

In the name of Almighty Allah who has got unlimited Jurisdiction over each and every subject of the universe and beyond.

IN THE COURT OF ADDITIONAL SESSIONS JUDGE, ORAKZAI.

Complaint No: 03 of 2020
Date of Institution: 13.07.2020
Date of Decision: 17.07.2021

1. Allama Abid Hussain Shakeri s/o Lal Hussain r/o Madrassa Ahle Bait, Anwar ul Madaris, Kalaya District Orakzai.
 2. Molana Shahab Ali s/o Insan Ali r/o Village Orakzai Noor Ali Garhi, Kalaya, District Orakzai.
 3. Syed Muhammad Jawad Hadi s/o Syed Ahmad Shah.
 4. Nazeer Hussain s/o Wazir Hussain
 5. Syed Jameel Hussain s/o Syed Nazak Hussain
 6. Ihsan Ullah s/o Kemya Gul all r/o at present Madrassa Shaheed Arif ul Hussaini, Faisal Colony, GT Road, Peshawar.
- (Complainants)

VERSUS

1. Mulana Syed Murtaza Abidi s/o Syed Muhammad Taqi r/o Caste Mani Khel Tappa Sabzi Khel, District Orakzai.
 2. Mujeeb Ali s/o Muhib Ali r/o Caste Bar Muhammad Khel Tappa Khwedad Khel village Satara Khppa (Hussaini Garhi) District Orakzai.
 3. Syed Naeem Hussain s/o Syed Qasim.
 4. Syed Moeen Hussain s/o Naeem Jan
 5. Syed Shoaib Hussain s/o Syed Moeen Hussain
 6. Syed Raza Zakir s/o Malang Jan
All residents of Kalaya, District Orakzai.
- (Accused/Respondents)

Present:

Mr. Ibrar ul Haq Advocate, counsel for complainants
Mr. Javid Muhammad Advocate, counsel for respondents

Complaint u/s 3/4 Illegal Dispossession Act, 2005

JUDGMENT

The story narrated in the contents of complaint is such that the complainant No.1 is *Muhtamim* (Principal and Care Taker) of the *Madrassa* and *Masjid* with the name of Ahle Bait Anwar ul Madaris, situated at Kalaya of District Orakzai (*hereinafter called Madrassa of Orakzai*). Complainant No.2 is working as Accountant of Ahle Bait Anwar ul Madaris. Complainants No.3 to 6 are the Administrators of Madrassa Syed Ariful

Hussaini Peshawar (*hereinafter called Madrassa of Peshawar*) under which Madrassa Ahle Bait Anwar ul Madaris Kalaya Orakzai is functioning. The chain of Schools with the name of Islamia Schools is being managed by Ahle Bait Anwar ul Madaris as well. The Madrassa of Orakzai and Madrassa of Peshawar are registered institutions with Wifaq ul Madaris (Shia Sect) Jamia ul Muntazir Lahore Pakistan and founded by the renowned religious scholar Allama Arif Hussain Hussaini (late) in the decade of Eighties. The institutions are imparting religious education to students residing in Madrassa of Orakzai. Lodging, boarding and food has been provided to the students from the income of the Markets owned by Madrassa of Orakzai as well as contribution of the community. The Administrators of Madrassa of Peshawar runs the official business of Madrassa of Orakzai and nominates the Principal for fixed tenures and extension thereof. The complainant was the Principal nominated by Administrators and was working in the institution to the satisfaction of Management.

2. During winter vacation of 2019-20, Propaganda campaign has allegedly been started against the Administration of the Madrassa of Orakzai which culminated into forcible entry in Madrassa of Orakzai of about forty (40) persons, led by respondents No.1 to 3 with active connivance of respondents No.4 to 6 and thus forcibly dispossessed the Principal and staff from the premises. All of the entrants were equipped with fire arms and threatened the complainants with dire consequences.

3. This forcible dispossession of the complainants being occupier of the premises (Madrassa, Market, Masjid and School) under a legal cover, by the respondents was dragged to this Court in Complaint under section-3 of the


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Illegal Dispossession Act, 2005. Conviction and sentencing the respondents with restoration of possession is prayer part of the complaint.

