

in the year 2011, as such the application filed by the applicants before the lower forum suffers latches. Nonetheless, the counsel for the applicants is directed to argue the matter on the merits of the case.

2. It is the claim of the applicants that the proceedings before the lower forum was illegal as the same was initiated against the dummy persons, while the applicants are in possession of the subject property (i.e. 25 acre land claimed by respondent No. 2), where a village/goth is established, while the persons against whom the proceeding under the I.D. Act was initiated are not the residents of the said village/goth.

3. Succinctly, the facts of the case are that the said Society has filed a Complaint under Section 3 & 4 of the I.D. Act, against the respondent No. 3 to 5 (claimed by the applicants as dummies), which was decided ex-parte in favour of the said Society vide order dated 23-11-2011. It is claimed by the applicants that they remained oblivion of the proceedings under the I.D. Act before the trial Court. However, the applicant No. 1 in his personal capacity had challenged the order dated 23-11-2011 before this Court under a Constitutional Petition bearing CP No. D-5427/2018 but he could not succeed as he was not the party to the original complaint. Nevertheless, after dismissal of the above referred constitutional petition, an application was filed before the trial Court, which was dismissed through the impugned order; hence the present criminal revision application is filed to challenge the verdicts of the trial Court.

4. Mr. Liaquat Ali Khan, learned counsel for the applicants, opens the argument by submitting that under the law a society cannot file an I.D. complaint being a corporate body. He submits that a criminal complaint can only be initiated by a natural person and not by a body, who has been declared as a person under the fiction of law. According to him, on the piece of land, which is being claimed by the said Society, there exists a

village namely Gharibabad, which is an old village where some of the applicants are residing since 1974. He submits that the entire land is under the occupation of the said village and there are pukka dwelling houses of the applicants and other villagers. According to him, the said village was sanctioned by the Chief Minister on 06-04-2012 and approved by the Board of Revenue (hereinafter referred as 'BOR'), and BOR has issued allotment letters to the villagers. He submits that none of the actual occupants is a party to the proceedings before the lower forum, as such the impugned order is illegal and unwarranted under the law. According to Mr. Liaquat, the applicants came to know about the I.D. complaint when notices for removal of encroachment were issued. After referring to the Constitutional Petition (CP No. D-5427/2018), filed by one of the applicant, he submits that as per directions in the said CP, an application was filed before the trial Court but the same was dismissed through the impugned order. According to Mr. Liaquat, all the respondents, mentioned in the I.D. complaint filed by the respondent Society are actually their own persons and the said Society kept the actual occupants away from the proceedings so that they may be able to get an ex-parte order. He submits that there are legal issues, as the date and time of dispossession are not mentioned within the body of the complaint filed before the trial Court. He submits that the impugned order is also illegal as the same was passed without demarcation of the land in question. He also questions the legal status of the said Society and submits that their incorporation and status is questionable besides they don't have challan showing payment of price of land to government so also they don't have Form-7 as well as Form-2, which was issued to the said Society, which indicates non-existence of the said Society. In the end, he prays for setting aside the impugned order passed by the trial Court.

5. On the other hand, Mr. Faiz H. Durrani, the learned counsel for the respondent Society overwhelmingly denied all the allegations levelled against the said Society. After drawing attention towards different documents, he submits that the said Society was properly established and the same enjoys the status of the owner of the land in question as a body established under the law. He submits that all the requisite payments were made to the government through banking channels and this fact is not denied by the BOR. According to him, the layout plan of the society was duly approved by KDA and the same were also revised. He also categorically denies the existence of any official village at the said land and even he denies about establishment of pukka houses there. According to him, there are some hut types katcha block masonry dwellings in some portion and rest are either open or only boundary wall is given to some self-carving plots by the encroachers. Mr. Durrani further submits that the applicants are also encroachers and a serious question of maintainability was raised in CP No. D-5427/2018, as such the same was dismissed *in limine* without any direction to the petitioner, hence the contention of any direction is misconceived. He submits that after the dismissal of the said constitutional petition, they had to approach to the Hon'ble Supreme Court but they are time and again filing frivolous litigation to keep the said Society away from their land, which was acquired by the said Society for its members. Mr. Durrani denies that the alleged village is an old village and some of the villagers are residing since 1974. He challenges such allegation by submitting that none of the applicant can produce their NIC or any other document having the address showing their stay at the land in question since 1974. As far as filing of I.D. complaint by the said Society, he submits that from the very preamble of the I.D. Act, it appears that the same is maintainable by a corporate body also. According to him, there is no bar that the criminal law cannot be put in to motion by a corporate body.

