JUDGMENT-SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P. No. 2689 of 2022

Hafiz Muhammad Bilal Nazar

Versus

Fareeda Sarwar, etc.

Date of Hearing	:	**26.07.2022.**
Petitioner by	:	Hammad Saeed Dar, Advocate
Respondent by	:	Muhammad Shahzad Siddique, Advocate. Mian Zain Qureshi, State Counsel, Muhammad Siddiqui, S.I.

ARBAB MUHAMMAD TAHIR, J. Through the instant writ petition, petitioner impugns order dated 06.07.2022, passed by the learned Additional Sessions Judge-I, Islamabad-East whereby in complaint filed by respondent No. 1 under Section 3, 4 & 7 of the Illegal Dispossession Act, 2005, (**"Act of 2005"**), application under Section 7 of the Act of 2005 was accepted and SHO P.S. Koral, Islamabad was directed to put the complainant/respondent No.1 in possession of the land after verification of her possession over the suit property while application for setting aside Inquiry Report dated 14.03.2022 filed by the petitioner was dismissed.

2. Precisely, the subject matter of the complaint filed by the respondent No.1 under the Act of 2005 is ***plot bearing No.10, measuring 9-Marla, comprising***

Khewat No. 277, 269, Khatooni No. 315, Khasra No. 1893, 1894, 1895, situated in Mohallah Chaudhrian, Tarlai Kalan, Islamabad ('***disputed property***)'. As per the stance of the respondent No.1 (*complainan*t) the disputed property was originally owned by her late husband *Ch. Muhammad Sarwar Khan*, who purchased the same vide registered sale deed dated 04.11.2005 and after the demise of her husband, it stood devolved upon the legal heirs including the respondent No.1 and they have been in possession of the same since then but on 08.10.2021, were dispossessed illegally by Nazar Muhammad and his sons including the petitioner. As opposed to the said stance, the petitioner claims to have purchased 6 Marla land out of Khasra No.1894, Khewat No.315, of the same revenue area from one Saqib Pervaiz while the respondent No.1 and her two sons owned only 01 Marla, 7 Sarsai in Khasra No.1893, 1894 and 1895 and in Khasra No.1894 only 1-Marla and 2 Sarsai.

3. After filing of the complaint under the Act of 2005 by the respondent No.1, the learned Court seized with the complaint directed the learned Judicial Magistrate of P.S. Koral, Islamabad vide Order dated 01.03.2022 to conduct an inquiry on the points[(i) ***whether the complainant was in possession of the property description whereof is given in the copy of complaint*** **and, (ii)** ***if the complainant was in possession of the property-in-question, then how and when she was dispossessed, and on what date, she came to know about the dispossession*****.** In-addition, the learned Judicial Magistrate was authorized to seek assistance of

revenue officer concerned for the purpose of inquiry and identification of property-in-question.

4. Pursuant to the above direction, the learned Judicial Magistrate culminated the proceedings on the statements as well as documents and vide order dated 14.03.2022 reported that ***the respondent No.1 had been in possession of the disputed property till 08.10.2021 when she was dispossessed by Nazar Muhammad and his sons namely Bilal etc. (petitioner*)**. After the receipt of the report, the learned ASJ heard the parties and accepted application under Section 7 of the Act of 2005 with direction to SHO concerned to hand- over possession of the disputed property to the respondent No.1 while application of the petitioner for setting aside Inquiry Report dated 14.03.2022 was dismissed. Hence, instant writ petition.

5. The learned counsel argued that the inquiry conducted by the learned Magistrate was unilateral as it being without notice and intimation to the petitioner; that the learned Inquiry Magistrate made no efforts to consult the revenue record for identification of the disputed property; that claim of the respondent No.1 at the most is genuine only to the extent of land measuring 1-marla and 7 sarsai; that claim of the petitioner to have purchased the disputed property from one Saqib Pervaiz and possession of the same since 2016 is substantiated; that the revenue report dated 18.11.2021, negates the version of respondent No.1; that police report dated 19.02.2022 also negates the version of the respondent No.1; that the petitioner had been in possession of the disputed property since 2016 with constructions but the learned

Trial Court failed to appreciate the material documents while passing the impugned order and that the inquiry report being ex-parte are liable to be set aside.