4. Complainant was examined on 13th of July, 2020 under oath by attracting Section-200 of Criminal Procedure Code, 1898. The SHO of Police Station Lower Orakzai was directed to conduct Investigation and present Report. The Investigation Report was placed on file on 28th July, 2020, against which, application for reinvestigation was received from complainants. Meanwhile, respondents put appearance before the Court presented Wakalat Nama in favor of Mr. Javid Muhammad Advocate. Both the parties have been associated with the proceedings of reinvestigation allowed vide Order dated: 18-08-2020.

5. Reinvestigation was completed and report thereof was submitted on 14-09-2020. Question of maintainability was determined vide order No.8 dated: 19-09-2020 and attendance of rest of the respondents (2, 3, 4 and 6) was procured. Copies have been provided to the respondents as postulated in Section-265 C of the Criminal Procedure Code of 1898. Consequently, charge was framed on 01-10-2020, to which the respondents pleaded not guilty and claimed trial.

6. Complainants have produced documentary as well as oral evidence which is sketched below.

i. PW-1 is the statement of Syed Ali Raza s/o Syed Akbar Hussain who state that "I am working as cook in Kalaya madrasa and attached with the system since 2011. On 26-02-2020 the students of madrasa came from Peshawar to madrasa at Kalaya. At Aisha time 30/40 persons came to Kalaya Madrasa and forcibly kept out the students of the madrasa along with teacher


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from the Kalaya madrasa. The teachers are appointed through the system from Peshawar. When the madrasa was taken into possession by the 30/40 persons it was then handed over to Respondents No. 1 and 2 and it is still in their possession. The Respondent No. 1 and 2 thereafter broke the locks of the rooms inside madrasa as well as trees standing inside madrasa”.

ii. PW-2 is statement of Syed Mazhar Ali Shah s/o Syed Akbar Khan, stated that “the system of Kalaya madrasa is run from Peshawar madrasa. Abdi shakiri was also appointed by the Peshawar madrasa as a principal at Kalaya madrasa. On 10-02-2020 Abid Hussain, Syed Jawad, Nazir and Mujeeb driver came to Kalaya at esha time. After esha prayer at dinner by them some persons came to the madrasa and asked Abid Hussain, Syed Jawad, Nazir and Mujeeb driver that there is threat and they should leave the madrasa. In the meanwhile one Kamran police official also came there and asked them to leave the madras as there is threat to them and he is ordered by his high ups. Abid Shakiri and Nazir told to the said police official that Syed Jawad is an old age person who cannot go back now and thereafter on the next day at morning time before breakfast they left the madrasa and went to Peshawar. On 26-02-2020 Shahab Ali, Sajid accompanied by students came to madrasa at Asar time and they remained till esha time in the madrasa and also took the dinner. Then a group of 30/40 persons came to the madrasa and asked Shahab and Sajid to leave the madrasa and at night time they along with the students left the madrasa and the remaining I do not know.

iii. PW-3 is the statement of Syed Muhammad Naqi s/o Syed Sultan Akbar stated that “I am attached with madrasa Kalaya since 2014 and worked as cook in the madrasa. The administration of the madrasa at Kalaya is run by the madrasa at Peshawar since long. On 10-02-2020 Shakiri and Jawad

came to the madrasa along with Nazir and security gards. After maghrib prayer some persons entered the madrasa and took out Shakiri and Jawad from the madrasa, who left the madrasa. On 26-02-2020 Sajid and Shahab along with students came to the Kalaya madrasa from Peshawar. Some 30/40 persons came to the madrasa after maghrib prayer and took out Sajid and Shahab along students y force from the madrasa at Kalaya. Mujeeb and Murtuza took the possession of madrasa and after few days they broke the locks of the madrasa and thereafter they took the possession of madrasa. I remained in the madrasa and now in the month of January I was removed by respondents from the madrasa.

iv. PW-4 is the statement of Syed Muhammad Baqir s/o Syed Asghar, stated that "I remained as principal of Kalaya madrasa since 1994 to 1997. The foundation of Kalaya madrasa had been laid down by Shaheed Arif Hussaini. The madrasa is also attached to a school. After the shahadad of Arif Hussaini the whole responsibility was delivered to Syed Muhammad Jawad and he was the chief patron run through the present administration. I was also appointed as a principal through the said system by Muhammad Jawad Hadi. I acquired and brought landed property in front of the madrasa and also on account of my struggle installed electric transformer through to then MNA Muhammad Afzal and also constructed two rooms by him in the school. We also purchase land at Kuriz for Islamia Public School which is also under the channel of this system. The whole system whether its school, madrasa, markets or any other institution run under this system is headed by Muhammad Jawad Hadi. Similarly, the administration of Kalaya madrasa was also under the administration of Jawad Muhammad Hadi till 2020. The market situated in front of the madrasa is also constructed by us.


