

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Crl. Revision Application No.15 of 2020.

Date	Order with signature of Judge
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- 1) For orders on office objection at "A".
- 2) For hearing of main case.
- 3) For hearing of M.A. No. 688 of 2020.

Date of hearing 15th March 2020
Date of decision 15th March 2020

Mr. Sami Ehsan, advocate for applicants/Complainants.
M/s. Uzma Khan and Syed Jawad Hyder Rizvi, advocate for
respondent No.1.
Mr. Hussain Bux Baloch, Addl. P.G. Sindh.
Dr. Chaudhry Wasim Iqbal, Official Assignee.

Salahuddin Panhwar, J:- Through instant criminal Revision Application Applicants have challenged order dated 14.11.2019 passed by IInd Additional Judge Karachi East whereby the Crl. Complaint filed under Section 3 of Illegal Dispossession Act on the plea that they have been dispossessed from the subject matter premises by the Official Assignee, was dismissed.

2. Learned Official Assignee is present and has emphasized over his reference dated 29.07.2020, which is appended with the judgment passed in Suit No. 1767 of 2014. Operative part of the judgment is (paragraph No. 23), which being conducive is reproduced herewith:-

“23. The upshot of the above discussion is that the suit is decreed in the above terms and as prayed in terms of prayer clauses (i), (iv), (v) and (vi) with costs.

The learned Official Assignee is hereby directed to take steps for re-possession of the suit plot, viz. Plot No.B-2, measuring 400 Square Yards, situated at Block-10, Gulistan-e-Johar, Karachi from Defendants No.1 and 2, and the physical, peaceful and vacant possession of the suit plot shall be handed over to Plaintiff, by removing all the structures at the suit plot but at the costs of Defendants No.1 and 2. The learned Official Assignee will seek Police Assistance and if required that of Anti Encroachment Cell. The concerned DIG is directed to provide adequate

force to the learned Official Assignee for implementing the Judgment of the Court. Fee of the Official Assignee will be settled by him.”

3. Learned Official Assignee has further emphasized over statements of learned counsel for respondents No. 1 [Judgment debtor] that subject matter property is lying abandoned, accordingly, same was taken over with the help of police, pursuant to the referred judgment, hence, this is not a case of forcible dispossession.

4. Learned counsel for the applicant, while relying upon the judgment reported as 2019 CLC Note 7 contends that this is a case of illegal dispossession and statements filed by the counsel after disposal of that suit, were not valid and they were not competent to file statement that property is left as in abandoned condition by their client. Further learned counsel contends that pursuant to judgment, implementation was not in accordance with law, legal course as warranted was by filing execution application, which was not done.

5. The peculiar facts of the instant case make me to reiterate that the ‘Act’, being special one, shall have application *only* where the ingredient (s) thereof are, *prima facie*, satisfied / existing. Every case of ‘*dispossession*’ shall not necessarily fall within ambit of the ‘Act’ but only cases of ‘*illegal dispossession*’ shall fall within ambit of the Act. Needless to add that every ‘*dispossession*’ is not ‘*illegal*’ because where the ‘*dispossession of one is under a legal course/action or lawful order, the same shall always qualify the term ‘lawful dispossession’* which (lawful act) shall not be liable for penal action. Any other view shall cause failure of ‘**law and legal course, meant to have a wrongful possession removed/dispossessed**’, by resort to available lawful remedies which, *even*, includes the one, permitted under this very ‘Act’, which, one while raising such plea in every case of ‘*dispossession*’ must keep in mind.

The above irresistible conclusion does find support from the provision of Section 3 of the Act which reads as:-

3. Prevention of illegal possession 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.

6. *Prima facie*, the provision is aimed to prevent '*illegal possession*' and shall be available only against those who enter into or upon any property to dispossess, grab, control or occupy the same **without having any lawful authority**. The emphasis over phrase "*without having any lawful authority*" shall have to be given due regard. I would conclude that *possession/having a lawful authority* for entering into or upon a property shall always be a sufficient '**defence**' to hold such complaint as '*incompetent*'. Such view is based on guidelines, provided in the well-known case of *Gulshan Bibi v. Muhammad Sadiq* PLD 2016 SC 769 wherein it is held as:-

"7.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*'. 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.

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.

7. Keeping above principle in view, I have examined the reference of learned Official Assignee dated 29.7.2020 which is appended with the judgment passed in Suit No. 1767 of 2014. Operative part of the judgment is paragraph No. 23, which being conducive is reproduced herewith :-

“23. The upshot of the above discussion is that the suit is decreed in the above terms and as prayed in terms of prayer clauses (i), (iv), (v) and (vi) with costs.

