

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Revision Application No. 217 of 2021

Date _____ Order with signature of Judge _____

Priority Cases

1. For order on office objection at 'A'
2. For hearing of main case.
3. For hearing of MA No. 10394/2021

15.11.2023

Mr. Aftab Ahmed G. Nabi advocate for the applicant
Nemo for private respondents
Mr. Muntazir Mehdi Addl. PG

The present Criminal Revision Application No.217/2021 filed by Applicant Taj Muhammad against the order dated 05.8.2021 passed by learned District & Sessions Judge Malir Karachi in Illegal Dispossession Complaint No. 45/2021, whereby the Complaint presented by the applicant under Sections 3, 4, 6 and 7 of Illegal Dispossession Act, 2005 was dismissed on the premise that Civil proceedings between both the real brothers is pending adjudication before the Civil Court before the filing of Criminal I.D Complaint. For convenience's sake, the order dated 5.8.2021 is reproduced as under:-

“ 4. It is to be noted that even as per the complainant he was dispossessed from the property in question in 2019. However, the complainant has neither disclosed the exact date when he was allegedly dispossessed from the same property nor apprised this forum that why he approached this forum after lapse of two years. Delay in approaching this forum may lead to the inference that now, the complainant wants to initiate this proceeding as a counterblast. The SHO Police Station Shah Latif Town was directed to submit the report in the matter and in compliance he has reported that Ameer Muhammad had purchased the same property from Taj Muhammad and due to some dispute over the sale amount he has also filed Civil Suit No.157/2019 before the IIIrd Senior Civil Judge. So, the matter regarding the same property is pending before IIIrd Senior Civil. The dispute is complicated and the facts of the case call for its disposal through civil Court.

5. In the case of Rana Nasir Ali v. Gul Agha & Others (2020 YLR 2331) the Honorable Sindh High Court has observed that a complaint under the Illegal Dispossession Act is not meant either to equate a civil proceeding or to frustrate a civil suit. In the same case, the Honorable High Court has referred to the case of Waqar Ali & Other v. The State (PLD 2011 SC 181), where it was held that:

“It is clear from section 3 ibid that in order to constitute an offense thereunder the complaint must disclose the existence of both, an unlawful act (actus reus) and criminal intent (mens rea). In view of the allegations and circumstances considered above, it is apparent that even if it is ultimately established that the appellants are in occupation of an area owned by the respondent-complainant, there is no indication that they also had the necessary criminal intent. On the contrary, the averments in the complaint point in the opposite direction and show at best, that there is a dispute of a purely civil nature between the parties as to the exact location of their respective parcels of land. It is in these circumstances, and with the aforesaid background in mind that learned counsel for the respondent-complainant was asked to state if an inadvertent encroachment would constitute an offence under section 3 of the Act. He replied in the affirmative. We are afraid his response is against the express wording of the statute which requires the existence of a guilty intention for the purpose of assuming jurisdiction. For reasons considered above, guilty intent, does not exist in the present case.”

6. The Honorable Sindh High Court went on to observe that no doubt, a criminal and civil proceeding can be initiated simultaneously but it is not an inflexible rule and it happens that a cause involved between the parties had overtones of a civil dispute with certain criminal facets, and it will not be proper to give a criminal twist to such a dispute which mainly of a civil nature to bring the same within the scope of some penal section. It is further observed that such a tactic is usually used with the intention to pressurize the opponent party, which cannot be appreciated. In case of Asim Siddique Butt v. Muhammad Khursheed Mirza & Others (2017 YLR Note 64), the

Honorable Lahore High Court has observed that a delay of years in lodging of I.D complaint cannot be ordinarily expected from a person, who was forcibly deprived of his valuable property. I have respectfully gone through the case law of Malik Muhammad Naeem v. Malik Alam Majeed & Others (PLD 2008 Lahore 358) and Wali Muhammad v. ADJ Jaranwala & Others (PLD 2008 Lahore 392) relied by learned advocate for the complainant, but facts and circumstances of present case as discussed in this order, are different and distinguishable. However, it may be pointed out that in the cited case of Malik Muhammad Naeem the I.D complaint was filed a couple of months before the filing of civil suit. While, in the present case proposed accused had filed a civil suit much before the presentation of this I.D complaint.

In view of above facts and the observations of the Honorable Superior Courts, I do not find it a fit case to take cognizance. Accordingly, present I.D complaint is dismissed.”