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v. PW-5 is the statement of Mustaf Hassan s/o Khushal Khan, who stated that "I have been appointed as principal in Kalaya madras in the 2013 and 2014 by the patron in Chief Syed Muhammad Jawad Hadi. The whole administration of the kalaya madras, school and market were administered by me during this period when the patron in chief Syed Muhammad Jawad Hadi called me to Peshawar, I handed over the charge to him and the year 2019-20 I was appointed a senior teacher in the madras Ahl-e-Bait Kalaya under the supervision of the then principal Allama Abid Shakiri. In the winter vacation I was in Peshawar and then this occurrence has taken placed. Since the inauguration till 2020 the instant madrasa and disputed property was controlled by the chairman Syed Jawad Hadi.

vi. PW-6 is the statement of Allama Abid Hussain Shakeri s/o Lal Hussain, who stated that "I belong to madras Arif-ul- Hussaini since 1990 and remained principal of the madrasa Ahl-e-Bait Kalaya for two years. For the 2nd time since March, 2016 till the dispute arise, I was the principal of madrasa Ahl-e-Bait. During my tenure as a principal of the madrasa I run the administration of madrasa smoothly. I worked hard and made efforts for the unity of all Muslim sects in the locality, however my efforts were not appreciated by some segments of the society hence they started propagating against me. They started sharing an audio clip on social media against me and provoked the people of the locality. I have not targeted any specific person or sect in the audio clip which was posted on social media nor there anything in the audio clip against Quran and Sunna. After the audio clip the respondents were required to discuss the matter with me being principal or with the Syed Muhammad Jawad Hadi the chairman of the system to resolve the issue legally but no such complaint was preferred by the respondents. The

respondents were also required to register FIR if they were aggrieved from the audio clip but no such action was taken by them. The respondents provoked and instigated the people of the locality on the basis of that audio clip. Every year at the end of December the madras Ahl-e-Bait remained closed due to winter vacation for all educational activities and the students along with teachers goes to Peshawar madrasa however only one teacher remains in the madrasa Ahl-e-Bait to perform Jumma prayer and run the administrative activities of the madrasa. The administration of madrasa at Peshawar was informed about the activities when the situation became verse then on 10-02-2020 I along with Syed Muhammad Jawad Hadi chairman madrasa, Allama Nazir Hussain along with our guards and driver came to madrasa Ahl-e-Bait Kalaya and reached after evening time. We had come to Kalaya to resolve the issue after discussion the matter of audio clip with the elders of the locality. After we took our dinner and Maghreb prayer about 10 persons from Sadat tribe came and told us to leave the madrasa as people gathered duly arm. One of our colleagues was called on phone to leave the madrasa by threatening him for dire consequence that people has been gathered duly armed. One Kamran also informed me who is a security official to leave the madrasa on the order of his high-ups. I posted on Facebook about the whole situation and on that the said Kamran was suspended by his high ups after inquiry. The DPO told me that Kamran on his own informed you to leave the madrasa and no such order was issued by the high ups. In order to avoid any undue incident, we left the madrasa at early in the morning on the next day. On 26-02-2020 we sent the students along with two teachers to Kalaya madrasa on the end of winter vacation who reached to madrasa at asar time. After dinner and asha prayer, some 30/40 persons duly armed came to madrasa and the teacher informed me about the situation as I was


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present at Peshawar. I contacted the commandant and informed him about the matter. The situation was verse and the students and teachers were not allowed to stay in the madrasa and there was possibility of blood shed therefore the students and the said teachers were forced to leave the madrasa who left the madrasa. The madrasa came into the possession of our opponent who are now occupying the madrasa. After taking the possession of madrasa the respondent No. 1 starting cutting the trees and demolishing the shops owned by the madrasa. They also broken locks of the rooms and offices inside the madrasa including the account office. We made efforts to resolve the dispute amicable but the issue could not be resolved therefore we recourse the court for redressing. I am residing in Peshawar madrasa and the house allotted by the madrasa and not only me the previous principal Jameel Hassan also residing in Peshawar in the allotted house of madrasa which clearly shows that the system of madrasa Ahl-e-Bait Kalaya run through the Peshawar madrasa. Initially in 2016 Rs. 10000/- as my salary from Kalaya madrasa and later on my salary was increased to 12000/- out of which I paid 10000/- per month to my driver as salary. We are the complainants submit before the court that the accused may be convicted accordingly”.

