JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Writ Petition No.3853 of 2014

Haji Abdul Khaliq Awan

Versus

Manzoor Hussain Malik and others

Date of Hearing	:	14.03.2022.
Petitioner by	:	Mr. Mudasar Khalid Abbasi, Advocate
Respondents by	:	M/s Manzoor Hussain Malik and Jawad Malik, Advocates
State by	:	Mr. Haseeb Hassan, State Counsel.

ARBAB MUHAMMAD TAHIR, J. The instant writ petition is arising out of order dated 17.07.2014, passed by the Additional Sessions Judge-III, Islamabad (East), whereby in complaint under Section 3 & 4 of the Illegal Dispossession Act, 2005 ('Act of 2005'), filed by the petitioner against respondents No.1 & 2 others namely Anjam Nawaz Kayani and Hashim Kayani, application under Section 265-K Cr.P.C. filed by respondent No.1 was accepted, consequently, respondent No.1 was discharged from the case while the application under Section 239(c) Cr.P.C. for impleading one Tauqeer Malik as an accused, filed by the petitioner was dismissed as having become infructuous.

2. Relevant facts are that on 29.08.2013, petitioner filed complaint under the Act of 2005 with the allegation of illegal dispossession from plot No. 4, Umer Block, Street No.2, Phase-I, measuring 4500 sq. yards, Jaddah Town, Zone-V Islamabad (disputed property) against the respondent No.1 and two others namely Anjum Nawaz Kayani and Hashim Kayani. In the complaint besides asserting ownership on the basis of registered sale deed, site plan, receipts of utility bills and lease agreement, on the allegation of dispossession alleged that after taking over possession from the lessee, he had locked

the disputed property and used to visit the same off and on. That in the beginning of March 2013, when he visited the suit property along with witnesses, found its lock missing with some security personnel duly armed; that on his inquiry one of the said persons informed that they are occupying the suit property at the instance of respondent No.1 as allegedly the latter is owner-in-possession of the suit property.

3. It was also alleged in the complaint that the incident was reported to the SSP Islamabad through an application dated 07.03.2013, which was forwarded to the concerned Police Station but the exercise remained fruitless; that he also approached the respondent No.1 for getting back the possession but his said efforts also proved abortive, which compelled him to lodge the complaint under the Act of 2005.

4. Cursory statements of the petitioner and three witnesses namely Soba Awan, Muhammad Akhtar, and Adil Sajjad, were recorded on 03.09.2013 and the matter was adjourned to 11.09.2013 for preliminary arguments. On the date fixed, arguments were heard and it was mentioned as *"Admit the contents"*. Thereafter, the report from the SHO concerned was summoned, which was tendered but finding the same not in accordance with the direction, the concerned SHO was again directed to submit report on the points mentioned in interim order dated 03.10.2013. On the subsequent date, after the receipt of police report, the matter was again set for further proceedings/preliminary arguments for 04.11.2013.

5. On the date fixed, i.e. 04.11.2013, the learned Presiding Officer proceeded to admit the complaint for regular hearing and thereafter summoned the respondent No.1. After entering appearance, respondent No.1 filed an application under Section 265-K Cr.P.C on 27.05.2014. On the subsequent date, i.e. 23.06.2014, petitioner filed an application under Section 239(C) Cr.P.C for addition of an accused. The learned Trial Court on the subsequent date of 09.7.2014 heard the arguments and set the case of orders on 17.07.2014 when the application filed by the respondent No.1 in terms of Section 265-K Cr.P.C was allowed while that of petitioner for addition of accused under Section 239(C) Cr.P.C. was dismissed being infructuous.

6. Learned counsel for the petitioner argued that the impugned order is against the law and facts; had been passed in derogation to the set principle; that the evidence put-forth to substantiate the claim qua ownership and alleged dispossession is sufficient for further proceedings. According to the learned counsel, it was so held by the learned Trial Court while admitting the complaint for regular hearing but thereafter without taking any evidence, dismissed the complaint, in contravention of its own opinion, therefore, impugned order is liable to be set aside.

7. On the other hand, learned counsel for respondent No.1 repelled the above submissions by contending that necessary ingredients for constituting an act as an offence in terms of Section 3 of the Act of 2005 are missing in this case; that the ownership of the petitioner itself is dubious as observed by the learned Trial Court and that the alleged incident of dispossession is without any iota of incriminating material, therefore, further proceedings, if ordered, would be wastage of time as there would be no change in the outcome. Learned counsel relied upon case laws reported as PLD 2011 SC 181, 2019 P.Cr.L.J. 56 (Islamabad), and 2007 P.Cr.R. 201 (Lahore).

8. Heard, record examined.

9. There is no second opinion that in terms of Section 265-K Cr.P.C., the Trial Court is vested with authority to acquit an accused at any stage of the case, if, after hearing the Prosecutor and the accused and for reasons to be recorded, it considers that there is no probability of the accused being convicted of any offence.

