JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No.1020 of 2021

Tahseen Shaukat

Versus

Learned ADJ & others.

Date of Hearing:-	:	24.02.2022
Petitioner by:	:	Mr. Usman Jillani, Advocate.
Respondent No.1 by:	:	Raja Mazhar Ali, Advocate.

ARBAB MUHAMMAD TAHIR, J: The instant writ petition is arising out of order dated 29.01.2021 passed by the learned Additional Sessions Judge-III, Islamabad (East), whereby the complaint under Section-3, 4 and 5 of the Illegal Dispossession Act, 2005 (**Act of 2005**) filed by the petitioner was dismissed being not maintainable and proceedable.

2- Precisely, relevant facts are that land measuring 4-kanal 17-marla, bearing Khasra N.367, Khatooni No.490 to 707, Khewet No.228, situated in village Shah Dara, Islamabad (subject land) was purchased by Ahmer Bilal Soofi from Ahmad Nawaz Sheikh through registered sale deed No.8612, dated 18.06.2013; that the petitioner (before this Court and before the court of learned First Instance) namely Tehseen Shaukat is Special Attorney of said Ahmer Bilal Soofi; that the owner, in order to guard the subject land, hired a security personnel namely Raza Khan since 17.06.2013; that the possession of the subject land was also handed over to the owner at the time of transfer and thus he had been enjoying its possession without any interruption for about seven years since 2013; that the subject land was further gifted to the World Wildlife Fund duly recorded in the minutes of the WWF Board meeting dated 11.07.2020; that in order to execute the gift, the owner obtained Fard on 24.09.2020 from the Halqa Patwari;

that in October 2020, some unknown persons attempted to occupy the subject land forcibly which incident was duly reported at the Police Station Bara Kahu; that subsequently, on 17.12.2020, at about 9:45 a.m. about 10-12 persons armed with axes entered the subject land, cut down the trees; that the guard Raza tried to negotiate with respondents 2 & 3 followed by alike attempt by the owner at about 11:00 a.m. and during conversation it transpired that the said 10-12 persons were acting at the behest of Raja Nisar Abbasi and Raja Ansar Abbasi (respondents 2 & 3); that the owner then intimated the concerned Police Station about the occurrence but to no avail, which led to filing of the complaint under the Act of 2005.

3- Learned counsel for the petitioner argued that the complaint under the Act of 2005 through an attorney is competent; that the cursory statement of the complainant, police report and the report of the revenue officials lend support to the allegations set-forth in the complaint, therefore, there was no justification to dismiss the complaint in cursory manner without adverting to the material available on record and that too through a non-speaking order on flimsy grounds. The learned counsel relied upon case laws reported as PLD 2007 SC 09, 2016 SCMR 1931, and 2019 P.Cr.L.J. 1023 (Sindh),

4- On the other hand, learned counsel for the respondents 2 & 3 repelled the above submissions by urging that a complaint or FIR through an Attorney is nullity in the eye of law; that the parties are in civil litigation and that no offence as alleged had taken place, therefore, petition is liable to be dismissed. Learned counsel placed reliance upon case laws reported as 20019 CLD 107 and 2017 CLD 519.

5- Heard, record examined.

6- It has vigorously been argued that the impugned order is not only against the law on the subject but also result of misreading

and non-reading of material placed on record that includes cursory statement of the complainant and police report, therefore, it is necessary to go through the same at the first instance. The operative part of the impugned order reads as under:-

> *"Scan on record as well as report of police reveals that admittedly civil dispute between the parties is pending in the Court of Mr. Yasir Hafeez, learned Civil Judge (East) Islamabad wherein the status quo regarding the suit property has been granted. Moreover, the petitioner has also filed contempt petition in the learned Civil Court. As per report of SHO, the respondents are owner-in-possession of their inherited land whereas the complainant has purchased through mutation No.1956 vide Registered Sale Deed No.8612 dated 18.01.2013.*
>
> *Prima facie, there exists a civil dispute between the parties. No forcible occupation by the respondent side is found whether in the complaint, other document with complaint or from the police comments could be found.*
>
> *Consequently, offence under Section 3 of Illegal Dispossession Act, 2005 could not made out in the circumstances, therefore, the instant complaint is neither maintainable nor proceedable, and same is dismissed accordingly."*

7- It is obvious from the order ibid that the complaint was dismissed on two grounds i.e. *there exists a civil dispute between the parties* and that *no forcible occupation by the respondent's side is found.*

8- The scanning of the record shows that the complaint was initially taken up on 23.12.2020 when after recording cursory statement of the complainant, a report was requisitioned from the SHO concerned on the points that *whether the complainant had been in possession of the disputed property at/before the time of occurrence*; *whether the alleged occurrence as narrated in the complaint had taken place on 17.12.2020* and that *whether the respondents are occupying the disputed property in consequence of the occurrence, if so in what capacity.* On the direction, SHO concerned submitted its report where after the learned Trial Court

heard the arguments of learned counsel for the complainant on admissibility of the complaint and proceeded to dismiss the same vide impugned order.