vii. PW-7 is the statement of Syed Jameel Hussain s/o Sayed Nazuk Hussain, who stated that “I am appearing before this court on behalf of the trust madrasa at Peshawar. Syed Muhammad Jawad Hadi could not appear before the court as witness due to his old age and sickness. After the inauguration of madrasa at Peshawar by Syed Arif Hussaini, he started struggle for inauguration and laying the foundation of madrasa at Kalaya Orakzai in the year 1984. For this purpose, he dedicated his ancestral property as well as he exchanges and bough property for madrasa Ahl-e-bait

Kalaya Orakzai through various deeds which are Ex.PW-7/1 to Ex.PW-7/4 respectively. Similarly, some persons dedicated their property to the madrasa Ahl-e-Bait Anwar-ul-Madaris the deed of which Ex.PW-7/5. Similarly, the administrative/ principals of the madrasa at their tenure also bough and made different transaction for the said madrasa. The original deeds are produced before the court the copy of which are Ex.PW-7/6 to Ex.PW-7/12. (STO by the defense that witness is not the executant of the above exhibits and he not the proper person to produce the said documents. Further added that there are some additions in the above said documents). I was posted as principal at Kalaya madrasa once in the 1990 and then 2014. I am also the member of trust Shaheed Arif Hussaini. I produced the original trust deed before the court the copy of which is Ex.PW-7/13 consist of three sheets. Accused Syed Murtuza Abidi remained as my student both in Kalaya as well as Peshawar madrasa. (STO that the Ex.PW-7/13 is not in respect of trust of disputed madrasa and concert witness is not produce in the evidence). In 2015 a dispute arrosed and I being principal of the Kalaya madrasa visited. I in order to resolve the dispute took authorization of the parties to the dispute vide deed Ex.PW-7/14 and decided the dispute vide verdict of the Jirga Ex.PW-7/15 and it was decided that no one disturb or interfere in the affair of the madrasa and it shall run according to the present system. The madras at Kalaya is registered one under Peshawar madrasa and I produced the verification deed Ex.PW-7/16 (STO that Ex.PW-7/16 is postdated and is not issued by authorize person). Vide deed dated 14-06-2020 Ex.PW-7/17 a committee of five members was constituted by the chairman Syed Muhammad Jawad Hadi to resolve the dispute amicably (STO that the above documents are not attached to the complaint and is based on fraud and boghas one which is prepared during pendency of this complaint). In lite of

the above deeds it is establish that madrasa Ahl-e-Bait Anwar-ul-Madaris run through the trust of Allama Arif Hussaini Shaheed. The administration of Kalaya Madrasa disturbed and the respondent may proceed accordingly.”


Viii. PW-8 is the statement of Shahab Ali s/o Insan Ali, who stated that “I was posted as teacher at madrasa ahle-e-bait Kalaya in the year 2015 and was remained there till the occurrence on 26-02-2020. On 10-02-2020 when the situation was verse at Kalaya and some miscreants were propagated against the madrasa. The chairman Syed Muhammad Jawad Hadi along with allama Abid Hussain Shakiri and Nazir Hussain Montahiri reached to madrasa to Kalaya for resolving the dispute with the local elders but when they reached to the madrasa and after having the dinner at madrasa these miscreants started attacking on madrasa and when the situation was worse, they forced the above mentioned teachers and trusties along with chairman to leave the madrasa, hence early in the morning they went back to Peshawar. I also proceeded to Peshawar on the next day for meeting with the elders of the madrasa. They told me to go back to Kalaya and take the charge of the madrasa, hence I was there in the Kalaya madrasa along with other staff of the madrasa. During the dispute the charge of the account was also handed over to me, hence there was cash, prize bonds, mobile phones, laptop, certificates and other important documents of the madrasa was also in the said room. On 25-02-2020 I went back to Peshawar madrasa to discuss the issue with the chairman as the winter vacations for almost at the end. The chairman directed us to go back to Kalaya, hence on 26-02-2020 I along with Sajid and students came back to madrasa where we reached at asar time. My home is near to madrasa so I went to home for dinner and when I ate my dinner *moulana* Sajid informed me through call that a mob 30/40 persons