2. Applicant Taj Muhammad filed a Complaint under Sections 3, 4, 6, and 7 of the Illegal Dispossession Act, 2005 against his brothers namely Ameer Muhammad and Noor Muhammad with the narration that he was/is the lawful owner of plot No.451, 99.80 square yards, Street No.2 Khuldabad, Quaidabad by regularization of unauthorized Katchi Abadi vide lease dated 11.02.2019. He claims that his brothers had forcibly occupied the subject property in 2019 even though they had no lawful claim over the same property. Applicant went on to contend that respondent No.1 had thereafter rented out the same property to respondent No.2 at the monthly rent of Rs.4,000/-. It is further stated that despite requests they refused to vacate the same premises and filed a Civil Suit No.157/2019 before learned IIIrd Senior Civil Judge, Karachi Malir in respect of the same property. The aforesaid Complaint was dismissed vide order dated 05.8.2021 passed by learned District & Sessions Judge Malir Karachi on the premise that Civil proceedings between both the real brothers are pending adjudication before the Civil Court before the filing of Criminal I.D Complaint.

3. At the outset I inquired from the learned counsel representing the applicant as to how the Criminal I.D Complaint can be filed under Sections 3, 4, 6, and 7 of the Illegal Dispossession Act, 2005 against the family members in the presence of civil proceedings pending adjudication between brothers.

4. The learned counsel for the applicant has contended that the applicant is the lawful owner of plot No. 451, 99.80 square yards, Street No.2 Khuldabad Quaidabad Karachi by regularization of unauthorized Katchi Abadi vide lease dated 11.02.2019. He further contended that the private respondents had forcibly occupied the subject property in 2019 even though they had no lawful claim over the property. He next contended that the respondent-Ameer Muhammad, thereafter rented out the subject property to respondent-Noor Muhammad at the monthly rent of Rs. 4000/-; that despite requests they failed to vacate the premises and filed a Civil Suit No. 157 of 2019 before the IIIrd Senior Civil Judge Malir

Karachi in respect of the subject property thereafter the applicant filed present I.D Complaint before the learned trial Court. He emphasized that in any act that entails civil liability under civil law as well as criminal penalty under criminal law, such as the Illegal Dispossession Act, of 2005 a person can be tried under both kinds of proceedings, which are independent of each other, therefore, irrespective of any civil litigation that may be pending in any Court, the proceedings under the said Act can be initiated as the same would be maintainable in law. In support of his contention, he relied upon the cases of *Muhammad Naseem v Mst. Farida Gul* (2016 SCMR 1931), *Shafi Muhammad v The State* (PLD 2008 Karachi 480), *Muhammad Afzal and another v Muhammad Ashraf and others* (2006 P. Cr. L.J 1391) and *Jalal & others v Kapri Khan and another* (PLD 2008 Karachi 369). He lastly prayed for allowing the Criminal Revision Application by setting aside the order dated 05.08.2021 passed by learned District & Sessions Judge Malir Karachi in Illegal Dispossession Complaint No. 45/2021.

5. The private respondents were served and they have engaged counsel but neither respondents nor their counsel is in attendance though this court vide order dated 13.9.2023 granted them a last chance to appear and assist this court, however, the matter was adjourned to 2.10.2023 and they put their appearance but today they are called absent, leaving this court with no option but to hear the parties present in court for a decision on merits.

6. Mr. Muntazir Mehdi Addl. PG has supported the impinged order and argued that there is a dispute between two brothers over property which is purely civil as such provisions of the Illegal Dispossession Act, 2005 are not applicable in the case. He added that only those possessing the credentials and antecedents of 'land grabbers' or 'Qabza Group' can be prosecuted under the Illegal Dispossession Act, 2005 as in the present case it is yet to be ascertained whether who is the owner of the subject property and in absence of such findings nothing could be said for and against at this stage until and unless parties obtain a decree in their favor from the competent court of law. He prayed for the dismissal of the instant revision application.

7. I have heard the learned counsel for the applicant as well as learned Additional PG on the subject issue and have also perused the record with their assistance and examined the law cited by them at the Bar.

8. Although learned counsel for the applicant adverted at length, to factual controversies between the parties relating to title, possession, and similar matters, it is not necessary to adjudicate on such factual aspects because the matter before me is confined to the issue noted in the impugned order dated 05.08.2021.

