

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE AMIR HANI MUSLIM
MR. JUSTICE MUSHIR ALAM
MR. JUSTICE MAQBOOL BAQAR
MR. JUSTICE FAISAL ARAB
MR. JUSTICE KHILJI ARIF HUSSAIN

CRIMINAL APPEAL NO. 04-K OF 2012

(On appeal against the judgment dated 30.09.2011
passed by the High Court of Sindh, Karachi in Cr.
Revision Application No. 07/2011)

Shaikh Muhammad Naseem

... Appellant

VERSUS

Mst. Farida Gul

... Respondent

For the Appellant: Nemo

For the Respondent: Mr. Abdullah A. Munshi, ASC
Mr. K.A. Wahab, AOR

For the State: Mr. Shahdat Awan, P.G.

Date of Hearing: 22.07.2016

JUDGMENT

FAISAL ARAB, J.- In the present appeal, the appellant, who claims to be a tenant of the respondent, filed Criminal Complaint No.130 of 2010 in the Court of Sessions, Karachi-East under the provisions of Illegal Dispossession Act, 2005 alleging that on 08.01.2010 while he was away, the servants and some hired persons of the respondent entered his rented premises and forcibly took its possession. The said criminal complaint was dismissed as not maintainable by the Additional Sessions Judge vide order dated 13.12.2010 for the reason that a Civil Revision Application No. 77 of 2007 wherein the restoration of possession of the same rented

premises has been sought by the Appellant is pending adjudication in the High Court of Sindh. The appellant challenged the order of the Additional Sessions Judge before the High Court in Criminal Revision No.7 of 2011 which was dismissed. While doing so the High Court not only adopted the same reasoning as that of the Additional Sessions Judge but also placed reliance on the judgment delivered by a three member bench of this Court in the case of *Bashir Ahmad Vs. Additional Sessions Judge* (PLD 2010 SC 661) wherein the scope and applicability of the Illegal Dispossession Act, 2005 was restricted. It was held that only such offenders can be prosecuted who possess the credentials and antecedents of 'land grabbers' or 'Qabza Group' and no one else. As in the impugned judgement, the High Court has placed reliance on *Bashir Ahmad's* case supra, we deem it appropriate to refer to the judgment delivered by a five member bench of this Court recently decided on 18.07.2016 in Civil Petition No.41/2008 alongwith Civil Appeals No. 2054/2007 & 1208/2015 (*Gulshan Bibi and others Vs. Muhammad Sadiq and others*), which resolved the conflict between two sets of judgments of three member benches of this Court, including *Bashir Ahmad's* case supra. The first set comprised of the cases of *Muhammad Akram Vs. Muhammad Yousaf* (2009 SCMR 1066), *Mumtaz Hussain Vs. Dr. Nasir Khan* (2010 SCMR 1254) and *Shahabuddin Vs. The State* (PLD 2010 SC 725). These cases do not impose any restriction as to category of persons who could only be prosecuted under the provisions of Illegal Dispossession Act, 2005. The second set comprised of cases of *Bashir Ahmad Vs. Additional Sessions Judge* (PLD 2010 SC 661) and *Habibullah Vs. Abdul Manan* (2012 SCMR 1533) wherein it was held that only those possessing the credentials

and antecedents of 'land grabbers' or 'Qabza Group' can be prosecuted thereby restricting the scope and applicability of the Illegal Dispossession Act, 2005. The five member bench of this Court in *Gulshan Bibi's case* supra while examining both the sets of cases came to the conclusion that it was not the intention of the legislature that only a particular category of persons can be prosecuted under the Illegal Dispossession Act, 2005. Thus the second set of cases was declared not to be a good law. For ease of convenience, the reasons that prevailed with the five members bench are briefly explained below:-

2. The substantive provisions of Illegal Dispossession Act, 2005, which describe the offence and the offender are contained in Section 3 of the Act. It reads as follows:-

"3. Prevention of illegal possession of property, etc. (1) No one shall enter into or upon any property to dispossess, grab, control or occupy it without having any lawful authority to do so with the intention to dispossess, grab, control or occupy the property from owners or occupier of such property.

(2) Whoever contravenes the provisions of the sub-section (1) shall, without prejudice to, any punishment to which he may be liable under any other law for the time being in force, be punishable with imprisonment which may extend to ten years and with fine and the victim of the offence shall also be compensated in accordance with the provision of section 544-A of the Code."