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entered the madrasa and who are forcing us to leave the madrasa so I rushed to the madrasa where 30/40 persons duly arm were present and force me along with my students to leave the madrasa upon which I left the madrasa and took the students to my Hujra where they spent night and on the next day at morning time we left for Peshawar.”

ix. PW-9 is the statement of Muhammad Shafiq SHO, PS Lower Orakzai, who stated that “I conducted investigation in the instant complaint. I received the written order of the court along with the complaint. I visited the disputed Madrassa and market for the purpose of investigation. I recorded the statement of witnesses, u/s 161 Cr.P.C and thereafter, I submitted inquiry report Ex.PW-9/1 before the court. The court during the course of proceeding in the instant complaint ordered re-investigation in the instant complaint. I received the order along with copy of complaint for re-investigation in the instant complaint. During re-investigation I recorded the statement of Shopkeepers of the market attached to the Madrassa and recorded the statement of parties and their witnesses. I also recorded the statement of independent witnesses in the instant complaint. After completion of investigation, I submitted my final report Ex.PW-9/2 consist of 29 pages. Today I have seen the report submitted by me before the court which is correct and correctly bears my signature.”

7. On closure of complainants' evidence, statements of accused have been recorded under Section-342 of the Code of Criminal Procedure, 1898; wherein, they denied the charge and professed innocence. They opted not to be examined on oath; however, they produced defense evidence which is reflected below;



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i. DW-1 is the statement of Syed Khaleel Hussain s/o Syed Sameen Hussain, who stated that, "Allama Shaheed Arif Ul Hussaini was my real cousin. On 10th Rajab in the year 1985 I along with Allama Shaheed Arif ul Hussaini and Syed Safdar Hussain Najfi laid the foundation stone of Madrassa Ahle Bait Anwar Ul Madaris Kalaya. Syed Safdar Hussain Najafi issued cheque of Rs. 10000/- to Allama Arif Ul Hussaini who handed over the said cheque to me. Thereafter, we and the other people of the locality all Shia and Sunni sects offered our Zuhar prayer after the Allama Arif Ul Hussaini. I produce the copy of photo which is Ex. DW-1/1. On 27th Rajab 1985 Allama Arif Ul Hussaini constituted a committee to run the affairs of Madrassa the copy of the document is already Ex.PW-6/x-1. Allama Arif ul Hussaini used to issue directions with regard to the affairs of Madrassa the relevant page is Ex.DW-1/2. I also produce the copy of letter dated: 19-03-1985 by Allama Arif ul Hussaini addressed to Syed Nijat Hussain which is placed on file. All the landed property of Madrassa Ahle bait was purchased by Allam Arif Ul Hussaini except a portion of land on which a quarter has been constructed was dedicated by one Safar Ali. Similarly, the property in front of Madrassa was dedicated by the owners of the locality for thoroughfare of the Madrassa the copy of relevant documents is placed on file. Allama Arif Ul Hussaini appointed an accountant for the Madrassa namely Syed Aqeeq Hussain vide letter dated: 29-05-1985 the copy of which is placed on file. The Madrassa was constructed and after completion of construction the Madrassa started in the year 1986 for which at different times religious scholars were appointed to deliver lectures and perform prayers. They were appointed for a period of 02 years. The religious scholars on completion of his tenure used to go to Qum in Iran for continuing his further studies. Thereafter in about in the year 1990 the complaint No.1 Abid

Hussain Shakeri was appointed in the Madrassa as Imam however he started Political activities in the Madrassa. The committee keeping in view the aforementioned activities of complainant No.1 decided to remove complainant No.1 and thereafter he was removed by the member of the committee. Thereafter Muhammad Iqbal Behishti was appointed as Imam of the Madrassa by the committee who served for about 18 years. Muhammad Iqbal Behishti was then removed on the objection of the Government and he was banned. In the year 2015 one Jameel Hassan was appointed to serve the Madrassa. The tribes and committee members were not agreed on the appointment of Jameel Hussain. Thereafter a committee was constituted by all the 3 tribes of Orakzai namely Kalaya Saidan, Bar Muhammad Khel and Mani Khel which is vide deed already Ex.PW-6/x-2. I was also member of the committee and Jameel Hussain was the head of the committee and his signature is correctly available on the above-mentioned deed. I along with all the member of the committee signed the deed Ex.PW-6/x-2. Jameel Hussain was then removed from the Madrassa due to his Political activities and complainant No.1 was again appointed as Imam of the Madrassa on the condition that he shall only deliver lectures, perform prayers and teach the students of Madrassa and shall not involve himself in the Political activities and disputes of the tribes. The complainant No.1 during election campaign delivered a speech in which he demanded if any candidate pay Rs. 40,000,000/- for the construction of Mosque then he will be successful in the election. The complainant No.1 also started interfere in religious faith of the people of the locality. Complainant No.1 delivered disputed speech in respect of Ziarat Syed Meer Anwar Shah. The audio of the aforementioned speech was leaked/viralled in the locality and when the tribes and members of the committee came to know about the speech, they came to complainant No.1