Regarding documents placed by the applicants on the record, the contention of Mr. Durrani is that the said documents have already been declared as fake and bogus documents. He points out that some of the encroachers have filed a Civil Suit No. 506/2018, which was also dismissed. In support of his contentions, he relies upon the following case-law;

- i) Federal Government Employees' Housing Foundation and others—vs—Malik Ghulam Mustafa and others (PLD 2019 Islamabad 1).
- ii) Gulistan Textile Mills Ltd.—vs—Soneri Bank Ltd. (2018 CLD 203).
- iii) ZHA Securities (Pvt.) Ltd. and others—vs—Federation of Pakistan and others (2018 CLD 1338).
- iv) Askari Bank Limited—vs—DCD Services Limited and 3 others (2018 LCD 799).
- v) Syed Mushahid Shah and others—vs—Federal Investment Agency and others (2017 SCMR 1218).
- vi) Major (Retd.) Pervez Iqbal—vs—Muhammad Akram Almas and others (2017 SCMR 831).
- vii) Shifa International Hospitals Ltd. and others—vs—Mst. Hajira Bibi and others (PLD 2018 Islamabad 372).
- viii) Habib Bank Ltd.—vs—Capital City Police Officer and others (2015 PCrLJ 1609),
- ix) Ghazanfar Ali—vs—M. Zahid Hussain and others (PLD 2011 Lahore 179).
- x) Malik Muhammad Shoaib Bhutta, Editor, Daily Tulou, Islamabad—vs—Abdul Aziz Mohammad and another (PLD 2010 Lahore 300).
- xi) Nazir Ahmed—vs—Asif and 4 others (PLD 2008 Karachi 94).
- xii) Alia Hussain—vs—Syed Ziauddin (PLD 2008 Quetta 27).
- xiii) Abdul Qahir alias Saidq—vs—Bibi Aisha and 2 others (PLD 2012 Baluchistan 189).
- xiv) Mst. Inayatan Khatoon and others—vs—Muhammad Ramzan and others (2012 SCMR 229).

- xv) Brigadier (Retd.) Syed Ali Mohsin—vs—Fazal Inam Sabir alias Saain Inam and others (2019 PCrLJ 563).
- xvi) Waqas Amjad and others—vs—Additional Sessions Judge and othes (PLD 2019 Lahore 111).
- xvii) Abdul Ghaffar—vs—Muhammad Asif and another (2011 PCrLJ 441).
- xviii) Muhammad Qasim—vs—SHO PS Khudabad (2016 MLD 1238).
- xix) Mumtaz Hussain—vs—Nasir Khan and othes (2010 SCMR 1254)

6. In the instant revision application a proceeding before the trial Court is challenged, which was initiated by the said Society on a complaint filed under the I.D. Act, and after an investigation, the trial Court has taken cognizance. The applicants; who are claiming to be in possession of the piece of land, for which a complaint of illegal dispossession was filed under their own rights being the residents of an old village. After exasperating in rounds of different legal proceedings, they ultimately filed an application for intervenor before the trial Court but the same was also dismissed and the said dismissal order is impugned here. The grounds urged them are hereunder:

- A) The said society being a corporate body cannot file a criminal complaint specially under the I.D. Act.
- B) The said society has done an illegality by not making the applicants as respondents and the respondents mentioned in the complaint before trial Court are imposters/dummies.
- C) The applicants are under possession of the land in question since long i.e. 1974 and there are thousands of houses available there, as such they cannot be considered as encroachers and a right is created in their favour.

- D) There is an established village under the name of Gharibabad, which was sanctioned by the Chief Minister and approved by BOR.
- E) The said society is a non-existence body and the land in question is not allotted to them.

7. The foremost objection raised on behalf of the applicants is regarding the capacity of the said Society to initiate a criminal proceeding under the I.D. Act. Nevertheless, it is settled law that the criminal law can be put in motion by any person. There is no distinction amongst the natural and legal person in general criminal law as per definition given in Section 11 of Pakistan Penal Code, according to which 'the word "person" includes any Company or Association, or body of persons, whether incorporated or not'. Hence, the law does not prevent a body corporate to initiate a criminal proceeding by lodging a F.I.R. or filing a private criminal complaint. In this respect, reliance may be taken from a case of Lahore High Court reported as Malik Muhammad Shoaib Bhutta, Editor, Daily Tulou, Islamabad—vs—Abdul Aziz Mohammad and another (PLD 2010 Lahore 300).

