

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Revision Application No.133 of 2023

Date	Order with signature of Judge
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1. For order on office objection at 'A'
2. For hearing of main case
3. For hearing of MA No.7584/2023

22.11.2023

Mr. Mansoor Ahmed Turk advocate for the applicants
Ms. Rubina Qadir, Deputy PG

The instant Criminal Revision Application has been preferred by applicants Yar Muhammad and Lal Khan, against the order dated 17.05.2023 passed by the learned IInd Additional Sessions Judge Thatta in private complaint No. 38 of 2022, which was dismissed on the ground that no case under the Illegal Dispossession Act 2005 was made out. An excerpt of the order is reproduced as under:-

“Prima face, it is the case of possession not of illegal and forcible dispossession. In my humble view if the complainants have a clear title, they may approach the concerned Civil Court for the relief they are seeking from this Court for the matter requires full-fledged evidence to be led by both the parties as the accused also claims to have interest in the land under dispute and this Court cannot proceed under the Illegal Dispossession Act, 2005 having limited jurisdiction and limited scope. Under such circumstances, I am of the considered view that the complainants have no case under the ambit of the Illegal Dispossession Act, 2005, as such, the same lacks consideration and stands dismissed.”

2. Learned counsel for the applicant has submitted that the applicants have been illegally dispossessed by the private respondents/accused from their lands viz Survey No.568/1 area 7-31 acres, Survey No.557/2, area 4-28 acres. Survey No.556/3,4 area 08-00 acres, total area 20-11 acres, and survey No.569/1 to 4 area 16-00 acres situated at Deh Dandro, Tapo Sukhpur, Taluka Mirpur Sakro District Thatta on 10.09.2022. He has further contended that they approached the trial Court to restore their possession which was illegally occupied by the private respondents. In support of his contention, he relied upon the documents attached to the memo of Cr. Revision Application and prayed for allowing the instant Cr. Misc. Application as prayed.

3. It appears from the record that the trial Court called for inquiry reports from the Mukhtiarkar concerned, as well as the SHO concerned,

and also sought a report as to the period of occupation of alleged land by the respondents. The Mukhtiarkar Revenue Mirpur Sakro submitted the report with the narration that he visited the subject land and found the block survey Nos. 568/1.2 (08 acres) were occupied with a good number of Dwarf Trees and bushes and the subject land is vacant. He further reported that upon block survey No. 557/2 (04 acres) some houses were built by Yar Muhammad Khaskheli and others, further on block No. 569 (16 acres) there are two shrine-like graves of Syed Community, Empty Hut and the rest portion of the land is lying plain and vacant on the site. SHO also reported the position of land is available on page 71. The trial Court has carefully scanned the material placed before it and concluded that the case in hand did not fall within the ambit of Section 3 of the Illegal Dispossession Act, 2005 but it pertained to the Civil Court for the reasons that it is the accused who had challenged the very grant of land of the complainant and civil suit bearing No.31 of 2007 was also preferred by the respondents/accused No. 3 & 4 in the year 2007. However, the applicant/complainant party had taken the stance that the accused had lost their case before the concerned revenue forums even though their civil suit was also dismissed; and finally opined that the complainant, party has no case for the Illegal Dispossession Act 2005.

4. 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.

5. 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 immovable 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 the applicants have to resort to civil litigation to clear the title of the land, and the proceedings under the Illegal Dispossession Act, 2005 cannot be maintained.

6. 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 at loggershead and claim ownership of the subject property and denied their claims and counter claims, in such a situation prima facie it cannot be said at this stage that the respondents are the land grabbers/Qabza Group/land mafia as defined in the 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.

7. 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 applicants, 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 over the subject land, 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.

8. 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.

9. 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