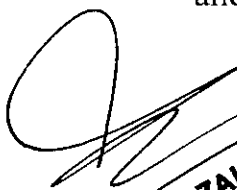
and asked him with great respect to leave the Madrassa and he with his own consent left the Madrassa. Thereafter the Madrassa was closed for few days and the complainant No.1 asked the religious people of the Bangash area that they shall not join the Madrassa and prayers there. Then one Baqir was contacted but he was also stopped by complainant No.1 and Jameel Hassan not to pray in the Madrassa. The complainant No.1 gathered different people on different occasion to accompany the complainant No.1 against the tribes and committee member however a few people joined his meetings whereas the others refused. We took one Muntazir Mehdi from Lodhi Khel to offer Jumma prayer in the Madrassa. The 3 tribes and member of the committee constituted to run the affairs of Madrassa appointed respondent No.1 Syed Murtaza Hussain and Hadi Hussain were appointed as Imam of the Madrassa. Now the Madrassa is opened and running condition where lectures are delivered, prayers are offered and its markets are also opened in the Madrassa, further construction is also in progress. The court may appoint a commission to visit the Madrassa and confirm the affairs of Madrassa are now run by respondent No.1”.

ii. DW-2 is the statement of Malik Surat Ali s/o Amanullah Khan, who stated that, “I have seen documents Ex.PW-6/x-2 dated: 01-05-2015 which is correct with all its contents and correctly signed by me being elder of Qaum Bar Muhammad Khel along with other members. After the constitution of committee, the affaires of Madrassa Ahle Bait were run by the said committee and tribes Kalaya Saidan, Bar Muhammad Khel and Mani Khel. The principal/Imam of the Madrassa were appointed at different occasion and for different tenure by the committee. The committee run the affairs of Madrassa under the leadership of Syed Jameel Hussain who also signed the


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deed Ex.PW-6/x-2. One Muhammad Iqbal Behishti remained Principal for about 18 years with the consent of the committee. The complainant No.1 was removed by the member of all the 3 tribes and committee due to his involvement in the sectarian and in the Political activities and respondent No.1 namely Syed Murtaza Abidi was appointed as Principal of the Madrassa by the committee and now running the affairs of Madrassa. I myself contacted and visited complainant No.1 to avoid the said activities and do not disturb the public peace and tranquility. Complaint No.1 had not taken interest in teaching to the students of Madrassa which affected the studies of students of Madrassa”.

iii. DW-3 is the statement of Ikhtiyar Ali s/o Sultan Ali, who stated that, “I have seen documents Ex.PW-6/x-2 dated: 01-05-2015 which is correct with all its contents and correctly signed by me being elder of Qaum Mani Khel along with other members. After the constitution of committee, the affairs of Madrassa Ahle Bait were run by the said committee and tribes Kalaya Saidan, Bar Muhammad Khel and Mani Khel. The principal/Imam of the Madrassa were appointed at different occasion and for different tenure by the committee. The committee run the affairs of Madrassa under the leadership of Syed Jameel Hussain who also signed the deed Ex.PW-6/x-2. One Muhammad Iqbal Behishti remained Principal for about 18 years with the consent of the committee. The complainant No.1 was removed by the member of all the 3 tribes and committee due to his involvement in the sectarian and in the Political activities and respondent No.1 namely Syed Murtaza Abidi was appointed as Principal of the Madrassa by the committee and now running the affairs of Madrassa”.


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8. Exhausting the opportunity of leading evidence, the case file was fixed for final arguments.

9. Learned counsel representing complainants argued that complainants were in lawful possession of the premises forcibly dispossessed by the respondents without authority; that too, with criminal intent, which is proved in trial through cogent documentary and oral evidence. It was concluded that respondents may be convicted and complainants may be restored to possession of the premises.

