

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH, KARACHI**  
**Criminal Revision Application No. 38 of 2024**

along with  
Criminal Revision Application No. 257 of 2023

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<i>Date</i>	<i>Order with signature of Judge</i>
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1. For hearing of Main Case.
2. For hearing of M.A No.2241/2024.

**16.05.2024**

Mr. Mohsin Ali Khan, Advocate for the Applicants.  
Ms. Amna Ansari, Addl. Prosecutor General, Sindh.  
Mr. Muhammad Kamran Khan, Assistant Advocate General, Sindh.  
Mr. Abdul Hafeez Sandhu, Advocate for Respondent No.1.

**-x-x-x-x-x-**

Through these revision applications, applicants / accused have assailed the order dated 05.12.2023 passed by learned 4<sup>th</sup> Addl. Sessions Judge, Karachi (East) vide Criminal Complaint No. 46 of 2018 (*re-Ejaz Ahmed Hanafi Versus Khalid Mehmood*); whereby, an application filed by respondent No.2 under Section 7 of the Act was allowed and the respondents (applicants in these applications) were directed to hand over the possession to the complainant. In compliance of said order, possession of the premises was handed over to the respondent, however, after filing of these revision applications, the respondents (applicants in these revision applications) have again dispossessed the complainant/owner.

After arguing the case at some length, learned counsel admits that applicants are not title holder nor the person from whom they had purchased the property and in fact it is still in the name of respondent Ejaz Ahmed Hanafi, as is evident from the allotment order (*available at page37 of Criminal Revision Application No.38 of 2024*). As far as Suit No. 294 of 2024 filed by Ibrahim Kumbhar before the Court of Senior Civil Judge-III, Karachi (East) for declaration, specific performance and permanent injunction is concerned, same has been dismissed in *Limine* on 02.02.2024. The Plaintiff Ibrahim Kumbhar has filed Civil Appeal No.92 of 2024 before the Court of District Judge, Karachi (East) which is still pending and is fixed on 06.07.2024, therefore, impugned order suffers from many illegalities and is liable to be set-aside; hence, prays for grant of revision applications.

On the other hand, learned counsel for respondent No.1 opposes the revision applications on the ground that respondent No.1 is the original allottee of the property in dispute by virtue of allotment order dated 27.08.1980 and per KDA record, it is still intact in the name of respondent; hence, subsequent fake transaction, as made by the accused and other fraudulent persons have no legal authenticity, therefore, trial Court has rightly entertained the application filed by the respondent under Section 7 of the Act. He, therefore, submits that by dismissing these applications, impugned order may be maintained and directions be issued to the concerned to restore the possession of the property in dispute to the respondent in terms of the impugned order.

Learned Addl. P.G, Sindh is also of the same view, opposes the revision applications and supports the impugned order.

Since, the respondent is title holder and bonafide owner of the property in dispute which is still intact in his name. Such fact is evident from the allotment order dated 27.08.1980 and said document has not been assailed / questioned by the applicant or any of the party. As far as, alleged purchase of the property by the applicant from a stranger through unregistered sale agreement, is concerned, the person who allegedly had sold it out to the applicant, was not competent to sale out the property in dispute nor submitted any valid document or sale deed to show that the respondent had sold it out to him. Hence, such transaction to sale in respect of the property in dispute being itself questionable would not confer the right of ownership upon the applicant/accused. Therefore, the trial Court has rightly entertained the application under Section 7 of the Act filed by the respondent; hence, impugned order does not suffer from any illegality or infirmity which may warrant interference by this Court.

As far as, pendency of Civil Appeal filed by the applicant, is concerned, it is yet to be adjudicated upon the basis of material and mere pendency of such *lis* does not confer any right in favour of the applicant or any other person to dispossess the actual owner who is not only title holder but his right of ownership is ostensible and is protected by the law. As such, these revision applications are not maintainable. Consequently, same are hereby dismissed.

Before parting with the order, it will be appropriate to reproduce the concluding para of the impugned order, which reads as under;\_

*“Heard. Although under Illegal Dispossessio Act normally a court hand over possession of subject property after culmination of trial but in certain conditions the court has been empowered to hand over possession to any lawful party during trial U/s 7 of ACT, 2005. I have gone through the evidence available on record and the evidence of IO clearly reveals that the subject plot bearing NO:B-140 Mehran Town, Karachi is officially owned by complainant and his documents were verified by IO. The accused Khalid Mehmood was in possession, and he failed to produce single document in his favour. Moreover during cross nothing favourable came out in favour of accused, therefore it is prima-facie made out the complainant is lawful owner of alleged plot, which is at the moment is in possession of 6 persons, who are claiming their title through accused and it is a matter of record that accused has failed to show his title. It is settled principle of law that no one can transfer better title what he possess at the time of contract and when accused Khalid had no title any sale agreement between him and those 6 persons have no legal sanctity at the moment.*

*The learned counsel has rightly relied upon case of Ata Rasool, which is squarely applying to the facts in hand and if there is any sale agreement between present 6 persons occupying plot with accused Khalid Mehmood, they should clarify their title through competent civil court, till then, they have no right to hold possession of same.*

*Thus I allow this application and direct SHO KIA to ensure that possession of subject property i.e. Plot No.:B-140, Sector 6-G Korangi Township, measuring 400 Sq.yds shall be handed over peacefully and in vacant condition to the complainant Aijaz ahmed Hanafi S/o Hafeez Ahmed within 7 days and report to this court. The SHO shall inform the person occupying the plot to remove their articles within 7 days and in case of non-compliance the police shall hand over vacant possession to the complainant under intimation to this court. The office is directed to communicate this order to SHO KIA and matter is adjourned to 19.12.2023 for report.”*

Accordingly and in view of above, SHO, PS KIA, Karachi is directed to comply with the directions contained under impugned order and hand over the possession of the premises to the respondent within seven (7) days and submit such report before the trial Court as well as this Court through MIT-II. Meanwhile, Trial Court is directed to expedite the trial and conclude it within three (3) months’ time, under intimation to this Court. The parties shall ensure their presence before the trial Court today as well as on each date of hearing.

Office to place a copy of this order in the connected application.

**JUDGE**