

ORDER SHEET
HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

Cr. Rev. Application No.S-32 of 2023

DATE

ORDER WITH SIGNATURE OF JUDGE

15.05.2023

Mr. Muhammad Aslam Bhatti advocate for the applicant
Mr. Noor-ul-Amin Sipio, advocate for respondents
Mr. Nazar Muhammad Memon A.P.G

ORDER

Through this Criminal Revision Application, the applicant Naresh Kumar has called in question the legality of order dated 01.03.2023 [**Impugned Order**], passed by the Additional Sessions Judge-II Kotri, whereby I.D Complaint No.07 of 2022 filed by him under Illegal Dispossession Act, 2005, was kept in abeyance till final decision of F.C Suit No.69 of 2022 pending before Senior Civil Judge-II Kotri in respect of the land admeasuring 16-00 acres in Survey No.1072, 1085, 1168, and 1155 situated in Deh and Tapo Kotri District Jamshoro (**subject land**).

2. Brief facts of the case are that the applicant filed the aforesaid I.D Complaint, claiming that he was/is the exclusive owner of subject land by registered Sale Deed, and such Record of Rights was mutated in his favor vide Entry No.164; however, the private respondents forcibly dispossessed him from his lawfully owned suit land; that the trial Court after recording evidence and hearing the parties kept the matter in abeyance till final adjudication of F.C Suit No.69 of 2022.

3. Upon notice Mukhtiarkar Kotri submitted report that the revenue record of subject land has been tempered by the revenue officials, however, no action was taken against the delinquents due to pendency of F.C Suit No. 69 of 2022 and the imatter under inquiry is still pending before Deputy Commissioner Jamshoro; that private respondents are illegally occupying the subject property without any title documents and there is no entry available in the record of rights in favor of respondents / legal heirs. SHO posted at Police Picket Site Kotri has also reported the same factum.

4. This court vide order dated 08.5.2023 directed the parties to assist this court on the question whether possession of subject property depends upon the decision of trial court in I.D. Complaint or this court can direct the Mukhtiarkar to takeover possession till the decision of trial court. In reply to the above Mr. Muhammad Aslam Bhatti counsel for applicant argued that the object of Illegal Dispossession Act is to stop and prevent the forced dispossession of owner or occupier of the immovable property by the persons having antecedents in land grabbing or in committing fraud. The procedure under the said Act provides filing of complaint under section 3 of the Act whereafter the court has to record the statements of complainant and witnesses so also to call report from the police officials regarding the dispute pending between the parties over the property so that such material could be tentatively looked into to take cognizance and summon the accused persons as required by Section 4 of the Act *ibid*. However, under Section 5 of the Act *ibid* the procedure for investigation is provided, while under section 6 of the Act, the court can act to attach the property until the final decision of the case if it is satisfied that none of the parties are/were in possession of the property immediately before the commencement of the offense and under section 7 of the Act *ibid* the court has power to grant interim relief in favor of the complainant who was dispossessed. He further argued that the impugned order where the I.D complaint was kept in abeyance is opposed to law and facts; that the private respondents are in illegal possession of subject land without title documents; therefore, the case of illegal dispossession was made out by the applicant; therefore, the trial court may be directed to decide I.D complaint of applicant without waiting for the decision in F.C. Suit No. 69 of 2022 which has no bearing in the present matter; that the applicant is owner of subject land and the private respondents in connivance with the plaintiff in the aforesaid suit has managed the purported Mukata just to deprive the applicant of his valuable land which is protected under Article 24 of the Constitution. In support of his contentions, he relied upon the cases of *Khariat Hussain Versus Additional Sessions Judge, Sheikhpura* 2011 YLR 979, *Noorullah Versus Muhammad Farrukh* 2023 YLR Note 9, and *Atta Rasul Versus Haji Muhamamd Rafique* 2019 P Cr. L J 1023. He prayed for allowing this Revision Application.

5. Mr. Noor-ul-Amin Sipio counsel for private respondents has argued that the private respondents are not encroachers, however, they are in legal possession of the subject land being tenants (Makadars/licensee of

Mst.Akhtar-un-Nisa); that real owners of subject land are Mst. Akhtar-un-Nisa and others, who have also filed Direct Complaint No.31 of 2022 against the present applicant as well as F.C Suit No.69 of 2022 for declaration and cancellation of documents, which is pending adjudication; that there is tampering in the revenue record and the provincial Anti-Corruption court has already taken cognizance of the matter; therefore this court has no jurisdiction to deal and decide the issue; besides an inquiry about the tempering of revenue record is also pending before Deputy Commissioner, Jamshoro. However, no conclusion has been brought on record due to pending litigation; that there is no sale and purchase by and between Ghulam Qadir and Peeso Mal and Mst.Akhar-ur-Nisa Mughal is the original owner of subject land. Learned counsel referred to various documents attached with his objections and argued that applicant is not the original owner of suit land. He lastly prayed for dismissal of instant Criminal Revision Application.

6. I have heard counsel for the parties and perused the record with their assistance and the case law cited at bar.

7. There is no cavil to the proposition that mere pendency of civil litigation between the parties, the proceedings under Illegal Dispossession Act could not be stopped. In this regard, the Supreme Court has held that irrespective of any civil litigation between the parties once the case under Illegal Dispossession Act is proved, the accused cannot escape punishment.

8. Primarily, any act which entails civil liability under civil law as well as criminal penalty under criminal law, such as Illegal Dispossession Act, 2005 then a person can be tried under both kind of proceedings, which are independent of each other. Once the offense reported is proved against the accused within the confines of Illegal Dispossession Act, 2005 then he cannot escape punishment on the ground that some civil litigation on the same issue is pending between the parties. No one can be allowed to take law in his own hands and unlawfully dispossess the owner or lawful occupier of immovable property and then seek to thwart the criminal proceedings initiated against him under Illegal Dispossession Act, 2005, on the pretext that civil litigation on the issue is pending between the parties. Therefore, irrespective of any civil litigation that may be pending in any Court, where an offense, as described in the Illegal Dispossession Act, 2005, has been committed, the proceedings under the said Act can be initiated as the same would be maintainable in law. In such situation this Court vide order dated

8.5.2023, directed the Civil Court to decide the subject suit within three months.

9. Section 7 of the Act, 2005 provides eviction and mode of recovery as an interim relief. 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 and the complainant is only required to prove that he was a lawful occupier of the property when he was allegedly dispossessed.

10. The Illegal Dispossession Act, 2005 is a special enactment, which has been promulgated to discourage land grabbers and to protect the right of owner and the lawful occupant. It is provided in law that the Court dealing with illegal dispossession case may at any time pass an order directing the accused or any person claiming through him for restoration of possession of the property to the owner if not already restored to him under Section 7 of the Act, 2005. And the interim relief could be granted in favor of owner/ occupier if the trial court is satisfied that the person (accused) is not in lawful possession.

11. In the aforesaid scenario, the trial court can take care of all the questions raised in the present case and pass speaking order, if it concludes that the accused have illegally occupied the subject property the same is liable to be restored to its original owner under the law by taking over possession of the subject land.

12. For what has been discussed above, this Revision application is allowed, and the impugned order dated 01.03.2023 passed by the Additional Session Judge-II Kotri is set-aside. The trial court shall hear I.D Complaint No. 07 of 2022 and decide the same after providing hearing to the parties. Meanwhile, the possession of subject property shall be taken over through Mukhtiarkar concerned from the private respondents with police aid if needed. SSP concerned shall provide necessary police aid in compliance of trial court's direction, if any.

This Cr. Revision Application stands disposed of.

JUDGE