(Underlining is ours to lay emphasis)

3. It is evident from the provisions of Section 3 of the Illegal Dispossession Act, 2005 that it describes the offence exhaustively but does not describe the offenders in specific terms. On the contrary, it uses the general terms 'no one' and 'whoever' for

the offenders. The use of such general terms clearly indicates that the widest possible meaning was attributed to the offenders. The three member bench of this Court in *Bashir Ahmed's* case supra however has held that under the Illegal Dispossession Act, 2005 only those can be prosecuted who possess the credentials and antecedents of '*land grabbers*' or '*Qabza Group*' and none else. In reaching such conclusion, *Bashir Ahmed's* case adopted the reasoning contained in the judgment of the Lahore High Court in the case of *Zahoor Ahmed Vs. the State* (PLD 2007 Lahore 231). The first reason that prevailed with the Lahore High Court in *Zahoor Ahmed's* case was the use of the term '*property grabbers*' in the preamble of the Act, which was made basis to restrict its scope and applicability. We may state that the term '*property grabbers*' is not one of those terms that is popularly associated with any particular class of offenders such as the terms '*Land grabbers*', '*Qabza Mafia*' or '*Qabza Group*'. In fact none of the popular terms which are identified with a specific category of offenders have been used anywhere in the Act. As the term '*property grabbers*' appearing in the preamble of the Act has been used in general sense, it cannot be identified with any particular category of offenders in order to restrict the scope and applicability of the Illegal Dispossession Act, 2005 to a particular category of offenders. Additionally, the substantive provision of Illegal Dispossession Act i.e. Section 3 expressly uses general terms such as '*no one*' and '*whoever*' for the offender. This clearly indicates that the widest possible meaning is to be attributed to these terms. Thus the provisions of Section 3 clearly demonstrate that whosoever commits the act of illegal dispossession, as described in the Illegal Dispossession Act, 2005

against a lawful owner or a lawful occupier, he can be prosecuted under its provisions without any restriction.

4. To reach the conclusion which it did, the Lahore High Court judgment in *Zahoor Ahmed's* case apart from using the term 'property grabbers' that finds mention in the preamble had also placed reliance on the caption of the Working Paper that was prepared by the law ministry at the time of laying the Illegal Dispossession Bill before the parliament. The caption of the Working Paper states "*The object of the proposed Bill is to provide deterrent punishment to the land grabbers and Qabza Group and to provide speedy justice and effective and adequate relief to the victims dispossessed of immovable property by unlawful means....*" It can be seen that the terms '*land grabbers*' and '*Qabza Group*' that were there in the caption never found their way in any provision of the Illegal Dispossession Act, 2005. The second part of the caption of the Working Paper narrates "*..... to provide speedy justice and effective and adequate relief to the victims dispossessed of immovable property by unlawful means....*". In our view the object contained in this second part of the caption of the Working Paper was in fact achieved as is evident from the contents of the substantive provisions of the Act, which are unambiguous and unequivocal and while interpreting them do not lead to any absurdity. In *Gulshan Bibi's* case supra the five member bench of this Court had referred to a judgment from English jurisdiction in the case of *Pepper Vs. Hart* [1992] 3 WLR 1032 wherein it was held that the exclusionary rule whereby reference to Parliamentary materials was prohibited should be relaxed so that the courts may

reach the true meaning of the enactment. However, such a conclusion was qualified i.e. it was held that such a course is to be adopted only in situations where the legislation is ambiguous or obscure or while interpreting the provision it leads to an absurdity. While interpreting the scope of the provisions of the Illegal Dispossession Act, 2005 the larger bench of this Court in *Gulshan Bibi's* case supra did not find any ambiguity, obscurity or absurdity in the substantive provisions of the Illegal Dispossession Act, 2005 that would have warranted reference to the relevant Parliamentary material. In paragraphs 6 to 8 of *Gulshan Bibi's* case the five member bench of this Court held as follows:-

"5. A bare reading of sub-sections (1) of Section 3 the *Illegal Dispossession Act, 2005* shows that terms like *dispossess, grab, control or occupy* have been used which clearly mean that *illegal dispossession in all forms* have been made an offence and by the use of the terms 'no one' and 'whoever' in sub-sections (1) and (2) of Section 3, anyone and everyone who commits such an offence was made liable for punishment. The very use of the terms like 'no one' and 'whoever' are clearly intended to convey the widest possible meaning for the offenders. Thus without any distinction any person who illegally dispossesses, grabs, controls or occupies property of a lawful owner or occupier shall be liable for prosecution under the provisions of the *Illegal Dispossession Act, 2005*. The second set of cases has however restricted the scope and application of the *Illegal Dispossession Act, 2005* to a particular class of offenders only i.e. those who possess the credentials or antecedents of being 'land grabbers' or Qabza Group by placing reliance on the term 'property grabbers' that appears in the preamble of the *Illegal Dispossession Act, 2005*. From the mere use of the term 'property grabbers' in the preamble one cannot reach the conclusion that the legislature intended that a complainant must first establish that the accused possesses the credentials or antecedents of being a professional land grabber or member of a Qabza Group in order to maintain his complaint under the said Act. The term 'property grabber' can be construed to refer to anyone who has committed the act of grabbing