8. However, in the instant matter, the learned counsel for the applicants have taken a little bit different view by submitting that a complaint under the I.D. Act cannot be filed as the word 'person' mentioned in the preamble does not cover a corporate body. In fact, his contention is that a corporate body like the said Society cannot initiate a criminal proceeding under the I.D. Act, as the said Society is not a natural person. He also submits that such a criminal case can only be initiated by a genuine individual. Whereas the learned counsel for the applicants could not place any authoritative judgment in support of his such contention. Even he could not point out any provision from the I.D. Act about the non-applicability of the said law on communal and corporate bodies or cooperative societies. In this respect, the preamble of the I.D. Act, itself meaningful, which says that the purpose

of the statute is to protect the lawful owners and occupiers from their illegal and forcible dispossession by the property grabbers. The word 'owner' and 'occupier' has been defined in Section 2 of the I.D. Act, where the word 'person' is used, and the word person was not further elaborated by declaring that the same covers only natural individuals. When no specific definition of 'person' is given in the special law of I.D. Act, it covers the same meaning as defined in Article 260 (1) the Constitution according to which "person" includes any body politic or corporate'; and similar definition is also given in Section 11 of the Pakistan Penal Code. Hence, I am of the considered view that when the I.D. Act, being special law, has not given any specific definition of 'person' the definition given in the Constitution shall prevail and the word 'person' appears in the I.D. Act, will also include any company or association or body of person.

9. Now, it is clear that a society can file an I.D. complaint as a person in respect of any property owned by the society against those, who have illegally dispossessed the entire land of society or some plots of the society allotted to its members. Similarly, being a special law, it will not debar a society to initiate a proceeding under the I.D. Act on the ground that some of the encroachers or unlawful occupiers of any portion of the land have initiated some other legal proceedings either criminal or civil. Even if the general criminal law is put in motion from either side or anybody else by lodging a F.I.R. or filing a civil suit, it will not ousted any person including a society from initiating a proceeding under the said Act and in such a situation, an I.D. complaint can competently be filed. The reason is that there is no bar on the proceeding of criminal or civil cases simultaneously. In this respect, reliance may be taken from a case of the Hon'ble Supreme Court reported as Rafique Bibi—vs—Muhammad Sharif and others (2006 SCMR 512), wherein it is held as;

"So far as the second ground prevailing upon the High Court with regard to converting a civil dispute into a criminal liability is concerned, in this behalf it is to be noted that there is no bar to initiate both the proceedings i.e. civil and criminal simultaneously."

10. Since I.D. complainant is a criminal proceeding and there might be some civil case pending regarding the property but if after investigation, it is established that a party has been forcibly dispossessed then a complaint under the I.D. Act can competently be filed and cognizance on such complaint is not unwarranted under the law. In this respect, I would like to take reliance from a judgment of this Court reported as Muhammad Ramzan alias Jani—vs—Muhammad Aslam and others (2007 PCrLJ 1784), wherein it has been observed as under:

"Respondents allegedly having forcibly and illegally trespassed the land owned by applicant with a common intention to grab the property, applicant filed civil suit for seeking restoration of possession along with an application for obtaining status quo. Senior Civil Judge issued notice to respondents and maintained status quo. Applicant, in the meanwhile filed application in the Court of Session under section 4 of Illegal Dispossession Act, 2005, in offence under Ss.3 and 7 of the Act. District Attorney opposed complaint stating that applicant had already filed civil suit for seeking declaration regarding his title over disputed property. No bar existed for any party to choose to file civil suit or criminal proceedings, as per law both the remedies could be availed by the applicant. Court had to protect the rights of the person and property. Respondents had encroached upon the land of applicant with ulterior motive in order to usurp the land of the applicant. Court had to see the ground realities regarding the hardship of the parties. Applicant had rightly filed application for seeking eviction of respondents from the land involved in the application. Mere pendency of the civil suit regarding declaration, would not mean that applicant could not avail other efficacious remedy by approaching the court having jurisdiction. Application by applicant before Sessions Judge under section 4 of Illegal Dispossession Act, 2005, in offence under Ss.3 and 7 of said Act, was maintainable."

