

IN THE HIGH COURT OF SINDH AT KARACHI

CP. No. S--05 of 2024

*(Mst. Nasira Khalique v Province of Sindh & others)*

Date

Order with signature of Judge

**Date of hearing and Order: 07.04.2025**

Mr. Muhammad Aziz Khan advocate for the Petitioner.

Mr. Ali Safdar Depar AG

Mr. Umar Farooq advocate for respondent No. 8

Mr. Shafiq Ahmed advocate for respondent No.10

Inspector/SHO Faisal Gul, PS Shahrah-e-Faisal Karachi and

Mr. Raza Mian DSP (Legal-II) CPO

**ORDER**

**Adnan-ul-Karim Memon, J:** Feeling unjustly dispossessed and evicted from her lawful rented residence at Apartment No. 141-H, Army Housing Scheme, Askari-IV, 31st Street Rashid Minhas Road, Karachi, on November 25, 2023, by Respondents No. 8, 9, and 10 (allegedly in collusion with Respondents No. 6 and 7, subordinates of Respondents No. 2 to 5, who report to Respondent No. 1), the petitioner, Mst. Nasira seeks legal redress. Having exhausted all other means to regain possession, she petitions this Court to declare her eviction from the subject premises illegal, without lawful authority, and to issue a mandatory injunction compelling Respondents Nos 8 to 10 to immediately restore her possession of the said apartment. Furthermore, she seeks a permanent injunction restraining the respondents from removing her belongings, alienating the property, or transferring its possession to anyone else. The petitioner also prays for any other equitable relief deemed appropriate by this Court.

2. The petitioner claims to be a law-abiding, peace-loving citizen of Pakistan, residing at the aforementioned address and also holding UK nationality. She claims to be a well-reputed member of society, entitled to all fundamental rights guaranteed by the Constitution of the Islamic Republic of Pakistan, 1973, and lives within the bounds of the law. As a tenant, the petitioner acquired possession of Apartment No. 141-H, Army Housing Scheme, Askari-IV, 31st Street, Rashid Minhas Road, Karachi, from Respondent No. 8 under a rental agreement dated October 1, 2006. She has consistently paid the agreed monthly rent to Respondent No. 8 through bank transfers and is not in default. She averred that on November 25, 2023, at 11:00 am, Respondents No. 8 to 10, accompanied by 30 armed security guards and acting in conspiracy with the Station House Officer (SHO) Respondent No. 6, forcibly entered the petitioner's apartment. They assaulted the petitioner and her children, and at gunpoint, stole approximately 350 Tola of gold ornaments, PKR 8,000,000, GBP 30,000, and five mobile phones. The assailants also tore the clothing of the women present in the house, coerced the petitioner into signing blank papers under duress, looted the aforementioned valuables,

packed them into bags, and left after threatening the petitioner and her family with severe consequences.