9- In order to appreciate the reasons made basis to dismiss the complaint being not maintainable, the ratio set in the case of ***"Sh. Muhammad Naseem v. Mst. Farida Gul" (2016 SCMR 1931)***, as observed in paragraph-5 holds that any act which entails civil liability under Civil Law as well as criminal penalty under Criminal Law such as the Illegal Dispossession Act, 2005 then a person can be tried under both kinds of proceedings, which are independent of each other. It has further been laid down that no one can be allowed to take law in his own hands and unlawfully dispossess an owner or lawful occupier of an immoveable property and then seek to thwart the criminal proceedings against him under the Illegal Dispossession Act, 2005 on the pretext that civil litigation on the issue is pending adjudication between the parties in a court of law. Therefore, irrespective of any civil litigation that may be pending before any Court, where an offence, as described in the Illegal Dispossession Act, 2005 has been committed, the proceedings under the said Act can be initiated as the same would be maintainable in law.

10- In the light of above principle, the complaint under the Act of 2005 is maintainable even where a civil litigation is going on while a person can be tried under both kinds of proceedings *(civil as well as criminal)* which are independent of each other, therefore, a complaint cannot be dismissed summarily on the ground of maintainability due to existence of civil dispute between the parties, as observed by the learned trial Court vide impugned order.

11- Adverting to the second ground that *no forcible occupation from the respondent's side is found, i*t is important to mention that the trial Court itself after taking cursory statement of the complainant directed the SHO concerned to submit a detailed

report vide order dated 23.12.2020 *as to who was in possession of the subject land at the time of alleged occurrence*; that *whether the alleged occurrence had taken place on 17.12.2020* and that *whether the respondents are occupying the subject land inconsequence of the said occurrence and if so, in what capacity*. Pursuant to the direction, SHO concerned after consulting revenue record and inspecting the subject land, submitted its report with the conclusion that as per report of the Revenue Department, *the owner of the subject land is Ahmer Bilal Soofi who had been in possession of the same before 17.12.2020 and that after the said date, respondents 2 & 3 had been in illegal possession of the same.* The report of the SHO concerned, prima facie, lends support to the allegations put forth in the complaint besides it was also reported that the owner had been in possession of the subject land before the occurrence and that after 17.12.2020 respondents 2 & 3 are in illegal possession of the same.

12- In addition, it is visible from cursory statement of the complainant that he had given the date and time of alleged dispossession and had also given the account of episode allegedly took place on 17.12.2020 wherein it was also stated that on the night of 17.12.2020 at about 8:00 p.m. about 20-30 persons took illegal possession of the subject land, constructed a room and the pictures was also tendered as Mark-D.

13- In presence of above incriminating material, particularly police report wherein it was specifically reported that *the owner of the subject land is Ahmer Bilal Soofi who had been in possession of the same before 17.12.2020 and that after the said date, respondents 2 & 3 had been in illegal possession of the same*, and the fact that the complainant in his cursory statement had given the account of alleged dispossession there was no justification to dismiss the complaint in cursory manner by overturning the incriminating material which, prima facie, supports the allegation of alleged forceful dispossession. While forming its opinion, it is

bounden duty of the Court to go through the record made available on file and then to form its opinion which should be rationale with the facts. The opinion should be backed by the reasons and in case of any contrary view, it is mandatory to advance reasons while, the impugned order is short of such exercise, therefore, cannot be termed to be a judicious dispensation.

14- In view of above, the instant writ petition is accordingly **allowed,** impugned order is set aside. The learned Trial Court shall decide the complaint in accordance with law after recording evidence of the parties by affording them due right of audience.

(ARBAB MUHAMMAD TAHIR)
JUDGE

*A.R., Ansari**

Announced in open court on ____.03.2022.

JUDGE.