

Whereas, the Civil Suit No.359/1998 is still pending in Hon'ble High Court of Sindh wherein complainant of this case has filed application of intervener, and in presence of his advocate Mr. Ishrat Hussain Jafferi, and advocate for complainant Siraj namely Mr. Ashiq Muhammad, complainant himself, representatives nominated by Official Assignee Dr. Chaudhry Waseem Iqbal namely Khair Muhammad and Athar Waheed Rana, the property purchased by respondent Raees Ahmed in auction was measured and claim of complainant Siraj was found baseless, and on said report of Official Assignee, complainant Siraj and his advocate Mr. Ashiq Muhammad refused to put their signatures, rather they filed complaint before Hon'ble Chief Justice of Sindh High Court. As per Inquiry Officer, in his application for becoming intervener, complainant Siraj claimed that respondent Raees Ahmed has occupied upon 300 yards land which belongs to him whereupon the Hon'ble High Court of Sindh appointed Official Assignee, who on 02.05.2020 inspected the property and found extra land of 70 square yards, and inquiry officer SIP Badar Shakeel written letter to officials of KDA and Executive Engineer, Korangi Division, KDA confirmed that said area belongs to KDA, and said it has no concern with KMC or DMC while in Sector 5/D, Landhi there is no existence of land of Katchi Abadi. The complainant alleges about Plots No.105, 106 and 107 but there is no existence of plots preceding to said numbers, and in his report before Hon'ble High Court of Sindh by Nazir, the description of House No.88/10, Area 5/D, measuring 80 square yards including a restaurant, three shops and house consisting ground plus one floor is mentioned and in additional space there is one restaurant named "Raees Standard Biryani", therefore, the said facts falsifies the allegations of complainant, therefore, he prayed for dismissal of instant complaint.”

“5. For the foregoing reasons, it is clearly established that dispute between the parties, at the foremost is of civil nature and the complainant intends to convert the matter into criminal litigation. The plea of complainant is not tenable as section 3(1) of Illegal Dispossession Act 2005 is applicable to cases wherein somebody entered into or upon any property with intention to dispossess the lawful owner or occupier of that property and thereby wanted to grab that property. Such phenomenon did not at all exist in the present case and the controversy comes within ambit of civil litigation, therefore such like dispute between the parties ought to be decided by the civil court and not under the Illegal Dispossession Act and from going through the case as discussed above the same appears to be a matter which is to be adjudicated before a Civil Court of Competent jurisdiction and hence the this dispute is not amenable to the jurisdiction of this Court pursuant to the Illegal Dispossession Act, 2005.

And to ascertain the factual position about occupation of land shall also fall within the domain of the Court of appropriate civil jurisdiction. And it is well settled law that no person may be evicted from a property save in accordance with the due process of the law. I fortified upon case law and, it was held in the case of RAZA MUHAMMAD AND OTHERS VERSUS THE STATE, reported as PLD 1965 (W.P.) KARACHI 637, that a trespasser was entitled to defend his possession even against the rightful owner of the property. It is settled law that where dispute in between the parties in respect of property the provision of illegal dispossession do not attract, and for ready reference I place my reliance upon case law reported PLD 2007 Lahore 231 Zahoor Ahmed and 5 others Vs. The State and 03 others as under:-

“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 Groups/land mafia, i.e. cases of disputes over possession of immovable properties between Co-owners or co-sharers, between landlords and tenants, between persons vying for possession on the basis of competing title documents, contractual agreements or revenue record or cases with a background of an on-going private dispute over the relevant property.”

4. Learned counsel for applicant has relied upon report of the official assignee which speaks that respondents are in illegal possession of some portion on the plea that that possession was handed over to them by the Nazir of this court in Civil Suit No.359/1998. Besides, applicant filed suit No.982/2018 for possession and that was dismissed though learned counsel or applicant contends that that suit pertains to another property.

5. Admittedly, applicant has filed application under order I rule 10 CPC in Suit No.359/1998 which is pending for adjudication. In the case of illegal dispossession, the significant question is, whether any occupier or owner has been dispossessed forcibly. In case possession has been wrongly given by the civil court as per report of the official

assignee applicant would be at liberty to approach concerned court and file proper application under Order XXI of CPC, hence this is not a case of illegal dispossession. Criminal Revision Application is dismissed.

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