



“Perusal of inquiry report of SHO of P.S. Ferozabad, shows that he recorded the statement of witnesses verified the ownership of complainant from Sub-Registrar-I, Jamshed Town, Karachi, who verified the same vide letter reference No.311 Jamshed Town-I/2021 dated 24.06.2021, as well as verified from Pakistan Employees Co-Operative Housing Society Ltd, Shahrah-e-Quaideen Karachi, as such Honorary Joint Secretary PECHS Ltd., Karachi Major (R) Naveed Ahmed Khan verified the same vide letter reference No.PECHS/544/Coml./2021 Karachi Dated:30.06.2021 that the subject property was transferred in the name of complainant (Muhammad Saleem son of Shah Gul Amber). It appears from the record that prima-facie the complainant is owner of the subject property upon which the respondents No.1 encroached upon illegally and unlawfully.”

5. On last hearing R&P was called. Admittedly trial court has not framed the charge, on the basis of enquiry report trial court opined that “..... prima facie the complainant is owner of the subject property upon which the respondents No.1 encroached upon illegally and unlawfully.” Whereas section 7 of the Illegal Dispossession Act 2005 speaks that:-

**“Eviction and mode of recovery as an interim relief:**

- (1) ***If during trial*** the Court is satisfied that a person is found prima facie to be not in lawful possession, the Court shall, as an interim relief direct him to put the owner or occupier, as the case may be, in possession.
- (2) Where the person against whom any such order is passed under subsection (1) fails to comply with the same, the Court shall, notwithstanding any other law for the time being in force, take such steps and pass such order as may be necessary to put the owner or occupier in possession.
- (3) The Court may authorize any official or officer to take possession for securing compliance with its orders under subsection (1). The person so authorized may use or cause to be used such force as may be necessary.
- (4) If any person, authorized by the Court, under subsection (3), requires police assistance in the exercise of his power under this Act, he may send a requisition to the officer-in-charge of a police station who shall on such requisition render such assistance as may be required.

- (5) The failure of the officer-in-charge of police station to render assistance under subsection (4) shall amount to misconduct for which the Court may direct departmental action against him.

6. Bare perusal of above provision manifests that use of word by the legislature “*during trial*” under section 7(1), of Illegal Dispossession Act, 2005 is of considerable significance. There is little cavil with the well-settled proposition of law that taking of cognizance is not commencement of the trial. Trial of a case commences with the framing of the charge against the accused. Thus, the trial court was not competent to pass such order before framing of the charge, however, trial court was required to record the evidence and during evidence trial court was competent if there was an urgent need to hand over the possession. As well as trial court was competent to decide the fate of the complaint on conclusion of the trial by full-fledged judgment to issue direction to hand over the possession. Here R&Ps are silent with regard to any evidence recorded and yet matter is fixed for framing of charge hence direction to the SHO for handing over the possession to the complainant was in contravention of the provisions of Section 7, of the Illegal Dispossession Act, 2005. Thus the impugned Order passed by the trial Court suffers from illegality and impropriety. Learned counsel for petitioner has relied upon PLD 2010 SC 661, 2012 SCMR 1533, 2010 SCMR 1254, PLD 2007 LAHORE 231, 2021 YLR SINDH 1060, 2009 PCrLJ SINDH 1359 and 2016 PCrLJ SINDH 366. The learned counsel for the Petitioner has also emphasized over FIR which was recorded one month before wherein complainant mentioned the same property in possession and criminal assault on him.

7. Accordingly, impugned order is set aside with direction to the SHO PS Ferozabad and SSP District East to hand over the possession to the present applicant within three days after receipt of this Order. In case of failure, contempt proceedings can be initiated against them. Accordingly Criminal Complaint No.95/2021 is withdrawn from the learned trial Court with direction to the District Judge to assign the same to any other competent court having jurisdiction.

**J U D G E**

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