3. As a result of the assault, petitioner and her sister Nazia sustained severe injuries from kicks and gun butts inflicted by the accused. Following the incident, the petitioner and her daughter approached Respondent No. 6 (the SHO) at 5:30 p.m. on November 25, 2023, and filed an application. A medical treatment letter was issued by the Duty Officer on the same day, and both the petitioner and her daughter underwent a medical examination by the MLO at JPMC Karachi. However, the accused also forcibly ejected valuable household items from the apartment, with some being taken away and others left in the corridor, effectively and illegally dispossessing the petitioner by 5:00 p.m. The petitioner, her daughter Miss Seema Khalique, and Nazia sustained severe injuries due to the maltreatment by Respondents No. 8 to 10, including kicks and gun butt strikes. Despite the daughter's repeated calls to police helpline "15," they were prevented from entering the Askari-IV area by Respondents No. 9 and 10 at the instigation of Respondent No. 8. Despite the petitioner's request to hold an inquiry and register an FIR against the accused, Respondent No. 6 did not direct the recording of the daughter's statement or the registration of the FIR. This inaction is attributed to undue pressure from Respondents No. 8 to 10, given that the matter involved retired Army Officials, leaving the petitioner with no alternative but to approach the District & Sessions Judge Karachi East. Consequently, a petition under Section 22-A Cr.P.C. and Sections 3 & 4 of the Illegal Dispossession Act 2005 was filed and subsequently transferred to the IIIrd A.D.J Karachi East, who granted the application under Section 22-A Cr.P.C. on December 12, 2023, leading to the registration of the FIR. Since the lodging of the FIR on December 16, 2023, Respondents No. 2 to 7 have failed to arrest the accused or recover the stolen household articles, ornaments, cash, and UK Pounds. This inaction persists despite the petitioner's call (1.0. Call) for a truck to move the remaining household items to a temporary location, highlighting the perceived impunity of even retired Army Officials. Notably, the IIIrd A.D.J. Karachi East, after ordering the registration of the FIR, has not yet requested a report from the SHO or issued notice to the respondents regarding the complaint under Sections 3 & 4 of the Illegal Dispossession Act 2005. Due to the failure of Respondents No. 1 to 7 to fulfill their legal obligations despite the commission of a cognizable offense and the filing of the application dated November 25, 2023, at the Shahrah-e-Faisal Police Station (Karachi East), and the continued non-recovery of household articles, cash, and mobile phones, the petitioner has no adequate legal remedy available other than filing the present petition against the highhandedness of the police officials in connivance with the private respondents and they are obligated to restore the possession of the subject property.

4. Learned counsel for the petitioner argued that the petitioner is an undisputed tenant of Respondent No. 8, has not willfully defaulted on rent payments, and faces no pending eviction proceedings or court order for eviction. Therefore, the petitioner is entitled to immediate restoration of possession. Counsel further contended that the dispossession was factually uncontested and occurred without any due process of law or a valid court order, entitling the petitioner to relief under Article 199 of the Constitution, as the law prohibits actions resembling a "state within a state." The restoration of amenities by Respondents No. 9 and 10 was cited as occurring under a previous order of this Court in C.P. No. 7935/2018 dated November 28, 2018. Counsel highlighted this Court's prior ruling on November 28, 2018, stating that landlords are not authorized to disconnect utilities or take other extra-judicial measures to evict tenants and must pursue legal avenues through competent courts. The act of Respondents Nos 8 to 10 on November 25, 2023, was presented as a clear contempt of this court's prior order. It was also argued that while rent laws address tenant and landlord rights, they lack a specific provision for the restoration of possession when a tenant is evicted without due process, thus necessitating the constitutional remedy under Article 199 of the Constitution. Learned counsel asserted that no adequate legal remedy exists to challenge the unlawful eviction by Respondents No. 8 to 10, their commission of a cognizable offense, and the failure of Respondents No. 1 to 7 to perform their legal duties. Requiring the petitioner to pursue multiple avenues for redress would be a miscarriage of justice and undermine the rule of law, thus justifying relief under Article 199 of the Constitution. In support of these arguments, learned counsel cited the cases of 1973 SCMR 90 [M. Ghani Versus M.A. Mullick & Brothers and 3 others], 1970 SCMR 434 [Syed Mehdi Hasnain Versus Muhammad Ayub and another], PLD 2000 Lahore 101 [Abdul Haq and 2 others Versus The Resident Magistrate, Uch Sharif, Tehsil Ahmedpur Est, District Bahawalpur, and 6 others], 1980 CLC 1119 [Azad J&K], [Karam Dad and another Versus Azad Government of the State of Jammu & Kashmir and others], 1993 MLD 152 [Lahore], [Muhammad Aslam Versus Station House Officer and others], 1986 CLC 1408 [Karachi], [Muhammad Farooq M Memon Advocate Versus Government of Sindh through its Chief Secretary, Karachi. PLD 2004 Karachi 60 (Nadir Khan Versus Town Officer (Municipal Regulation). Shah Faisal Colony, Karachi and another], PLD 2008 Supreme Court 135 [Muslimabad Cooperative Housing Society Ltd Through Secretary Versus Mrs. Siddiq Faiz and others], 2007 SCMR 1240 [Supreme Court of Pakistan] [Sargodha Textile Mills Limited through General Manager Versus Habib Bank Limited through Manager and another], 2005 SCJ 176, [Khalid Saeed Versus Mrs Shamim Rizvan & others], PLD 1999 Supreme Court 1126 [New Jubilee Insurance Company Ltd., Karachi Versus National Bank of Pakistan Karachi), PLD 2014 Sindh 20 [Habib Metropolitan Bank Ltd Versus Administrator, Karachi Municipal Corporation,

