JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

CRIMINAL APPEAL NO. 260 OF 2024

Dr. Anwar Ul Haq (Late) through his legal heir Sumera Umer
Vs
The State & 2 others.

Appellant by: Mr. Waqas Ahmed Abbasi and Barrister Abdullah Haroon, Advocates.

Respondents by: Raja Mazhar Hussain Bhatti, Advocate for Respondent No.2.
Respondents No.2 & 3 in person.
Rana Hassan Abbas, Assistant District Public Prosecutor.
Mr. Riaz Noon SI, P.S Bani Gala.

Date of hearing: 09.04.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Criminal Appeal under Section 8-A of the Illegal Dispossession Act, 2005 read with Section 417 of the Code of Criminal Procedure, 1898 **("Cr.P.C.")**, the Appellant has assailed the Order dated 09.05.2024 **("Impugned Order")** passed by the learned Additional Sessions Judge-II, East-Islamabad, whereby the Complaint under Sections 3 & 4 of the Illegal Dispossession Act, 2005, was dismissed and Accused/Respondent No. 2 namely Mst. Rukhsar Kauser was acquitted of the charge.

2. The brief facts of the case, as per the memo of Appeal, are that the Petitioner [Dr. Anwar ul Haq], a medical professional who worked in the UK, USA, and Canada for over 17 years, returned to Pakistan in 1986 and established the Islamic Medical Centre in Islamabad, serving as its CEO. The Complainant, aged 79 during the pendency of the Complaint before the learned Trial Court, passed away on 11.10.2022, and the instant Appeal is now being filed by his real daughter, namely Sumera Umer, being his legal heir (**hereinafter referred to as the "Appellant"**). The Complainant purchased land measuring 31.5 Marlas, bearing Khewat Nos. 881 and 883, Khatooni Nos. 1335 and 1337, Khasra Nos. 940 and 951, situated at Mouza Mohra Noor, Tehsil & District Islamabad, from Muhammad Khalid Abbas (Respondent No. 3) through registered Sale Deed Nos. 3263 and 3362, dated 16.02.2017 and 17.02.2017, respectively. He was handed peaceful possession of the

land, including keys of a constructed room, and he built a boundary wall around the property. An electricity meter was installed with a No Objection Certificate (NOC) from a neighbor, and the Complainant's employees began residing in the constructed rooms. The Complaint to the extent of Respondent No. 3 was dismissed by the learned Trial Court due to non-submission of his alternate address by the Complainant. After the purchase, the Complainant got the land demarcated through a Surveyor, Noman Ahmed, who prepared a survey report and map confirming the specific boundaries of the registered sale deeds at the spot. On 03.08.2017, Accused/Respondent No. 2, along with certain property dealers, attempted to forcibly take over the land, prompting police involvement. Statements were recorded at Police Station Bani Gala. Subsequently, Accused/Respondent No. 2 filed Civil Suit No. 230/2017 challenging the ownership documents, but her application for interim relief was dismissed. Though she filed a civil appeal and obtained a status quo order on 07.03.2018, she again tried to interfere with the Complainant's possession on the same day but was stopped by police and locals. On 21.03.2018, Accused/Respondent No. 2, along with armed individuals, allegedly entered the constructed rooms by breaking windows, assaulted an employee of the Complainant named Muhammad Amin, and abducted him, later abandoning him in a jungle. Multiple complaints were submitted to the police and SSP, and a court-appointed bailiff confirmed the illegal possession and demolition of boundary walls by Accused/Respondent No. 2 in his Report dated 28.03.2018. On 24.03.2018, Accused/Respondent No. 2 and her accomplices allegedly evicted the Complainant's staff, seized furniture and belongings, and took illegal possession of the land. On the SSP's directions, FIR No. 113/2018 was registered on 09.05.2018 under Sections 452 and 440 of the Pakistan Penal Code, 1860, after considerable delay. However, the police investigation was allegedly inadequate and influenced. As a result, Dr. Anwar ul Haq filed a private Complaint under Sections 3 & 4 of the Illegal Dispossession Act, 2005, but the same was dismissed by the learned Trial Court vide Impugned Order dated 09.05.2024. Being aggrieved, the Appellant has preferred the instant Appeal.

