhaps not within the purview of the law. The learned Counsel cited the case of *SHAIKH MUHAMMAD NASEEM V. MST. FARIDA GUL*, reported as *2016 SCMR 1931*, and drew the Court's attention to the following passage:

“It is evident from the provision of section 3 of the Illegal Dispossession Act, 2005 that it described the offence exhaustively but does not describe the offenders in specific terms. On the contrary, it uses the general terms ‘no one’ and ‘whosoever’ for the offenders. The use of such general terms clearly indicates that the widest possible meaning as attributed to the offenders. The three member bench of this Court in *Bashir Ahmed's case* supra however has held that under the Illegal Dispossession Act, 2005 only those can be prosecuted who possess the credentials and antecedents of ‘land grabbers’ or ‘Qabza Grop’ and none else. In reaching such conclusion, *Bashir Ahmed's case* adopted the reasoning contained in the judgment of the Lahore High Court in the case of *Zahoor Ahmed v. The State* (PLD 2007 Lahore 231). The first reason that prevailed with the Lahore High Court in *Zahoor Ahmed's case* was the use of the term ‘property grabbers’ in the preamble of the Act, which was made basis to restrict its scope and applicability. We may state that the term ‘property grabbers’ is not one of those terms that is popularly associated with any particular class of offenders such as the terms ‘Land grabbers’, ‘Qabza Group’. In fact none of the popular terms which are identified with a specific category of offenders have been used anywhere in the Act. As the term ‘property grabbers’ appearing in the preamble of the Act has been used in general sense, it cannot be identified with any particular category of offenders in order to restrict the scope and applicability of the Illegal Dispossession Act, 2005 to a

particular category of offenders. Additionally, the substantive provision of Illegal Dispossession Act, i.e. section 3 expressly uses general terms such as 'no one' and 'whoever' for the offender. This clearly indicates that the widest possible meaning is to be attributed to these terms. Thus the provisions of section 3 clearly demonstrate that whosoever commits the act of illegal dispossession, as described in the Illegal Dispossession Act, 2005 against a lawful owner or a lawful occupier, he can be prosecuted under its provisions without any restriction.

4. *To reach the conclusion which it did, the Lahore High Court judgment in Zahoor Ahmed's case apart from using the term 'property grabbers' that finds mention in the preamble had also placed reliance on the caption of the Working Paper that was prepared by the law ministry at the time of laying the Illegal Dispossession Bill before the parliament. The caption of the Working Paper states "The object of the proposed Bill is to provide speedy justice and effective and adequate relief to the victims dispossessed of immovable property by unlawful means...." It can be seen that the terms 'land grabbers' and 'Qabza Group' that were there in the caption never found their way in any provision of the Illegal Dispossession Act, 2005. The second part of the caption of the Working Papers narrates "...to provide speedy justice and effective and adequate relief to the victims dispossessed of immovable property by unlawful means.....". In our view the object contained in this second part of the caption of the Working Paper was in fact achieved as is evident from the contents of the substantive provisions of the Act, which are unambiguous and unequivocal and while interpreting them do not lead to any absurdity. In Ghulam Bibi's case supra the five member bench of this Court had referred to a judgment from English jurisdiction in the case of Pepper v. Hart [1992] 3 WLR 1032 wherein it was held that the exclusionary rule whereby reference to Parliamentary materials was prohibited should be relaxed so that the courts may reach the true meaning of the enactment. However, such a conclusion was qualified i.e. it was held that such a course is to be adopted only in situations where the legislation is ambiguous or obscure or while interpreting the provision it leads to an absurdity. While interpreting the scope of the provisions of the Illegal Dispossession Act, 2005 the larger bench of this Court in Ghulam Bibi's case supra did not find any ambiguity, obscurity or absurdity in the substantive provision of the Illegal Dispossession Act, 2005 that would have warranted reference to the relevant Parliamentary material."*

9. The learned Counsel also drew the Court's attention to the case of *MUMTAZ HUSSAIN V. DR. NASIR KHAN & OTHERS*, reported as 2010 SCMR 1254 and referred specifically to the following paragraph:

“Whereas remedy under the Illegal Dispossession Act, 2005, cannot be restricted only against a ‘Qabza Group’. In the statute, the definition of ‘Qabza Group’ or ‘Land Mafia’ has not been given except that the preamble provides that to protect the lawful owners and occupiers of the immovable property from their illegal or forcible dispossession therefrom by the property grabbers. If it is accepted that the remedy under the Illegal Dispossession Act is available only against the professional land grabbers, though statute has not defined what is meant by ‘land grabbers’ or ‘Qabza Group’, then a person, who illegally and unlawfully grabs or dispossesses or occupies the property from a lawful owner for the first time, cannot be prosecuted under the act merely because there is no such previous history of him to call him a man professional engaged in the activity of land grabbing”

10. The learned Counsel cited another case being that of *SHAHABUDDIN V. THE STATE*, reported as *PLD 2010 Supreme Court 725* and referred to the following paragraph:-

“So far as the contention of the learned Counsel that the Act, 2005 is meant for the land grabbers, whereas the petitioner is not a land grabber, is concerned, this argument is also not available to him for the reason that he had failed to prove his lawful ownership or the property in dispute. More so, the Act, 2005 is a special enactment promulgated to discourage the land grabbers and to protect the rights of owner and lawful occupants of the property as against the unauthorized and illegal occupants. Learned High Court, in the impugned judgment, has elaborately discussed this aspect of the case and observed that “there is no requirement in the act that one must have grabbed atleast so many properties and only then he will be proceeded against; no doubt in the preamble, the words ‘land grabbers’, have been used and they have been used in the plural, but firstly the preamble though it must be given due weight, it does not have the same weight as the word used in the Act..... Therefore, for prosecution under the Illegal Dispossession Act, 2005 even if and individual is illegally dispossessed, he has a right to have a recourse to the provisions of Illegal Dispossession Act, 2005 without prejudice to the such other remedies that may be simultaneously available to him under the other laws”. IN our considered opinion, these observations by the learned High Court are irrefutable and worthy of credence. Thus the arguments put forward by the learned Counsel in this behalf are accordingly repelled. As far as the judgment in Zahoor Ahmed’s case, relied upon by the learned Counsel for petitioner is concerned, it cannot be referred to, as the same has been challenged before this Court in a petition wherein leave has already been granted.”

11. The learned Counsel for the applicant argued that the determination of guilt or otherwise was entirely the prerogative of the Trial Court, which decision could have been arrived at after completing the procedure prescribed for the trial itself and that the dismissal of the applicant's complaint at a nascent stage deprived the applicant not only of his remedy but also to the right to be treated in accordance with the due process of the law.

12. On the contrary, the learned D.P.G argued in support of the impugned order and at the outset read out the definition of owner and occupier as prescribed in the Illegal Dispossession Act, 2005, which is reproduced herein below:

“Owner means the person actually owns the property at the time of his dispossession, otherwise than through a process of law.”

“Occupier means the person who is in lawful possession of a property.”

13. The learned D.P.G further stated that it is not just the owner who enjoyed rights in a property but that the same protection was also afforded to an occupier of a property, within the meaning of the Illegal Dispossession Act, 2005. He further stated that there was no cavil to the proposition that the respondent No.2 was and in fact remains the occupant of the property.

14. The learned D.P.G read out the contents of the report filed by the concerned SHO and stated that it had come on record that the respondent No.2 had been married to the mother of the Sellers since the year 1990 and that he claimed to have been residing at the Subject Property since that time.

15. The learned D.P.G pointed out that it was stated by the respondent No.2 that the Subject Property initially belonged to his wife, who had then gifted it to the Sellers, who are her real sons.

16. He further stated that this is an admitted position and the same has been stated by the applicant in the memorandum of complaint filed before the learned Trial Judge, demonstrated from the content of paragraph No.2 thereto.

17. The learned D.P.G stated that there appeared to be a dispute of a purely civil nature wherein the occupation and title of the Subject Property vest in different entities and the titular owner of the Subject Property has sought to invoke the criminal jurisdiction under the Illegal Dispossession Act, 2005 to have the Subject Property vacated from its apparent occupier.

18. The learned D.P.G also adverted to the contention that as per the record the respondent No.2 has no right of ownership with respect to the Subject Property. He submitted that, be that as it may, the eviction of an occupier from a property, belonging to the persons other than the occupier, lies within the domain of civil law in general and possibly the Specific Relief Act in particular.

