

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD

Criminal Misc. Application No.S-669 of 2020

Applicants: Dr. Muhammad Tariq Rana & Dr. Sohail Rana, through Mr. Adeel Bagi Panhwar, advocate.

Respondents/accused: Fakhra Shaikh, Hassan & Kamran through Mr. Anwar Ali Rajpur, advocate.

The State: Through Ms. Rameshan Oad, Asst. P.G.

Date of hearing: 10.09.2021

Date of decision: 10.09.2021

ORDER

KHADIM HUSSAIN TUNIO, J-Applicants Muhammad Tariq Rana and Sohail Rana, through captioned criminal miscellaneous application, have impugned the order dated 05.11.2020, passed by learned Vth Additional Sessions Judge, Hyderabad in Illegal Dispossession Complaint No.52/2020 (*Re- Dr. Muhammad Tariq Rana and another v. SHO PS Makki Shah and others*) whereby the learned Judge has dismissed the complaint filed by the applicants u/s 3, 4, 5 & 7 of Illegal Dispossession Act 2005.

2. Precisely the facts of the instant application are that the complainants-applicants were occupying shop No. 32-B and 33-B at the ground floor of Al-Amna Centre, Alamgir Road, Cantt: Hyderabad and were renting the same from deceased Muhammad Iqbal for about 16 years and were paying the rent to Gulmash Khan who worked for the deceased Muhammad Iqbal. After the termination of said Gulmash, a notice was served upon the complainants-applicants on 31.10.2015 to pay the rent in Office on every 5th day of the calendar month. In the month of March 2018, Cantonment Board sealed Al-Amna Square and disclosed that the owner of the complex had not paid property and conservancy taxes to the Board. The complainants-applicants approached the Board who issued them a challan for shop No. 32-B and 33-B and demanded payment of the same. The complainants-applicants took the same to the

respondent No. 1 who refused to pay it. Thereafter, the complainants-applicants approached the Board to arrange installments, and eventually paid the same off through Challan No. 27 and 28 dated 20.03.2018, 35 and 36 dated 12.11.2018, 39 and 40 dated 11.01.2019, 2399 and 2400 dated 19.03.2019, 5415 and 5417 dated 23.10.2019, 38 and 5594 dated 23.10.2020 and lastly 6456 and 6475 dated 24.06.2020, paying a total amount of Rs. 214,544/-. On 20.06.2020, the complainants-applicants were approached by the proposed accused who demanded rent to which the complainants-respondents sought ownership documents from them, but instead they were dispossessed from the shops. After moving an application before the SSP Complaint Cell Hyderabad, the proposed accused restored the possession of the shops to the complainants-applicants. Thereafter, again on 01.07.2020, the proposed accused (*respondent No. 3, 4 and 5*) entered the concerned shops at 10:00 p.m. and dispossessed the complainants-applicants and locked the shops up. The complainants-applicants filed an application u/s 22-A and B Cr.P.C, but the same was dismissed, whereafter Illegal Dispossession Complaint No. 52/2020 was lodged by the complainants-applicants. However, the same was dismissed vide impugned order, hence this miscellaneous application.

3. Learned counsel for the applicants has primarily argued that the impugned order is illegal as the learned trial Court relied on *Basheer Ahmed's (PLD 2010 SC 661)* case which was over-ruled in the case of *Shaikh Muhammad Naseem v. Mst. Farida Gul (2016 SCMR 1931)* and that the complainants-applicants have presented sufficient material to establish their possession over the shops concerned and shown that they were illegally dispossessed from the same.

4. Learned counsel for the respondents/proposed accused has supported the impugned order. However learned Assistant Prosecutor General did not support the impugned order.

5. Without entering into the merits and demerits of the case, it would be pertinent to refer to the impugned order, the relevant portion of which is reproduced hereunder for ready reference:-

“I have carefully gone through the record and found that there is distinction in between Illegal Dispossession Act and Specific Relief Act. Illegal Dispossession Act, 2005 was enacted to take task those persons who have antecedents of grapping property and it is essential to differentiate between a case where a person is accused of solitary act of illegal dispossession and where a person proceeded against is professional land grabber and notorious for grabbing property as and when an opportunity presents itself.

In this case, there is no iota of evidence to establish that both accused had any characteristics or antecedents of land grabbers. The Spirit of Illegal Dispossession Act, 2005 is to proceed against persons who are professional land grabbers or members of land mafia and not against the accused of a solitary act of Illegal Dispossession.”

(underlining is mine for reference)

The learned Judge, in his order has observed that the provisions of Illegal Dispossession Act were only to proceed against people who are professionally known land grabbers or belonged to land grabbing groups or otherwise “qabza mafia” and no antecedents of the same were presented against proposed accused. Needless to say that such an observation is incorrect and the object of Illegal Dispossession Act was never to only act against “qabza mafia” groups, instead the terms “anyone” and “whoever” in S. 3(1) of the Illegal Dispossession Act, 2015 clearly entails that the legislature left a wide scope of meaning for when it came to those committing offences under this act. It is by now a well settled principle of law that a criminal complaint is maintainable if the point of “qabza mafia” or habitual land grabbers is not established as it is not necessary that the complainant proves that the accused belong to aqabza group, contrary to the case relied upon by the trial Judge being **Basheer Ahmed v. Additional Sessions Judge (PLD 2010 SC 661)**. In this respect, I am fortified by the dictum laid down by the Honourable Supreme Court in the case of **Mst. Gulshan Bibi and others v. Muhammad Sadiq and others (PLD 2016 Supreme Court 769)**, which also overruled the previous observations made in *Basheer Ahmed’s* case, wherein it has been observed as follows:-

“Section 3(1) of the said Act by using the terms 'anyone' and 'whoever' for the offenders clearly warns 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 is 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'."

(emphasis supplied)

The same view was reaffirmed by the Hon'ble Apex Court in the case of *Shaikh Muhammad Naseem v. Mst. Farida Gul (2016 SCMR 1931)*.

6. In light of the above discussion and circumstances, I am of the considered opinion that the learned trial Court has erroneously dismissed the Illegal Dispossession Complaint No. 52/2020. Resultantly, instant criminal miscellaneous application was allowed, the impugned order was set-aside and the matter was remanded back to the trial Court for deciding afresh fully in accordance with law on merits after providing opportunity of adducing evidence to the parties, vide shot order dated 10.09.2021.

These are the reasons for the same.

J U D G E

Irfan