3. The learned counsel for the Appellant contended that the Impugned Order is contrary to law and facts and is therefore unsustainable. The learned Trial Court erred by overlooking the specific boundaries mentioned in registered Sale Deed Nos. 3263 and 3362 and by disregarding the seller's statement (Ex. P-4), which

corroborated the Complainant's lawful possession. The Trial Court misread and ignored material evidence, including the independent surveyor's report and map confirming possession over 31.5 Marlas, and failed to consider photographs showing the construction of the boundary wall in the presence of Respondent No. 3. Furthermore, the Trial Court disregarded the installation of an electricity meter supported by a valid NOC and overlooked multiple reports of dispossession attempts by the Accused/Respondent No. 2. The court wrongly dismissed the Complaint based on differing Khewat/Khatooni numbers and an alleged lack of partition, without appreciating the Complainant's exclusive and documented possession. The Trial Court also erred in denying the summoning of key witnesses, including Muhammad Amin (injured/abducted) and the court-appointed bailiff Abdul Qadeer, whose reports confirmed the Complainant's possession and subsequent illegal dispossession. Additionally, the inquiry report of the SDPO and the findings of the Investigating Officer were unjustifiably ignored. It was argued that the Impugned Order suffers from legal and factual contradictions, reflects material irregularities, and violates the Appellant's fundamental rights. If the Impugned Order is not set aside, the Appellant will suffer irreparable loss. Therefore, it was prayed that the instant Appeal may be accepted, the Impugned Order dated 09.05.2024 may be set aside, and the Accused/Respondent No. 2 may graciously be punished as per law. Furthermore, peaceful possession of the disputed land measuring 31.5 Marlas, with specific boundaries as mentioned in the registered sale deeds, including the constructed rooms, may be restored to the Appellant, and compensation may be awarded for the damages caused by the Accused/Respondent No. 2, including destruction of the boundary walls and rooms. The articles allegedly taken by the Accused/Respondent No. 2 may also be returned to the Appellant in the interest of justice.

4. Conversely, the learned counsel for Respondent No.2 resisted the instant Appeal and prayed for its dismissal on the ground that the Impugned Order is a well-reasoned order; that the Impugned Order does not suffer from any illegality or irregularity, and does not call for any interference.

5. I have heard learned counsel for the parties and perused the record with their able assistance.

6. The Complainant alleged that he purchased 31.5 Marlas of land from one Muhammad Khalid Abbas, who handed over possession of the said land, including constructed rooms and their keys. The Accused/Respondents No. 2 and 3, on 24.03.2018, along with 10 unknown persons, made murderous assault on his employee, namely Muhammad Amin, kidnapped him at gunpoint, and forcibly dispossessed the Complainant from his land. During the proceedings, the Complainant (PW-1) appeared in support of his claim and narrated the same facts mentioned in his Complaint. During cross-examination, he admitted that at the time of occurrence he was present in Islamabad, while the occurrence had taken place in Mouza Mohra Noor. He further stated that he was informed by his servant, namely Muhammad Amin, that his land was encroached by Tahir Kiani, Safdar Hafeez, Wazir, Muhammad Ilyas, Tor Khan, Shoaib Akhtar Abbasi, and Dr. Ali, who were hired by Accused/Respondent No.1, namely Mst. Rukhsar Kousar. The Complainant failed to produce Muhammad Amin, who was allegedly the eyewitness to the whole occurrence, and similarly, he failed to produce any other independent witness to prove that the Accused/Respondents No. 2 and 3 took over the possession of the land of the Complainant illegally. From the statement of the Complainant, it transpires that the Accused/Respondent No.1, Mst. Rukhsar Kousar, was not present at the time of the alleged occurrence; similarly, Accused/Respondent No.3, Muhammad Khalid Abbas, was neither nominated by Muhammad Amin nor attributed any role in the occurrence.

7. Admittedly, the Complainant purchased 31.5 Marlas of land in Khewat Nos. 881 and 883, Khatooni Nos.1335 and 1337, in Khasra Nos. 940 and 951, situated in Revenue Estate Mohra Noor, Tehsil & District, Islamabad, from one Muhammad Khalid Abbas through registered sale deeds Nos. 3263 dated 16.02.2017 and 3362 dated 17.02.2017. Similarly, Accused/Respondent No. 2 namely Mst. Rukhsar Kousar also claims to be co-owner in Khewat Nos.1033 and 1035, Khasra Nos.951 & 940 of the same Revenue Estate. She also claims that she is in possession of her own piece of land bounded by a boundary wall constructed by her. The land is not partitioned by metes and bounds, and as per the settled law, every co-owner / co-sharer is owner in every inch of the land. Where the property remains in joint ownership, all the co-sharers are deemed to be the owners in each and every inch of the property, unless legally partitioned. In such circumstances, any criminal complaint filed against a co-sharer would amount to frustrating the very purpose of

the Illegal Dispossession Act, 2005, which Act provided a speedy remedy against land grabbers and involving a co-sharer in a complaint under the said Act would defeat the intent of the legislature, as envisaged by the Act. Reliance is placed on the Supreme Court ruling cited in **PLD 2010 SC 661**, titled as *"Bashir Ahmed vs. Additional Sessions Judge Faisalabad and 4 Others"*, the relevant portion of which is reproduced as under:-