19. The learned D.P.G also argued that whereas the title of the applicant had been demonstrated in the proceedings and also the occupation of the respondent No.2, however, there appeared to be no cogent constituent of the record demonstrating that the applicant was in fact ever in unencumbered possession of the Subject Property on 15.04.2015 or that he was illegally dispossessed from there by the respondent No.2 at any time.

20. In view of the said arguments, the learned D.P.G prayed that this criminal revision application be dismissed and the order of the learned Trial Court be upheld as being in due conformity with the law.

21. The pertinent provision in regard hereof is Section (3) of the Illegal Dispossession Act, 2005, which states as follows:

“3. Prevention of Illegal Dispossession of property, etc.-(1) No one shall enter into or upon any property to dispossess, grab, control or occupy it without having any lawful authority to do so with the intention to dispossess, grab, control or occupy the property from owner or occupier of such property.”

22. It follows that an illegal dispossession from an immovable property has to take place of either the owner or an occupier to attract the provisions of this Act. Whereas, there is no cavil to the argument that the applicant is the owner of the property, there is precious little to suggest that he was every in fact ever in occupation of the Subject Property.

23. The sale deed in respect of the Subject Property is dated 07.04.2015 and the applicant claims dispossession from the Subject Property on 15.04.2015, however, the complaint before the learned Trial Court was filed on 10.09.2015.

24. The learned Counsel for the applicant was asked to explain the glaring delay in filing of the criminal complaint under the Illegal Dispossession Act, 2005, and in respect thereto, the learned Counsel for the applicant submitted that the applicant had been pursuing the matter with the area police station and also sought the assistance of area notables in order to have his grievance redressed.

25. A direct question was put to the learned Counsel asking whether there was anything placed on record whereby the purported efforts of the applicant in pursuing the concerned police station or the local notables could be corroborated. The learned Counsel unequivocally stated that there was such document on the record.

26. From the perusal of the record, it appears that it may be unsafe to draw any inference suggesting that the applicant was infact in possession of the Subject Property at any time whatsoever. The record of the case would suggest that there is in fact a dispute regarding the occupation of the Subject Property, and not in respect of the title thereto.

27. The applicant appears to have prima facie demonstrated his title to the Subject Property and it falls to the respondent No.2 to prove that his occupation of the Subject Property is in fact in due accordance with the law.

28. Be that as it may, this appears to be a matter which is to be adjudicated before a civil Court of competent jurisdiction and hence the learned Trial Court has rightly reasoned that this dispute is not amenable to the jurisdiction of the Trial Court pursuant to the Illegal Dispossession Act, 2005.

29. The contention of the learned counsel for the applicant that the applicant has been deprived of his remedy and his entitlement to the due process of law finds no favor with this Court.

30. It is apparent that the due process of law and a remedy, if the claim proves successful, was available to the applicant but before the Court of appropriate civil jurisdiction.

31. The determination of the Respondent No. 2's rights in the Subject Property, if any, shall also fall within the domain of the Court of appropriate civil jurisdiction.

32. It is well settled law that no person may be evicted from a property save in accordance with the due process of the law.

33. There is authority to suggest that even a trespasser could not be dispossessed of land without due process of law.

34. It was held in the case of *RAZA MUHAMMAD AND OTHERS VERSUS THE STATE*, reported as *PLD 1965 (W.P.) KARACHI 637*, that a trespasser was entitled to defend his possession even against the rightful owner of the property.

35. It may be noted, however, that the observations made herein are of a tentative nature and are based entirely on the record that is available before this Court at the present time. The same shall not in any manner have any effect upon competent proceedings between the parties, wherein the title and/or occupancy rights of the Subject Property may be adjudicated.

36. The next issue to address is the reasoning laid down by the learned Trial Judge that the provisions of the Illegal Dispossession Act, 2005 could not be attracted since the respondent No.2 was not stated / demonstrated to be a land grabber / qabza group / land mafia.