“The learned Official Assignee is hereby directed to take steps for re-possession of the suit plot, viz. Plot No.B-2, measuring 400 Square Yards, situated at Block-10, Gulistan-e-Johar, Karachi from Defendants No.1 and 2, and the **physical, peaceful and vacant possession of the suit plot shall be handed over to Plaintiff**, by removing all the structures at the suit plot but at the costs of Defendants No.1 and 2. The learned Official Assignee will seek Police Assistance and if required that of Anti Encroachment Cell. The concerned DIG is directed to provide adequate force to the learned Official Assignee for implementing the Judgment of the Court. Fee of the Official Assignee will be settled by him.”

8. There can be no denial to the fact that *“learned Official Assignee was directed by a competent court of law for taking re-possession of subject matter”*. The *legality* of competence of the **Civil Court** in issuing such directions can't be discussed by this Court while exercising '*Criminal Jurisdiction*' but what can *safely* be said is that such action of '**re-possession**' was, *undeniably*, under a **lawful authority** hence no offence within meaning of Illegal Dispossession Act 2005.

9. As regard the case law, referred by learned counsel for the applicant i.e 2019 CLC Note 7, wherein possession was received by the Nazir and this Court in paragraph No. 10 and 11 observed that:-

“10. In view of the facts and law discussed above, the Nazir report dated 18.9.2014, is taken on record with the orders as follows:-

- i) The plaintiff/Decree Holder is put on notice to show-cause why the sale-deed, executed by the Nazir of this Court without lawful authority on the application of a lawyer who had no authority to represent the plaintiff in the said suit once it was decree and seek further relief in the same disposed of suit on his behalf without following the mandatory requirement of Order XXI, Rule 10, C.P.C. and even otherwise since it was illegally executed, should not be cancelled. Issue notice to the Plaintiff for 12.4.2018 for his personal appearance.
- ii) In the meanwhile Nazir is directed to immediately collect the original registered sale deed executed by the Nazir on 10.9.2014 from the plaintiff in respect of suit property and also send intimation forthwith to the concerned Sub-Registrar of Properties

that no further transaction should be allowed by him on the basis of sale-deed registered through Nazir of this Court in respect of the suit property. The original sale deed may be kept by the Nazir in his custody till final decision that whether it is to be cancelled or not.

11. The incidents of irregularities in following the mandatory procedure in suit branch need to be arrested forthwith to avoid repetitions of miscarriage of justice on account of serious flaws in suit branch as is apparent from the facts of the case in hand. Therefore, the Additional Registrar (O.S) to whom, I have repeatedly pointed out irregularities in the suit branch on original side in different orders is hereby directed to hold comprehensive inquiry to the following effect.

- i. He should obtain complete information from the office of the Nazir regarding the execution of sale deeds by the Nazir on the basis of compromise decrees right from January 2014 till date. This information should be in two categories. First category of the case should be the cases in which Mr. Qutubuzaman, advocate has obtained compromise decree and persuaded the Nazir to execute the same without filing an execution application. Secondly all other compromise decrees in which Nazir has executed the documents directly on the basis of compromise decree without recourse to the execution proceeding. The other set of information must also disclose/identify the advocate who has obtained compromise decree and manage to get the transfer of title of immoveable property through sale-deed executed by the Nazir in place of consenting party.
- iii. Collect information about ex parte decrees passed by this Court during the said period in the cases in which Mr. Qutubuzaman, advocate has appeared and examine each file from the point of view of proper service on the defendants as discussed in the judgment reported as 2015 MLD 1133, and also collect information that in how many cases of ex parte decree and compromise decree, application under section 12(2) have been filed and pending.
- iv. In each case fix the liability of the concern staff of the suit branch, identify names of the staff who have contributed in passing of orders on compromise decrees and/or ex parte orders by neglecting to follow the procedure, inter alia, pointed out in para-2 of this order so that disciplinary actions against the staff be initiated as per law.

Interim report to the above inquiry may be submitted within 15 days from receiving this order in chamber for perusal and further action if needed.”

10. I would take no exception to above rather would say that in said judgment it has never been held that such possession by Nazir was available to be challenged under Illegal Dispossession Act hence referral of above

judgment is misconceived. However, I would add that the applicant is competent to raise his grievances, if any, before the proper Court subject to law.

11. In consequences to what has been discussed above, I am of the clear view that possession was taken within the spirit of judgment passed in the civil suit, hence, complaint was rightly dismissed with regard to alleged illegality in the referred order; Revision application is dismissed.

Sajid

JUDGE