

# THE HIGH COURT OF SINDH KARACHI

## Cr. Revision Application No. 250 of 2022

[Nasreen Bano and others v. Muhammad Asif & others]

Applicants : Nasreen Bano daughter of Abdul Wahab and 05 others through Mr. Ashraf Ali Shah, Advocate.

Respondent 1 : Muhammad Asif son of Muhammad Bari through Mr. Nehal Khan Lashari, Advocate.

Respondents 2-3 : Through Ms. Rahat Ehsan, Additional Prosecutor General Sindh.

Dates of hearing : 27-04-2023, 09-05-2023 & Re-hearing on 30-05-2024

Date of order : 30-05-2024

## ORDER

Adnan Iqbal Chaudhry J. - By order dated 15-10-2022 passed on I.D. Complaint No. 128/2021 [**impugned order**], the learned Additional District & Sessions Judge-III, Karachi East [**ADJ**] allowed the application of the Respondent No.1/complainant for interim relief of possession under section 7 of the Illegal Dispossession Act, 2005, and dismissed the application of the Applicants/accused for acquittal under section 265-K CrPC; hence this revision application by the latter. By an interim order passed by this Court on 08.11.2022, the impugned order remains suspended.

2. The complaint under sections 3 and 4 of the Illegal Dispossession Act, 2005 was filed by Muhammad Asif, the Respondent No.1, against his ex-wife Nasreen Bano, her three brothers and two other persons who are the Applicants herein. It was averred by Muhammad Asif that he divorced Nasreen Bano on 03.03.2021 and allowed her a week's time to shift from his house No. 149, Block-C, Bagh Sector-10, Korangi, Karachi [**subject property**]; however, Nasreen Bano did not vacate the subject property, and on 03.04.2021 her brothers and two other persons (Applicants 2 to 6

herein) came to subject property and dispossessed Muhammad Asif by force.

3. Muhammad Asif contended that he was the owner of the subject property having purchased the same under a sale agreement from one Naheed Nazim, who in turn had purchased it from the original allottee, Shah Muhammad. Along with his complaint, Muhammad Asif produced *inter alia* Allotment Order dated 06.11.1985 issued by the KDA to Shah Muhammad, Transfer Order dated 25.08.2009 issued by the erstwhile CDGK in favour of Naheed Nazim, and the sale agreement dated 26.09.2011 with Naheed Nazim.

4. On the complaint, the learned ADJ ordered a preliminary investigation under section 5 of the Illegal Dispossession Act. The version of Nasreen Bano was that she was the actual owner of the subject property and had been residing thereat with her children, having purchased the same from its original allottee, Shah Muhammad, and transferred to her *vide* Transfer Order dated 02.12.2011. Per the statement of Nasreen Bano, she had paid for the subject property primarily from the money inherited from her father; that after Muhammad Asif had threatened her of dire consequences, she got scared and sold off the subject property through an estate agent namely the Applicant No.6. She produced the Transfer Order of the subject property issued to her by the erstwhile CDGK, dated 02.12.2011, and sale agreements dated 04.06.2021 and 11.06.2021 to show that she had sold half of the property to Junaid (Applicant No.5) and the other half to one Mohsin Raza.

5. Heard learned counsel and perused the record.

6. Learned counsel for the Applicants submitted that pursuant to the aforesaid sale agreements, Nasreen Bano had delivered possession of the subject property to the vendees, Junaid and Mohsin Raza, who are bonafide purchasers. Of the said vendees, only Junaid is arraigned as an accused person. Per learned counsel for the

Applicants, at the time the complaint was filed on or about 11.08.2021, Junaid was in possession of part of the subject property. Nonetheless, since Junaid claims to be in possession through Nasreen Bano and title of the subject property has yet to be transferred to him, his possession cannot be better than that held by Nasreen Bano herself. Therefore, for the purposes of section 7 of the Illegal Dispossession Act, this Court needs only to examine whether there was material before the learned ADJ to hold that *prima facie* Nasreen Bano was in unlawful possession and that it was Muhammad Asif who was owner or occupier of the subject property.