> *"The learned Additional Sessions -Judge had also observed in his order dated 6-3-2006 that a private complaint already stood instituted in respect of commission of some criminal offences and a suit for possession as well as a suit for partition pertaining to the same land were already pending before different Courts between the same parties and, thus, the dispute between the parties over the relevant parcel of land was a bona fide dispute which was already sub judice before the civil and criminal Courts. The relevant sale deed being relied upon by respondents Nos. 2 to 4 had ostensibly made the said respondents co-sharers of the petitioner and co-owners of the land in issue and the pending suit for partition went a long way in supporting the case of respondents Nos. 2 to 4 in that respect. It had been held by a Full Bench of the Lahore High Court, Lahore in the case of Zahoor Ahmad and 5 others v. The State and 3 others PLD 2007 Lah. 231 that the Illegal Dispossession Act, 2005 has no application to cases of dispossession between co-owners and co-sharers and also that the said Act is not relevant to bona fide civil disputes which are already sub judice before civil or revenue Courts. It had also been declared by the Full Bench of the Lahore High Court, Lahore in that case that the Illegal Dispossession Act, 2005 was introduced in order to curb the activities of Qabza groups/property grabbers and land mafia. It has been conceded before us by the learned counsel for the petitioner that no material is available with the petitioner to establish that respondents Nos. 2 to 4 belonged to any Qabza group or land mafia or that they had the credentials or antecedents of being property grabbers. In view of the discussion made above the impugned acquittal or respondents Nos. 2 to 4 recorded by the learned Additional Sessions Judge, Faisalabad upon acceptance of their application submitted under section 265-K, Cr. P. C. has been found by us to be entirely justified and dismissal of the petitioner's writ petition by the learned Judge of the Lahore high Court, Lahore has also been found by us to be unexceptionable. In the circumstances of this case mentioned above we have entertained an irresistible impression that through filing of his complaint under the Illegal Dispossession Act, 2005 the petitioner had tried to transform a bona fide civil dispute between the parties into a criminal case so as to bring the weight of criminal law and process to bear upon respondents Nos. 2 to 4 in order to extract concessions from them. Such utilization of the criminal law and process by the petitioner has been found by us to be an abuse of the process of law which cannot be allowed to be perpetuated."*

8. The Complainant registered an F.I.R No.113/18 dated 09.05.2018 under Sections 452 and 440 PPC at Police Station Bani Gala, Islamabad against the same occurrence, i.e., allegedly committed on 24.03.2018, in which Accused/Respondent No. 2 namely Mst. Rukhsar Kousar, along with 12 unknown persons, was nominated for the said offences. In this F.I.R., the Complainant did not name those individuals who, according to him, dispossessed his servant (Muhammad Amin), subjected him to torture, and attempted to kidnap him.

9. A civil suit regarding the same land between the parties is sub judice before the competent Court of civil jurisdiction, where both parties shall produce their respective evidence in support of their claims concerning the land in question. The present Complaint is filed under Sections 3 & 4 of the Illegal Dispossession Act, 2005, and this Act was promulgated primarily to protect the lawful owners and occupiers of immovable properties from illegal or forcible dispossession by property grabbers. In criminal cases, the onus of proof is on the complainant/prosecution to prove its case beyond any shadow of doubt by producing cogent, reliable, and trustworthy evidence, while in the present case, the Complainant is not the eyewitness and the only eyewitness was the Complainant's servant (Muhammad Amin) who failed to appear before the Trial Court. In this regard, reliance is placed upon the judgment of the august Supreme Court of Pakistan in a case titled *"Ali Ahmad and another vs. The State and Others"* reported as **(PLD 2020 Supreme Court 201)**, the relevant portion of which is reproduced as under:

> *"8. In a criminal trial, it is now jurisprudentially well- entrenched, the proper course for the court is to first discuss and assess the prosecution evidence, particularly the reliability of the eye-witnesses, in order to arrive at the conclusion as to whether or not the prosecution has succeeded in proving the charge against the accused on the basis of its evidence. Burden is always on the prosecution to prove its case and it is only when a prima facie case is made out against the accused sufficient to justify his conviction, does the burden shift upon the accused under Article 121 of the QSO, if he relies on any of the General Exceptions in the P.P.C or within any special exception or proviso contained in any other part of the P.P.C. or in any law defining the offence charged. If the prosecution fails to prove its case against the accused, the question of shifting of burden upon the accused does not arise as it becomes immaterial."*

10. In the facts and circumstances stated above, this Court finds that the Complainant has failed to prove that he was dispossessed of his land by the

Accused/Respondents No. 2 and 3, especially when it came on record that neither the Accused/Respondent No. 2 namely Mst. Rukhsar Kousar was present on the spot at the time of occurrence, nor was Muhammad Khalid Abbas, from whom he purchased the land, present at the time, as per Muhammad Amin's account. Resultantly, the order of the learned Trial Court dated 09.05.2024 is hereby maintained, and the instant Criminal Appeal is being devoid of any merit is hereby **dismissed**.

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in the Open Court on this _____ day of May 2025.

JUDGE

Sajid/--