6. On the other hand, the learned State counsel along with counsel for the respondent No.1/complainant opposed the plea taken by the petitioner with the averments that the respondent No. 1 had purchased plot No. 10 measuring 9.9 Marla situated in Khewet No. 277, 269 Khatoni No. 315 Khasra No. 1893, 1894, 1895, Mohallah Chodharian, Tarlai Kalan Tehsil & District Islamabad vide register sale deed No. 4015, dated 11.04.2015; that as per revenue record the suit property is in the name of the respondent No. 1-complainant; that the petitioner on 08.01.2021 occupied the disputed property and respondent No. 1 submitted application against her before the I.G. Police, Islamabad; that the respondent No. 1 and her sons visited the said property, where the petitioner and his sons extended life threats to them; that the respondent No.1/complainant submitted application before the SHO concerned for handing over the possession of said property and also for registration of FIR, but no heed was paid to her request and thereafter filed the complaint under the Act of 2005 wherein, vide impugned order, possession was restored to her. Learned counsel for the complainant placed reliance upon case law reported as ***2016 P .Cr. L.J 672, 2007 P. Cr. L.J 1784, 2009 MLD 1162 and PLD 2011 Karachi 624.***

7. Arguments heard, record perused.

8. The object of the Act of 2005 is to stop and prevent the forced dispossession of owner or occupier of the immovable property by the persons having antecedents in land grabbing or in committing fraud. The procedure under the Act provides filing of complaint under Section 3 of the Act where after the trial court has to record the statements of complainant and witnesses so also to call report from the police regarding the dispute pending between the parties over the property so that such material could be tentatively looked into for the purpose of taking cognizance and summoning the accused persons as required by section 4 of the Act of 2005. Under section 5 of the Act, the procedure for the purpose of investigation is provided, while under section 6 of the Act, the court can act to attach the property until the final decision of the case, if it is satisfied that none of the parties are/were in possession of the property immediately before commencement of the offence and under section 7 of the Act the court has power to grant interim relief.

9. The dispute in the instant writ petition is restricted to the exercise of jurisdiction by the learned Trial Court to the extent of granting interim relief. The plain language of Section 7 of the Act of 2005 reveals that the same regulates mode of recovery of possession as an interim relief. The jurisdiction conferred by Section 7(1) is exercisable during the trial which means at the stage when the trial is in progress. In other words, even before it is established as to whether an accused committed the offence under Section 3 of the Act of 2005. The exercise "*prima facie not found in lawful possession*" is different from recording a finding. The offence under Section 3 of

the Act of 2005 can only be established at the conclusion of the trial while the purpose of Section 7 of the Act of 2005 is restricted to grant interim relief during the course of the trial.

10. During pendency of the instant petition, the petitioner through **C.M.A No. 2713/2022** placed on record copy of application filed by respondent No.1 for demarcation, copy of agreements besides affidavit, police report and statements of PW-1, PW-2 and PW-3. It is thus clear that the learned Trial Court after passing the impugned order has conducted significant proceedings while the petitioner is also relying upon the same which, as a matter of fact, were never before the Trial Court at the time of passing of the impugned order.

11. The submission of the learned counsel that the impugned order could not have been passed until the framing of the charge and therefore, liable to be set aside, is required to be looked into the facts and circumstances of the instant case whereby it is quite evident that after framing of the charge, statements of witnesses are being recorded and the case, at present, is at the stage of recording evidence i.e. during trial. The petitioner is also relying upon the proceedings conducted by the Trial Court after framing of the charge that includes statements of prosecution witnesses which were never present at the time of passing of the impugned order.

12. In the attending circumstances of the instant case, as the trial is in full swing, statements of three PWs have been recorded, they have also been cross-examined,

therefore any interference at this stage may cause prejudice to the case of either side as the trial court is about to conclude the proceedings and to decide the complaint on the basis of evidence, *pro and contra*, where the petitioner shall have every right to present his case on all the grounds including the one agitated through the instant writ petition and also to question the inquiry conducted by the Magistrate pursuant to order of the learned Trial Court.

13. In view of above, the instant writ petition is **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on _____09.2022.

JUDGE

//*Kamran*//**