7. Learned counsel for the Applicant No.1, Nasreen Bano, had drawn attention to Suit No. 1890/2022 filed by her for declaration of her ownership of the subject property and for cancellation of the Transfer Order dated 25.08.2009 issued by the CDGK to Naheed Nazim. He submitted that a complaint under the Illegal Dispossession Act, 2005 is not maintainable pending a civil suit on the same issue. However, firstly, that suit was filed after the complaint; and secondly, it has since been held by a larger Bench of the Supreme Court in *Muhammad Naseem v. Farida Gul* (2016 SCMR 1931) that pendency of a civil suit is no bar to a complaint under the Illegal Dispossession Act. The complaint is therefore maintainable.

8. Report of preliminary investigation submitted by the ASI to the learned ADJ on 03.09.2021 stated that while documents produced by the parties were pending verification by the KDA, the investigation did not reveal the incident of dispossession by force as alleged by Muhammad Asif, and that the actual dispute between the parties was over the ownership of the subject property. There is indeed reason to doubt that Muhammad Asif was residing at the subject property on or about 03.04.2021 when he was allegedly dispossessed. Admittedly, on 03.03.2021, when Muhammad Asif executed the divorce deed, he was residing elsewhere. Therefore, there is some force in the submission that on 03.04.2021 he was not living at the subject property alongside Nasreen Bano after divorcing her.

9. As regards the ownership of the subject property, both sides relied upon different Transfer Orders issued by the CDGK. Muhammad Asif relied upon a Transfer Order dated 25.08.2009 from Shah Muhammad to Naheed Nazim, from whom he claims a sale agreement. Nasreen Bano too relies on a Transfer Order dated 02.12.2011 from the same Shah Muhammad directly to her. On a report submitted by the KDA, the learned ADJ concluded that the Transfer Order held by Nasreen Bano was bogus. But then, while replying to a show-cause notice issued by the trial court, the Additional Director (Shifting) Estate & Enforcement, KDA had also stated that there was no record of the subject property as it was a plot carved-out unlawfully by china-cutting. Thus, there were varying reports by the KDA, and if the latter one was correct, then even the Transfer Order issued to Naheed Nazim was unlawful.

10. Furthermore, while the sale agreement between Naheed Nazim and Muhammad Asif is printed on a stamp paper dated 26.09.2011, it does not mention the date of its execution. The receipt said to have been issued by Naheed Nazim to Muhammad Asif for part payment, is also un-dated. The pay-order produced by Muhammad Asif is also not in the name of Naheed Nazim. Muhammad Asif has yet to explain why he could not obtain a transfer order of the subject property in his favour in all these years.

11. In the circumstances discussed above where documents produced by both sides were doubtful, but prior possession of Nasreen Bano was admitted, the case before the learned ADJ did not demonstrate *prima facie* that possession held by Nasreen Bano, and consequently by Junaid, was unlawful possession. The observation by the learned ADJ that registered documents have preference over unregistered documents, is completely misplaced when no registered document was even relied upon by Muhammad Asif. The order of interim possession is also defective for the reason that it restored possession of "Plot No. B-55, Sector 6-G, Mehran Town, Korangi" which was not even the subject property.

12. As regards the dismissal of the Applicants' application under section 265-K CrPC, the learned ADJ was essentially of the view that the application was premature when the prosecution has yet to be given an opportunity to prove the charge. To that extent, the impugned order does not require interference.

13. For the foregoing reasons, this revision application against the order dated 15-10-2022 passed on I.D. Complaint No. 128/2021 succeeds to the extent it restores possession in the interim to Muhammad Asif. That much is set-aside by dismissing the application under section 7 of the Illegal Dispossession Act, 2005.

**JUDGE**

Karachi:  
Dated: 30-05-2024