

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application 230 of 2022
(Muhammad Jawed & others v Pervez Haroon)

&

Criminal Revision Application 231 of 2022
(Bilquiees Bibi & others v Pervez Haroon)

Date

Order with signature of Judge

Priority Cases

1. For orders on office objection.
2. For hearing of main case
3. For hearing of M.A no. 11832/2022
4. For hearing of MA 14102/2022 in Cr. Revision No.231/2022

01.11.2023

Mr. Naveed Ahmed Khan advocate for the applicant
Mr. Talal Wasif Qavi advocate for Respondent
Mr. Muntazir Mehdi Additional PG

Through these Criminal Revision applications under Section 439-A Cr.P.C., the applicants have questioned the order dated 19.09.2022 passed by the learned 3rd Additional Sessions Judge (East) Karachi in Cr. Complaint No. 65 of 2021.

2. The Theme of the arguments of the learned counsel for the applicants is that the impugned order dated 19.09.2022 is against the spirit of the law, and principles laid down by the Supreme Court; that at the time of investigation by a police officer, the applicants produced original file which includes payment challan, allotment order, and other relevant and necessary documents. He has further contended that the respondent is claiming that he obtained physical possession in the year 2006 whereas according to the record, the applicants owned the subject property since year 1998. He has further submitted that it is a settled proposition of law that proceedings under the provisions of the Illegal Dispossession Act, 2005 a criminal proceeding and it does decide the title of any party. He has further contended that applicants had purchased the subject land through a Sale Agreement executed in the year 1998 from the actual owner against a sale consideration of Rs. 1,500,000/-. He lastly prayed for allowing the Criminal Revision Application.

3. Mr. Wasif Qavi advocate for Respondent has supported the impugned order dated 19.09.2022 and has submitted that the Respondent is the sole and absolute owner of Plot No. B-56, measuring 400 Sq. Yrd, Sector 6-G, Mehran Town, Korangi, Karachi he submitted that the applicants are land grabbers who have unlawfully dispossessed the respondent from the subject property and they neither the owner nor

authorized by the owner to be in possession and they do not have any title document while the respondent had purchased the property from Mehboob Khan son of Abdul Hameed Khan and the transfer order dated 04.05.2006 is also issued by CDGK who also provided the site plan. He has further contended that one Irfan Khan handed over the possession to him in May 2006 whereby he secured the property to expand his factory as per need; that he also received a phone call from his friend who told him that some activity was being witnessed at the subject property involving few unwanted men thereafter the applicants threatened the respondent and his family for dire consequences. He lastly prayed for the dismissal of the instant Criminal Revision Applications.

4. Mr. Muntazir Mehdi Additional PG has adopted the argument of learned counsel for Respondent.

5. I have heard the learned counsel for the parties and have perused the material available on record.

6. The question involved in the present proceedings is whether the applicants have dispossessed the owner of Plot No. B-56, measuring 400 Sq. Yrd, Sector 6-G, Mehran Town, Korangi, Karachi, and whether in the presence of civil proceedings the possession of the subject property could be restored to the owner under the Illegal Dispossession Act, 2005.

7. To appreciate the aforesaid proposition, foremost, it is expedient to have a look at the factual aspect of the case, in the present case, it appears from the record that Illegal Dispossession proceedings were initiated by the respondent on the premise that he was/is the owner of Plot No. B-56, measuring 400 Sq. Yrd, Sector 6-G, Mehran Town, Korangi, Karachi, and the applicants are land grabbers of the subject property who had unlawfully dispossessed the respondent from the subject property. The learned trial court called a report from the concerned SHO who submitted his report with the narration that the statement of the respondent was recorded who reiterated the contents of his ID complainant while he also recorded the statement of the applicants who disclosed that applicant Muhammad Saleem had purchased the subject property in the year 2001 from Nasrullah and also obtained the documents but said Nasrullah went abroad without transferring title in his name, hence he filed Civil Suit No. 1867/2020 against him during such period he came to know about the death of said Nasrullah in abroad, therefore he withdrew the suit filed by him now he has filed fresh suit No. 1530/2021 against the legal heirs which is pending adjudication in the Court of VII Senior Civil Judge