37. With utmost respect to the learned Trial Court, this Court is unable to agree with the said contention.

38. In case of *GULSHAN BIBI & OTHERS V. MUHAMMAD SADIQ & OTHERS*, reported as *PLD 2016 Supreme Court 769*, the august Supreme Court of Pakistan maintained as follows:

2. We shall examine the ratio of the second set of cases first, which as a precondition require that the complaint under *Illegal Dispossession Act, 2005* can only be maintained if the accused possesses all the credentials and antecedents of being a land grabber or member of Qabza Group. The terms 'land grabbers' or 'Qabza Group' or 'Qabza Mafia' in ordinary parlance refer to a distinct class of offenders who usurp property of others in an organized manner. They mostly target unoccupied or deserted urban properties belonging to the Federal Government, the Provincial Government, Municipal authorities, autonomous or semi-autonomous bodies, Trusts or Waqfs and at times even properties belonging to private persons. By resorting to various forms of fraud and forgery the professional land grabbers or Qabza Mafia first get the targeted property transferred in the official records in the name of a person of their confidence and that create third party interest thereon. In doing so the face of the professional land grabbers or Qabza Group remains hidden. The indulgence in land grabbing through their proxy so that the real beneficiary of land grabbing could not be identified. With every new act of illegal dispossession the face of the proxy keeps changing. In every case where ratio of the second set of cases is to be applied it would be incumbent upon the complainant to establish that the accused belongs to a land Mafia or Qabza Group. The accused in reply almost invariably is not going to admit that he holds such a record. The denial of such a plea would serve as best defense against his prosecution. In all such cases extrinsic evidence would be required to establish that the accused possesses all the credentials of a professional land grabber or Qabza Mafia. Such kind of evidence would certainly not be regrettable to the incident reported in the complaint but to an offence of illegal dispossession committed by the accused sometime in the past in relation to some property. This evidence would depend on the testimony of persons who may not be known to the complainant at all. The only alternative to this would be that in some judicial pronouncement, the accused has already been declared to be a known, acknowledge and established land grabber or member of Qabza Group. Anything short of classifying the accused as a known, acknowledged and established land grabber would not be sufficient to prosecute him under the provisions of *Illegal Dispossession Act, 2005*. The complainant would thus be required to cross this hurdle first before the court assumes jurisdiction over the accused with regard to the incident reported in the complaint. Failure to do so would result in the dismissal of the case without even examining the truthfulness of the complaint that was filed for adjudication.

Thus in every case where the ratio of the second set of cases is to be applied, the existence of judicially acceptable material on the record would be necessary to satisfy the court that the accused possesses all the credentials and antecedents of being a member of 'land grabbers' or 'Qabza Group' or 'Qabza Mafia' otherwise the complaint filed under the provisions of Illegal Dispossession Act, 2005 would not be maintainable. In putting such a restricted interpretation on the scope and applicability of the Illegal Dispossession Act, 2005, the second set of cases has cast an arduous burden upon the complainant to establish existence of a fact of which he may not even have any knowledge or the means or the capability to prove it in a court of law.

3. Now the question that needs to be examined is whether the Legislature did intend that the complainant shall first establish that the accused possesses the credentials or antecedents of land grabbers or Qabza Group before his complaint could be entertained by the court. In order to examine this question we shall first examine the contents of the Working Paper for the reason that the Working Paper has been discussed in one of the impugned judgments, reasoning of which was adopted by this Court in the second set of cases. This Working Paper was prepared by the law ministry at the time of laying the Illegal Dispossession Bill before the parliament. It was captioned "The object of the proposed Bill is to provide deterrent punishment to the land grabbers and Qabza Group and to provide speedy justice and effective and adequate relief to the victims dispossessed of immovable property by unlawful means....". The terms 'land grabbers' and 'Qabza Group' appearing in the Working Paper were heavily relied upon in one of the impugned judgments in reaching the conclusion that the accused must possess the credentials or antecedents of land grabbers or Qabza Group before his complaint could be entertained by the court. However, the terms 'land grabbers' and 'Qabza Group' appearing in the Working Paper did not find their way in any provision of the Illegal Dispossession Act, 2005. Not even in its preamble. Only the term 'property grabbers' was used in the preamble and even this term was not used anywhere else in the entire enactment. By mere use of the term 'property grabbers' in the preamble, the scope and applicability of the Illegal Dispossession Act, 2005 was restricted by the second set of cases to a certain class of offenders and the relief sought in the complaint was held not to be available to the victims of illegal dispossession against those who do not fall under such class of offenders. In our society the acts of illegal dispossession are largely committed at the behest of the persons who are rich, powerful feudal lords, politicians, builders, government functionaries or the persons who head large communities and on account of their influence and power are placed in domineering positions either over their fellow community