9. The second legal question as to whether the trial Court had jurisdiction in the matter to decide the lis between the brothers over the subject property and can thus be easily decided by referring to the above circumstances and the relevant provisions of the Illegal Dispossession Act, 2005 (hereinafter referred to as the "Act"). Primarily Section 3 of the said statute defines the offense thereunder. Section 4 stipulates that any "contravention of Section 3 shall be triable by the Court of Session on a complaint". It also provides that the offense under the Act shall be non-cognizable. Section 5 empowers the Court to direct the police to make an investigation. It is clear from Section 3 *ibid* that to constitute an offense thereunder the complaint must disclose the existence of both, an unlawful act (*actus reas*) and criminal intent (*mens rea*). Besides the Illegal Dispossession Act, 2005 applied to the dispossession of immovable property only by property grabbers/Qabza Group/land mafia. A complaint under the Illegal Dispossession Act, 2005 can be entertained by a Court of Session only if some material exists showing involvement of the persons complained against in some previous activity connected with illegal dispossession from immovable property or the complaint demonstrates an organized or calculated effort by some persons operating individually or in groups to grab by force or deceit property to which they have no lawful, ostensible or justifiable claim. In the case of an individual, it must be the manner of execution of his design that may expose him as a property grabber. Additionally, the Illegal Dispossession Act, 2005 does not apply to run-of-the-mill cases of alleged dispossession from immoveable properties by ordinary persons having no credentials or antecedents of being property grabbers/Qabza Group/land mafia, i.e. cases of disputes over possession of immovable properties between co-owners or co-sharers, between landlords and tenants, between persons claiming possession based on inheritance, between persons vying for possession based on competing title documents, contractual agreements or revenue record or cases with a background of an on-going private dispute over the relevant property. Further a complaint under the Illegal Dispossession Act, 2005 cannot be entertained where the matter of possession of the relevant property is being regulated by a civil or revenue Court. However, in the impugned order it was also held that where civil litigation about illegal dispossession from immovable property is pending between the parties,

the proceedings under the Illegal Dispossession Act, 2005 cannot be maintained.

10. There is no cavil to the proposition that if the offence confines to the provisions of the Illegal Dispossession Act, 2005 then the land grabbers/Qabza Group/land mafia cannot escape punishment as no one can be allowed to take law in his own hands and unlawfully dispossess an owner or lawful occupier of an immovable property however in the present case both the parties are brothers interse and claim ownership of the subject property and one brother has denied the ownership right and one has stated that he has purchased the subject property, in such a situation it cannot be said at this stage that the respondent-brothers are the land grabbers/Qabza Group/land mafia as defined Illegal Dispossession Act, 2005, therefore, the proceedings under the said Act cannot be taken into its logical end until and unless it is decided who is owner and who is illegal occupier of the subject property as the case under the Illegal Dispossession Act, 2005 cannot be initiated against the ordinary persons having no credentials or antecedents of being property grabbers/Qabza Group/land mafia.

11. In view of the allegations and circumstances considered above, it is apparent that even if it is ultimately established that the respondents are in occupation of the subject property owned by the applicant, there is no indication that they also had the necessary criminal intent. On the contrary, the averments in the complaint point in the opposite direction and show at best, that there is a dispute of sale and purchase between two brothers over the subject property, and in such a scenario, it appears that the learned trial Court did not take cognizance of the alleged offense and dismissed the I.D Complaint. In such cases, the actions cannot be categorized as constituting an offense under the definition provided. This distinction requires the court to carefully examine the material presented on record at the initial stage and then make an order based on a judicial application of mind. This ensures that complaints are not unnecessarily registered, which could cause distress and harm to the accused individuals, as ultimately these cases may be found to be excluded from the scope of this particular law. Reference in this regard can be made to the case of Waqar Ali v/s The State (PLD 2011 SC 181), which supports this approach.

12. It is implicit in this observation that the 'intention to dispossess, grab, control, or occupy cannot be deduced from the complaint. The Court empowered to take cognizance of an offence under the Act, is required to filter out those complaints which do not disclose the requisite criminal

intent. Courts that have been authorized to try cases under the Act, 2005 thus have a responsibility to see that the persons named in the complaint have a case to answer before they are summoned to face trial.

13. In view of the above facts, the learned trial Court has rightly passed the impugned order and the same does not require interference by this Court. This Criminal Revision Application is dismissed along with the pending application(s).

JUDGE