Karachi East. However, the learned trial court vide order dated 19.9.2022 directed the applicants to restore the possession of Plot No.B-56, Sector 6-G, Mehran Town Scheme, Korangi, measuring 425 Sq. Yards., to the respondent/complainant, an excerpt whereof is reproduced as under:-

“The accused persons have agitated the ground of filing suits, but it is settled law that both civil and criminal litigation can simultaneously proceed and there is no legal bar on it. The copy of the notice in the said suit is annexed with the report of SHO and title of C.S No.1530/2021 filed by accused Muhammad Saleem Rajput against Muhammad Nasrullah for Specific Performance of Contract and Permanent Injunction. The accused Saleem claims to be the owner on the basis of sale agreement dated 13.06.1998 which is admittedly not the title documents, on the other hand, the complainant, during inquiry, was found lawful owner. The Inquiry Officer in his Inquiry report has categorically belled the version of accused, and supported the stance of complainant. The cognizance was taken by this Court against the accused on 12.04.2022, which order has attained finality, as the same was not challenged. The charge has been framed against accused on 23.08.2022 and case has matured for the evidence of complainant. It is also settled law that registered documents always have preferential rights over unregistered documents, hence by gathering all material together, prima facie, it appears that the property of complainant has been Illegally occupied by the accused Muhammad Javed Rajput son of Imamuddin Rajput and Muhammad Saleem Rajput son of Imamuddin Rajput unlawfully, therefore, I have no reason to decline the Interim relief to the complainant, hence accused is directed to restore the possession of Plot No.B-56, Sector 6-G, Mehran Town Scheme, Korangi, measuring 425 Sq. Yards., to the complainant on or before next date of hearing. Order accordingly.”

8. The Illegal Dispossession Act, of 2005 was enacted to protect the lawful owners and occupiers of immovable properties from their illegal or forcible dispossession by property grabbers. The Act states that no one shall enter into or upon any property to dispossess, grab, control, or occupy it without having any lawful authority to do so to dispossess, grab, control, or occupy the property from owners or occupier of such property. This Act was promulgated to provide a more efficacious means for private individuals to recover their property from illegal and forcible dispossession without having to first establish right or title through lengthy civil proceedings. It applies to dispossession from the immovable property by property grabbers, qabza group, and land mafia with punishment. Under section 7 of the Illegal Dispossession Act, 2005, possession can be restored. After the trial, or in the intervenning period, if the Court finds that an owner or occupier of the property was illegally dispossessed or property was grabbed in contravention of section 3, the Court may direct the accused or any person claiming through him for restoration of the possession of the property to the owner or, as the case may be, the occupier.

9. So far as the filing of civil proceedings, initiated by the applicants seeking specific performance of alleged agreement for sale in respect of the subject property claiming its ownership which factum has been denied

by the respondent. Prima-facie till such time the Civil Court passes a decree against the respondent in a Suit for specific performance, he was/is entitled to possession of the subject premises, under section 7 of the Illegal Dispossession Act, 2005 if occupied illegally as such the stance of the applicants is contrary to the law laid down by the Supreme Court, in the cases of Haji Jumma Khan V/S Haji Zarin Khan, PLD 1999 SC 1101, Kassim and another V/S S. Rahim Shah, 1990 SCMR 647, Muhammad Iqbal Haider and another V/S Vth Rent Controller/Senior Civil Judge, Karachi Central, and others, 2009 SCMR 1396, Syed Imran Ahmed V/S Bilal and another, PLD 2009 SC 546, and Abdul Rasheed V/S Mqbool Ahmed and others, 2011 SCMR 320.

10. In view of the above Criminal Revision Applications are dismissed along with pending application(s). The trial court is directed to expedite the trial of the case and conclude the pending proceedings within one month.

JUDGE