members or over less powerful communicates living in the area of their influence. In terms of the ratio of the second set of cases not every influential, rich or powerful person who illegally grabs someone's property is amenable to the provisions of the Illegal Dispossession Act, 2005 unless, as a condition precedent, he possesses the credential and antecedents of 'land grabber' or 'Qabza Mafia'. We may mention here that before the Illegal Dispossession Act, 2005 was enacted, any person who illegally dispossessed a lawful owner or before justice is delivered. Even where criminal proceedings were lodged they were initiated under the provisions of Pakistan Penal Code in the court of a Magistrate, which too did not prove to be an effective remedy. Thus until the Illegal Dispossession Act, 2005 came into effect, the acts effective and speedy remedy made available to the victims. Such acts at times translated into serious criminal offences including murders. To suppress such mischief was the main object that was to a greater extent achieved through Illegal Dispossession Act, 2005.

4. Thus legislature while enacting a special law for awarding punishment for a crime, in its wisdom, may or may not describe any particular category of persons who could be prosecuted. Where a special law after making a particular act an offence also describes the category of persons who could only be prosecuted then unless such person falls within the described category, he cannot be prosecuted. Where the special law only describes the offence or a set of offences and seeks to punish any person and every person who is found to have committed the described offence then the terms like 'anyone', 'any person', 'whoever' and 'whosoever' are used for the offenders in order to include all offenders without any distinction. In such a case, the offender may belong to any class of offenders, he as an accused can be prosecuted under such law. It can be seen that the Illegal Dispossession Act, 2005 has defined the offence but has not categorized any class of offenders who only could be prosecuted for committing the defined offence. This is evident from the provisions of subsection (1) and (2) of Section 3 of the Illegal Dispossession Act, 2005 which read as follows:-

Section 3 (1): No one shall enter into or upon any property to dispossess, grab, control or occupy it without having any lawful authority to do so with the intention to dispossess, grab, control or occupy the property from owners or occupier of such property.

Section 3(2): Whoever contravenes the provisions of the sub-section (1) shall, without prejudice to, any punishment to which he may be liable under any other law for the time being in force, be punished with imprisonment which may extend to ten years and with fine and the victim of the offence shall also be

compensated in accordance with the provision of section 544-A of the Code.

5. A bare reading of subsection (1) of Section 3 the *Illegal Dispossession Act, 2005* shows that terms like *dispossess, grab, control or occupy* have been used which clearly mean that illegal dispossession in all forms have been made an offence and by the use of the terms 'no one' and 'whoever' in subsection (1) and (2) of Section 3, anyone and everyone who commits such an offence was made liable for punishment. The very use of the terms like 'no one' and 'whoever' are clearly intended to convey the widest possible meaning for the offenders. Thus without any distinction any person who illegally dispossesses, grabs, controls or occupies property of a lawful owner or occupier shall be liable for prosecution under the provisions of the *Illegal Dispossession Act, 2005*. The second set of cases has however restricted the scope and application of the *Illegal Dispossession Act, 2005* to a particular class of offenders only i.e. those who possess the credentials or antecedents of being 'land grabbers' or 'Qabza Group' by placing reliance on the term 'property grabbers' that appears in the preamble of the *Illegal Dispossession Act, 2005*. From the mere use of the terms 'property grabbers' in the preamble one cannot reach the conclusion that the accused possesses the credentials or antecedents of being a professional land grabber or member of a Qabza Group in order to maintain his complaint under the said Act. The term "property grabber" can be construed to refer to anyone who has committed the act of grabbing someone's property illegally. Limiting the scope and application of the provisions of the main enactment to a particular class of offenders and that too on the basis of a term used in the preamble would not only deflect the Court to go into issues which are not subject matter of the complaint that is before it but at the same time such an interpretation would violate the cardinal principle of the statutory construction that where the language of the substantive provisions of an enactment is clear and not open to any doubt then the preamble cannot be used to curtail or enlarge its scope. Thus where the enactment is clear and unambiguous, the preamble cannot be used to undermine the clear meaning of the provisions of the Act or give it a different meaning. Only where the object or meaning of an enactment is not clear, the preamble may be resorted to in order to explain it. So the preamble is to be resorted only to explain and give meaning to any provision of the enactment where its language is open to doubt or is ambiguous or susceptible to more than one meaning. In the presence of the general terms like 'anyone' or 'whoever' that have been used to describe the offender, which are clear and wide in their application, the scope of the *Illegal Dispossession Act, 2005* cannot be confined to any particular class of offenders.