11. From the above discussion, it is clear now that a civil proceeding and a criminal case in respect of the same subject matter can take place

simultaneously. There is no statutory bar on a litigant, when different options are available before him, to choose any one of them as a legal course in respect of his rights. It is also clear that an I.D. complaint can be filed if the option of filing a civil suit is available, pending or have been initiated by the other side.

12. Applicants have taken another ground that the said Society has not included the applicants as the party in initial litigation and according to the applicants, respondents shown in the I.D. complaint are impostors and belonging to the said Society. It is also their case that the applicants were unaware regarding the pendency and disposal of the I.D. complaint, as such they could not participate in the same and the eviction order was passed behind their back. It is the claim of the applicants that the respondents in I.D. Complaint are imposters/dummies but they did not prefer any proof that the respondents, who are made party by the said society in the I.D. Complaint, are not the actual person, while it is a fact that those persons have initially filed a civil suit, as such they are the proper party in the criminal action initiated by the respondent No. 2 (the said Society) before the lower forum. It is worth mentioning that regarding the said property; some of the applicants have initiated different sorts of proceedings including a civil suit and several constitutional petitions. A Constitutional Petition bearing CP No. D-2000/2009 was filed by some of the occupants, who were in occupation relying on the similar documents, which are produced by the present applicants and the said petition was dismissed by observing that those documents were fake and bogus. Since, the petitioners of CP No. D-2000/2009 were those persons, who have initially dispossessed the respondent society; therefore, the society has rightly filed the I.D. complaint against those petitioners of CP No. 2000/2009. Nevertheless, if the initial illegal encroachers have further invited other people to come and stay on the land belonging to the said

Society, it will make no difference and the order of the trial Court is binding on all those encroachers and illegal occupants of the land in question. Since the applicants and other occupants have no legitimate character to stay over the land in question; therefore, the law should take its own course for removal of them as per directive of the trial Court. Even if they are claimant of purchasing the piece of land in their possession, it will make no difference as only good title over land is transferable. Whatever the situation may be, their status in respect of the subject land, of 25 acre or any part thereof, is no more than the strangers; rather they are in possession in the capacity of encroachers and trespassers. Under the law, encroachers and trespassers over the private land or even on the public property are not entitled to stay at such land under any plea. Whatever construction raised by the applicants or any other unlawful occupant over the land of the said society, the same is without any lawful authority as well as the approved plan, as such they cannot be liable for any consideration in sympathetically manner. In this respect, I would like to take reliance from a case reported as Muhammad Amanullah Khan and 346 others—vs—Province of Sindh through Secretary, Local Government and Rural Development Department and others (2007 MLD 1750), wherein while dismissing the petition filed by the petitioners, it was observed by a division bench of this Court as;

"Keeping in view of the above-stated actual and legal position we are of the considered view that the petitioners have not been able to establish any legal right or title to the property in their possession. They are encroachers and have already enjoyed undue benefits of their illegal and unauthorized possession. Even the construction raised by them is without any approved plan and appears to have been raised without conforming to law."

13. It is worth noting that different rounds of litigation have been invoked by or on behalf of applicants like Suit No. 506/2018, CP No. D-5427/2018 in which they remained failed to establish their rights over the subject land.

The documents produced by the applicants before this Court are also apparently fake as no village can be sanctioned or approved on a private land. The learned counsel for the applicants has relied upon an Allotment Order (annexure G/I, page 99), which does not bear a date of issuance and through the same a plot of 120 square yards was allotted to a person, while as per Rule 4(3) of the Sindh Goth Abad (Housing Scheme) Rules 2008, the size of plot allotted under Goth Abad Scheme shall not be exceeding two ghuntas. Hence, it is clear that the documents, which are in possession of encroachers are apparently false while in Civil Suit No. 506/2018, a report has already been submitted by the officials of BOR that the documents relied by the plaintiffs (respondents of I.D. complaint) in the said suit were fake and bogus.