Karachi and 3 others], 2013 CLC 792 [Sindh] [Shahnawaz Mallah and 2 others Versus Raza Muhammad Brohi and 8 others], PLD 1995 Supreme Court 423 [Multiline Associates Versus Ardeshir Cowasjee and 2 others]. PLJ 2000 Lahore 271 D/B (Bhawalpur Bench Bhawalpur) Abdul Haq & 2 Others V/S Resident Magistrate UCH Sharif Tehsil Ahmedpur East District Bhawalpur & 6 Others, SBLR 2017 Sindh 105 [High Court of Sindh at Sukkur] Mansoor Ashraf V/S Province of Sindh & Others. He lastly prayed for allowing the petition.

5. The private respondents have refuted the allegations of forcible eviction of the petitioner and prayed for dismissal of the petition. The police officials submit that FIR No. 1145 of 2023 was registered under section 452, 354, 395, 386, 337-A(1) PPC of PS Sharah-e-Faisal and investigation was carried out and statement of the concerned was recorded, however no evidence was found at the alleged crime scene nor did any witness provide statement in favor of the complainant, however she was asked to produce independent witness and receipts for the allegedly stolen property but failed to do so, as such two notices under section 160 Cr.PC were sent via post but the complainant showed no further interest or evidence, however it was disclosed that the rent agreement ended in October 2007 and the rent cheques issued to HBL Bank, Gulistan-e-Jauhar has bounced, finally subject FIR was disposed of under B Class but the learned Magistrate took cognizance of the matter and treated it as challan. He prayed for appropriate order.

6. Learned AAG submits that this Court lacks jurisdiction to order for restoration of the possession of the premises to the petitioner as the said agreement ceased to exist in 2007 as such petitioner has no locus standi to call in question the possession, as the Rent Controller has jurisdiction to entertain the issue of possession. Learned AAG also pointed out that petitioner has also filed Illegal Dispossession Case No. 215 of 2023 before the concerned Sessions Court and has sought prayer of possession of the subject apartment and the issue of said possession can be looked into by that Court and not by this Court parallel under Article 199 of the Constitution. The aforesaid stance has been refuted by the counsel for the petitioner on the premise that this Court has ample power to direct for the possession of the subject property as the petitioner has been illegally evicted from the subject premises in terms of ratio of the order passed by this Court in the case of Mansoor Ashraf v Province of Sindh **SBLR 2017 Sindh 105**.

7. I have heard the learned counsel for the parties and perused the record with their assistance. I intentionally not making any detail comments as the issues of the matter between the parties pending adjudication before the concerned court with regard to the interim relief application in terms of Section 7(1) of the Illegal Dispossession Act 2005 to hand over possession of the subjected premises to the

petitioner; that Illegal Dispossession Case needs to be decided by the competent court after hearing the parties if pending as the petitioner has already sought a similar prayer in the Illegal Dispossession case and so far as the restoration of possession of concerned the trial court has to see this aspect for interim custody of the subject premises if the petitioner was found forcibly evicted from the premises in question if she possessed the valid rent agreement and decision be made within two weeks from the date of receipt of this order.

8. The petitioner having already sought and exhausted a remedy in the competent court to regain possession of the rented premises in terms of prayer clause of the complaint No. 215 of 2023, this petition under Article 199 of the Constitution is not feasible, at this stage, to be decided on merits; and, the same is disposed of in the aforesaid terms. Copy of this order shall be communicated to the concerned court for compliance.

JUDGE

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