10. Mr. Javid Muhammad Advocate for respondents was of the stance that complainants are not the actual owners and that the respondents were having lawful authority to manage the premises. It was added that neither criminal intent behind the act nor the act of illegal dispossession have been proved by the complainants; whereas, the respondents have proved the ownership as well as the right to manage the premises through reliable evidence. Dismissal of the petition in hand was prayed for.

11. This Court is determining the matter in issue by examination of the contents of the petition, evidence of the complainants, defense evidence, professional assistance rendered by learned counsel representing parties and other material available on file, in following terms.

12. In order to constitute an offence under Section-3(I) of the Illegal Dispossession Act, 2005, the complainants are required to prove that; the complainants are the actual owner (or occupier i.e in lawful possession) of the immovable property in question; the accused have entered into (or upon) the said property; that the entry of accused into (or upon) the said property is




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without any lawful authority; that the accused have done so with the intention to dispossess (to grab or to control or to occupy) the complainants.

13. Admitted facts necessarily forming part of the case are required to be pen downed at the very outset. Allama Arif Hussain Late (*hereinafter called Waqif*) was the Founder of Madrasa of Peshawar and Madrasa of Orakzai including Islamia School, Market, Hiace Stand and other property attached to it. He bequeathed the property and fixture as Waqf for the benefits of all Muslims in the name of Allah. He was owner, founder and waqif of the property but did not scribe any written waqafnama in his life time. Allama Arif Hussain Late was a renowned religious scholar of Shia Sect and his name is still guarded as symbol of knowledge and dignity for both the contesting parties. He has his son alive residing in different parts of the Country and abroad. He has donated his own ancestral property as well as purchased land for consideration and without consideration as gift or waqf for establishing Madrasa of Peshawar and Madrasa of Orakzai with the intent to impart religious education to the kids of nation. The system of Madrasa of Orakzai is financially being run on the profit of Market, Hiace Stand and local and non-local donations and duly registered with Wifaq-ul-Madaris, Jamia-ul-Muntazir, Lahor, Pakistan.

14. Complainants led evidence on the stance at variance with respondents that Waqif, during his life time, has nominated Sayed Muhammad Jawad Hadi (complainant no.3) for administering the affairs of Madrasa of Peshawar and Madrasa of Orakzai. This nominated administrator has created Trust with the name of Shaheed Allama Arif Hussain Al Hussaini Trust and scribed Trust Deed for running the affairs of all the waqf properties situated at Peshawar and Orakzai. The administration of Madrasa of Peshawar is


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running the business of Madrasa of Orakzai through appointment of principal for fixed tenure extendable with the consent of administration of Madrasa of Peshawar. Allama Abid Hussain Shakiri (complainant No.1) was duly appointed as Principal by the administration of Madrasa of Peshawar. The complainants have forcibly dispossessed him without authority and assumed the illegal control of the Madrasa of Orakzai along with market, Hiace stand and Islamia School which obliged them to invoke the jurisdiction of the Court under Illegal Dispossession Act, 2005. Conviction and sentencing accused, compensation of complainants and restoration of possession of the premises is prayed for.

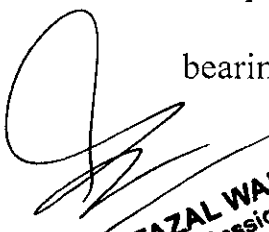
15. Accused adduced evidence on defense line that the waqif was belonging to their family of Sadath and was their consanguine. He being from the same blood, locality and for being close relative has announced in written a local committee consisting upon the elders of each tribe of the locality for construction of the Madrasa of Orakzai in eighties and since then, it is that committee which runs the business of the Madrasa of Orakzai. Committee appoints the principal for fixed term extendable with its consent. Complainant No. 1 has completed his tenure and his services are no more required due to his disputed audio clip and this was within the competence of the Committee. Termination of services of the Principal was demand of the locals on the score of disputed video clip wherein principal has expressed some unwanted talks about the graves located in the area. There was no forcible dispossession and no criminal intent. Dismissal of complaint was prayed for.