someone's property illegally. Limiting the scope and application of the provisions of the main enactment to a particular class of offenders and that too on the basis of a term used in the preamble would not only deflect the Court to go into issues which are not subject matter of the complaint that is before it but at the same time such an interpretation would violate the cardinal principle of the statutory construction that where the language of the substantive provision of an enactment is clear and not open to any doubt then the preamble cannot be used to curtail or enlarge its scope. Thus where the enactment is clear and unambiguous, the preamble cannot be used to undermine the clear meaning of the provisions of the Act or give it a different meaning. Only where the object or meaning of an enactment is not clear, the preamble may be resorted to in order to explain it. So the preamble is to be resorted only to explain and give meaning to any provision of the enactment where its language is open to doubt or is ambiguous or susceptible to more than one meaning. In the presence of the general terms like 'anyone' or 'whoever' that have been used to describe the offender, which are clear and wide in their application, the scope of the Illegal Dispossession Act, 2005 cannot be confined to any particular class of offenders.

6. *It would also be not out of place to mention here that reference to Legislative history is permissible only as an aid to construction of legislation which is ambiguous or obscure or the literal meaning of which leads to an absurdity i.e. from the text of a statute, the court is unable to decipher the real intent of the Legislature. Where the text is clear and there exists no ambiguity, resort to the legislative history may actually be counter-productive. This is because legislative history contains sporadic accounts and arguments made by the parliamentarians and the final outcome of debates and arguments made in the parliament could be much different. Therefore, the real intention of the parliament is to be first and foremost ascertained from the provisions of the enactment itself and frequent resort to the legislative history is not warranted. In this regard the case of Pepper Vs. Hart [1992] 3 WLR 1032, a judgment from English jurisdiction, can be referred with considerable advantage.*

7. *From what has been discussed above it is evident that no provision of the Illegal Dispossession Act, 2005 imposes any precondition on the basis of which a particular class of offenders*

could only be prosecuted. The Act aims at granting efficacious relief to lawful owners and occupiers in case they are dispossessed by anyone without lawful authority. Section 3(1) of the said Act by using the terms 'anyone' and 'whoever' for the offenders clearly warns all persons from committing the offence described therein and when found guilty by the court are to be punished without attaching any condition whatsoever as to the maintainability of the complaint. So all that the Court has to see is whether the accused nominated in the complaint has entered into or upon the property in dispute in order to dispossess, grab, control, or occupy it without any lawful authority. Nothing else is required to be established by the complainant as no precondition has been attached under any provision of the said Act which conveys the command of the legislature that only such accused would be prosecuted who holds the credentials and antecedents of 'land grabbers' or 'Qabza Group'. It does not appeal to reason that for commission of an offence reported in the complaint filed under the Illegal Dispossession Act, 2005 the Legislature would intend to punish only those who hold history of committing a particular kind of offence but would let go an accused who though has committed the offence reported in the complaint but does not hold the record of committing a particular kind of offence. In our view trial of a case is to be relatable to the property which is subject matter of the complainant, pure and simple. Any past history of the accused with regard to his act of dispossession having no nexus with the complaint cannot be taken into consideration in order to decide whether the accused stands qualified to be awarded a sentence under the Act or not. Once the offence reported in the complaint stands proved against the accused then he cannot escape punishment under the Illegal Dispossession Act, 2005.

8. *In view of the above discussion we conclude that in any proceedings initiated under Illegal Dispossession Act, 2005, the issues which fall for decision would be whether the offence against a lawful owner or occupier, as described in the complaint, has taken place and whether it is the accused who has committed it without any lawful authority. Anyone found committing the offence described in Section 3 would be amenable to prosecution under the provisions of Illegal Dispossession Act, 2005 and no past record of the accused needs to be gone into by the court."*

5. In the impugned judgment it was also held that where civil litigation with regard to illegal dispossession from immovable property is pending between the parties, the proceedings under the Illegal dispossession Act, 2005 cannot be maintained. This finding is also based on the decision of the Lahore High Court in *Zahoor Ahmed's* case (PLD 2007 Lahore 231, reasoning of which was adopted by three member bench of this Court in *Bashir Ahmed's* case (PLD 2010 SC 661). We are of the view that such a finding is also not sustainable in law. 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. Once the offence reported in the complaint stands proved against the accused within the confines of the provisions of the Illegal Dispossession Act, 2005 then he cannot escape punishment on the ground that some civil litigation on the same issue is pending adjudication between the parties. No one can be allowed to take law in his own hands and unlawfully dispossess an owner or lawful occupier of an immovable property and then seek to thwart the criminal proceedings initiated 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 in 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.

6. The above are the detailed reasons of our short order of even date whereby while relying on five Member Bench judgment of this Court dated 18.07.2016 rendered in the case of *Gulshan Bibi Vs. Muhammad Sadiq* in Civil Petition No. 41/2008 and Civil Appeal Nos. 2054/2007 & 1208/2015, this appeal was disposed of and the matter was remanded back to the learned Trial Court for its disposal on merits.

JUDGE

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Karachi, the
22nd of July, 2016
Approved For Reporting
Khurram