14. It is also forcefully claimed by the applicants that they are residing within the land in question since 1974 and being their long stay they have a right over the land in question. It is also claimed by the applicants that there are thousands of houses built and it is now an establish village in the name of Gharibabad, which was sanctioned by the Chief Minister and approved by the BOR. As far as the claim of the applicant regarding their stay over the subject land is concerned, no proof in this respect is placed on record by any of the applicants. Even, not a single NIC, Domicile or Permanent Residence Certificate is annexed with the instant application or produced during the course of arguments, which bears the address of the said land. In such a situation, the claim of applicants is merely words and having no credibility, while from chronological history of the area on Google map indicates that prior to 2008; the entire land was almost a chunk of barren and open land. The learned counsel for the respondent society has drawn attention towards the copies of the satellite map of Google (Annexure B-3 to B-8), which is sufficient to establish the claim raised on behalf of the applicant as incorrect. As far as contention regarding availability of

thousands of houses is concerned, I am of the considered view that it will make no difference and may not create a right of the applicants of any nature. I have seen photographs annexed with the objections and produced by the learned counsel for respondent No.2 during arguments. These photographs are not denied by the applicants. From these photographs, it appears that there are some block masonry structures mostly thatched with tin or asbestos sheets for roofing and good number of the same comprising boundary walls only. Nevertheless, either illegal encroachment by a handful person or a crowd of people, it will not legalise the illegality committed by them. Their status is no more than the encroachers and in whatever number they may be, they have to handover the possession to the respondent No. 3 (the said Society) and if they resist, the State machinery has to come forward and get them removed from the land of the said Society (respondent No. 2) to enable them to handover the plots of original allottees to them after necessary development.

15. It has been observed that in the late 80s and early 90s, a trend of encroachment was developed in different areas of Sindh especially in Karachi and soon it became a flourishing trade of land grabbing. Not only the respondent society but so many other cooperative societies have suffered by the hands of these land grabbers, who are usually supported by some influential and political figures. The society felt themselves helpless against those powerful mafias, who under the patronisation of such influential persons and groups, have encroached upon the land; prepared false documents; have established clusters of illegal habitations and occupancies. The members of those societies as well as lawful allottees of different schemes were forced to face hardship in spite of spending huge amounts from their hard earned money. Sometimes, these societies filed suits against those land grabbers, who made the litigation more complex by creating third-party interests in huge number. Nevertheless, the I.D. Act is a

good mode of getting relief for all those sufferers either individuals, associations, cooperative societies or any other body whether incorporated or not.

16. Applicants also raised objections regarding the status of the said Society and the counsel for the applicant submits that the same is a non-existent body as it was not duly incorporated. He goes on to say that the land in question was never allotted to the applicants as such they cannot prefer their claim over the said piece of land. Although, the objections raised by the applicants regarding their status are irrelevant but the fact is that the society is an existent body duly incorporated as a cooperative housing society having its office as well as office bearers. It is fully functional and it is also a fact that some of the encroachers have made a party to the said society in different legal proceedings. The learned counsel for the said Society (respondent No. 2) has placed on record teeming number of documents with the objection filed by the respondent No. 2, which indicates the existence of the society and several transactions in favour of the said Society including Sale Agreement executed in the 1976 (page-35), Transfer Deed of 1985 (page-43), revised Layout Plan of 1985 in which plotting is also identified (page-49 to 56), Receipts of Payment spreading from 1982 to 1995 et cetera. Nevertheless, the applicants have no *locus standi* to raise objection about the status of the respondent No. 2 but it has been established that the respondent society has acquired the land in question after fulfilling all the requisite formalities and payment of the price of land, which was transferred in the name of the said society, as such the respondent No. 2 are having good title over the subject land while the applicants and other illegal occupant, being encroachers and illegal occupiers, have no right regarding the said land, as such no claim on their behalf regarding the land in question is justified.

17. Another aspect of the case is to be addressed. Responding No. 2 has initiated a proceeding against those for whom they said that they are land grabbers and encroachers and have dispossessed them from their land illegally forcibly. The said proceeding became fruitful in their favour and when they tried to get the order executed, which was passed in their favour and the authorities concerned tried to restore the possession of the land in question to the said the Society (respondent No. 2), the applicants jumped into the picture by raising their frivolous claim in respect of the land in question and now they are trying to exhaust the efforts of the members of the respondent No. 2 by playing different tricks. I am of the view that for awarding punishment, it is necessary that the accused should be properly charged under I.D. Act but as far as restoration of possession is concerned, as per the provision under Section 7 of the I.D. Act, all the illegal occupant available at the land of the applicant (here respondent No. 2) should be removed irrespective of the fact that they are party to the litigation or not.

18. With these observations, the instant criminal revision application is dismissed being not maintainable on the ground of laches as well as merits through my short order dated 18-07-2019 and these are the reasons for the same. The trial Court is directed to take every measure to get the land belonging to the said Society (respondent No. 2) vacated and restore its possession to them without any further delay.

JUDGE

Dated:_____