16. The documentary evidence produced by the complainant party Ex.PW-7/1 to Ex.PW-7/12 are documents reflecting the sale transactions as well as

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ownership of different properties of the Madrassa of Orakzai; but, all these documents are neither disputed nor this forum is competent to determine its authenticity. Ex.PW-7/13 is the Trust Deed but still questions pertaining to its registration as per law, authorization by the Waqif and its enforceability are questions could not be answered in pending proceedings. Similarly, the evidence produced by respondent party as Ex.DW-1/1 to Ex.DW-1/2 is reflecting the constitution of local committee for running the Administration of Madrassa of Kalaya but again these questions can only be determined by the forum other than this. Same is the case with other documentary evidence available on file including Ex.PW-6/x-1 to Ex.PW-6/x-2 as well as Ex.DW-1/x-1. To comprehension of this Court, the contents, execution, admissibility and relevance of all these documents can only be determined by the Civil Court, being Court of General Jurisdiction. In this regard wisdom can be drawn from case titled "Nadeem Waqar Khan vs Javid Masood Ahmad Khan" reported as PLD, 2020 Sindh 8; wherein, it is settled that complaint under Illegal Dispossession Act, 2005 is maintainable against any person who forcibly dispossessed the occupier or owner but such remedy is never meant to settle Civil dispute or a substitute for Civil suit.

17. It is in the oral evidence of the complainant that the Madrassa of Kalaya was run by the Madrassa of Peshawar for the last three decades. The transactions pertaining to different properties as Ex.PW-7/1 to Ex.PW-7/12 revealing the ownership of Madrassa of Kalaya in safe custody of Madrassa of Peshawar is another fact confirming the oral evidence. The investigation report Ex.PW-9/2 consist of 29 pages also speaks about the possession of the complainants as well as forceful dispossession by the respondents. Certificate bearing No.177/20 dated 27-08-2020, issued by Wifaq ul Madaris, Lahore is


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establishing the fact that the Madrassa of Kalaya was run by Madrassa of Peshawar. The complainant produced as much as 09 (nine) witnesses including Investigation Officer and all of them had duly testified the possession of the complainants and their forcible dispossession. The documentary as well as the oral evidence of the complainant and the report of Investigation Officer is sufficient to establish that the complainants were occupier within the meaning of Section 2(c) of Illegal Dispossession Act, 2005. If at all, the respondents or any other person claiming any right attached thereto, they could have been approached to proper course of Law instead of opting forcible dispossession of the complainants.

18. As is clear above that the complainants were occupiers and have been forcefully dispossessed but who dispossessed the complainants is still the question that has to be answered in the evidence of complainants. It is alleged by the complainants that respondents with the help of mob comprising of more than forty persons have dispossessed them. The evidence of the complainant when thoroughly perused, none of the witnesses including eye witnesses could specify or identify anyone by name and all of them are speaking about the mob. Investigation report as well as examination of Investigation Officer is also silent about the identification of accused and termed it the activity of the mob. In this scenario no one can be sentenced despite the fact that forcible dispossession has taken place.

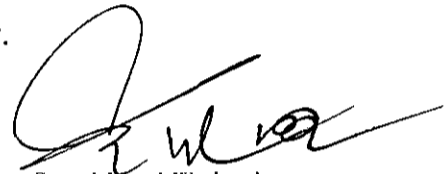
19. For what has been discussed above, this Court finds that the complainants being occupiers have illegally been dispossessed by the mob to control and occupy the property. However, the complainants could not prove their allegations against the specific persons (accused) through cogent and confidence inspiring evidence; therefore the complaint is dismissed to the


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extent of imposing punishment and thus respondents/accused are hereby acquitted from the charges leveled against them. The accused/respondents are on bail; their sureties are discharged from the liabilities of bail bonds. As for as, forcible dispossession with intent to control is concerned, such phenomena has been proved and thus restoration of possession of the property to the complainants is being ordered in line with Section-8 of the Illegal Dispossession Act, 2005. SHO of the Police Station Kalaya is directed to extend assistance as may be required for restoration of the possession to complainant within time frame of one month.

20. File be consigned to District Record Room Orakzai after necessary completion and compilation within span allowed for.

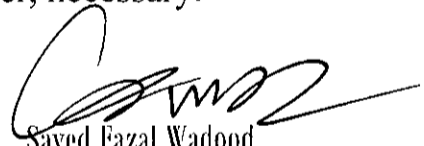
Announced
17th July, 2021



Sayed Fazal Wadood,
AD&SJ, Orakzai at Baber Mela

CERTIFICATE

Certified that this judgment is consisting of (21) pages. Each page has been read, corrected and signed by me wherever, necessary.



Sayed Fazal Wadood,
AD&SJ, Orakzai at Baber Mela