10. At the same time, the law envisages a set procedure for deciding a complaint under the Act of 2005. The Act of 2005 had been promulgated to protect the lawful owners and occupiers of immovable property from their illegal and forcible dispossession by the land grabbers. In terms of Section 4, the offence under the Act had been made non-cognizable while the Court at any stage of the proceedings may direct the police to cause arrest of the accused. Section 5 stipulates that upon a complaint, the Court may also issue direction to

the Officer Incharge of the concerned Police Station to investigate and complete the same and forward the same to the Court within a period of fortnight. Section 5(2) stipulates that on taking cognizance of a case, the Court shall proceed with the trial on day to day basis and shall decide the same within 60 days and for any delay, sufficient reasons shall be recorded. The provisions of the Code of Criminal Procedure 1898 were made applicable to the proceedings under the Act of 2005 unless provided otherwise in the latter statute in terms of Section 9 of the Act 2005.

11. The learned trial Court based its opinion on the following points:-

i. *That the subject property was not allotted by the Society to the complainant;*

ii. *That it was sold on lesser amount than offered in the brochure;*

iii. *That in the proceedings of a Civil Suit, one Makhdoom Gillani stated that Tariq Gillani from whom the petitioner statedly purchased the subject property, had no authority for allotment of plot;*

iv. *That the receipts regarding construction material bears the date prior to the registered sale deed in favour of the petitioner;*

v. *That the complaint regarding theft submitted by the respondent No.1 establishes his possession over the subject property since 2009.*

12. It is significant to note that in order to substantiate the alleged act of dispossession; petitioner himself appeared as PW-1 and also produced Soba Khan as PW-2, Muhammad Akhtar PW-3 and Adil Sajjad Kareem PW-4. The petitioner in his statement also tendered lay out plan Ex.PW-1/1, registered sale deed Ex.PW-1/2, approval of site plan Ex.PW-1/3, receipts of payment to the contractor Ex.PW-1/4, lease agreement between the petitioner and Tariq Gillani as Ex.PW-1/5, telephone bills Ex.PW-1/6 & 7, affidavit of said Tariq Gillani Ex.PW-1/9, and copy of application moved to SSP Islamabad Ex.PW-1/10. In addition, the report from the local police was requisitioned twice.

13. As mentioned above, it is significant to note that after recording cursory evidence and procuring police report, the complaint was admitted for regular hearing but after filing of the application under Section 265-K Cr.P.C; it was dismissed on the same material without appreciating statements of the petitioner, his witnesses or the documents tendered. There is also no observation with regard to the police reports requisitioned twice. The impugned order even did not find mention the proceedings of taking cursory evidence and the documents referred to above. The way the learned Trial Court proceeded with the matter, in no way, can be termed a judicious dispensation of a *lis.*

14. It had been the consistent view of the Hon'ble apex Court that for judicial dispensation the points for determination, decision thereupon and the reasons for decision are essential having binding status. The trace of the principle is ancient. Reliance is placed upon case of ***"Ch. Abdul Kabeer v. Mian Abdul Wahid & others*****(1968 SCMR 464)**, ***Mollah Ejahar Ali v. Government of East Pakistan and others*** **(PLD 1970 S.C. 173),** ***Raja Muhammad Afzal v. Ch. Muhammad Altaf Hussain and others*****(1986 SCMR 1736).**

15. In the case of ***"M.D. Civic Centre Hyderabad v Abdul Majeed & other*****(PLD 2002 S.C. 84)**, it was held that "*judicial pronouncement (judgment) by a Judicial Officer should be based on the evidence/material available on record and the reasons must be outcome of the evidence available on record and on the basis of such reasons conclusion should be drawn and if the order lacks of these ingredients it cannot be termed to be a judicial verdict (judgment) in stricto senso and at the best such pronouncement can be termed to be an administrative order incapable to settle controversy judicially between the parties.*"

16. Reference can also be made to case of ***Government of Sindh through Land Acquisition Officer & others v. Muhammad Juman & another*****(2009 SCMR 1407)**, ***M/S MFMY Industries Limited & others v. Federation of Pakistan through Ministry of Commerce and others*** **(2015 SCMR 1550) and** ***Muzaffar Ali & 5 others v. The Collector Land Acquisition, Mirpur and 16 others*****(2020 YLR 451)**.

17. In view of above, the impugned order, dated 17.07.2014 on the face of it, is short of reasons essential to justify its opinion and therefore, not legally sustainable. It is accordingly set-aside. The learned Trial Court shall decide the issue afresh strictly in accordance with law on the subject after giving due opportunity of hearing to the parties.

18. The instant writ petition is **allowed** in the above terms. The observations made herein above are restricted to appreciate the rationality and adequacy of the impugned order and will have no impact upon the proceedings, to be conducted by the learned Trial Court and shall also have no impact upon case of either side.

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in an open Court on _____06.2022.

JUDGE

//Kamran//