6. It would also be not out of place to mention here that reference to legislative history is permissible only as an aid to construction of legislation which is ambiguous or obscure or the literal meaning of which leads to an absurdity i.e. from the text of a statute, the court is unable to decipher the real intent of the Legislature. Where the text is clear and there exists no ambiguity, resort to the legislative history may actually be counter-productive. This is because legislative history contains sporadic accounts and arguments made by the parliamentarians and the final outcome of debates and arguments made in the parliament could be much different. Therefore, the real intention of the parliament is to be first and foremost ascertained from the provisions of the enactment itself and frequent resort to the legislative history is not warranted. In this regard, the case of Pepper v. Hart [1992] 3 WLR 1032, a judgment from English jurisdiction, can be referred with considerable advantage.

7. From what has been discussed above it is evident that no provision of the Illegal Dispossession Act, 2005 imposes any precondition on the basis of which a particular class of offenders could only be prosecuted. The Act aims at granting efficacious relief to lawful owners and occupiers in case they are dispossessed by anyone without lawful authority. Section 3(1) of the said Act by using the terms 'anyone' and 'whoever' for the offenders clearly wants all persons from committing the offence described therein and when found guilty by the court are to be punished without attaching any condition whatsoever as to the maintainability of the complaint. So all that the Court has to see as to whether the accused nominated in the complaint has entered into or upon the property in dispute in order to dispossess, grab, control, or occupy it without any lawful authority. Nothing else is required to be established by the complainant as no precondition has been attached under any provision of the said Act which conveys the command of the legislature that only such accused would be prosecuted who holds the credentials and antecedents of 'land grabbers' or 'Qabza Group'. It does not appeal to reason that for commission of an offence reported in the complaint filed under the Illegal Dispossession Act, 2005 the Legislature would intend to punish only those who hold history of committing a particular kind of offence but would let go an accused who though has committed the offence reported in the complaint but does not hold the record of committing a particular kind of offence. In our view trial of a case is to be relatable to the property which is subject matter of the complaint, pure and simple. Any past history of the accused with regard to his act of dispossession having no nexus with the complaint cannot be taken into consideration in order to decide whether the accused stands qualified to be awarded a sentence under the Act or not. Once the offence reported in the complaint stands

proved against the accused then he cannot escape punishment under the Illegal Dispossession Act, 2005.

8. In view of the above discussion, we conclude that in any proceedings initiated under Illegal Dispossession Act, 2005, the issues which fall for decision would be whether the offence against a 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 would be amenable to prosecution under the provisions of Illegal Dispossession Act, 2005 and no past record of the accused needs to be gone into by the court.

33. It is clearly evident from the foregoing that there is no requirement / restriction whereby the existence of a land grabber / qabza mafia / land mafia would be deemed to be a pre-requisite to invoking the provisions of the Illegal Dispossession Act, 2005.

34. It is thus stipulated that the second constituent of reasoning, provided by the learned Trial Court for the dismissal of the criminal complaint, vide the impugned order, is hereby declared to be contrary to the ratio laid down by the august Supreme Court of Pakistan.

35. In view of the foregoing and with specific reference to the preponderance of factors, narrated supra, pointing to the civil nature of the dispute, it is declared that the criminal complaint being No.64 of 2015 filed before the learned Trial Court was not maintainable and that the dismissal thereof by the learned Trial Court is upheld in terms herein.

36. Accordingly, this criminal revision application was dismissed vide a short order dated, 14-02-2018, which stated "Heard arguments of the learned Counsel for the applicant as well as the learned D.P.G. For the reasons to be recorded later on, this Criminal Revision Application is dismissed".

37. These are the reasons for the short order, dated 14-02-2018, wherein the instant Criminal Revision Application was dismissed.

JUDGE

Shahid