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**IN THE COURT OF ADDITIONAL SESSIONS JUDGE, ORAKZAI.**

IDA No: 02 of 2022  
Date of Institution: 23.05.2022  
Date of Decision: 15.06.2022

1. Mehraban Khan son Sultan Khan, resident of Qaum Mishti, presently residing at Jarma Kohat.
  2. Aseel Khan son of Raza Khan resident of Qaum Mishti, Tappa Mamozai District Orakzai.
- ..... (Complainants)

**VERSUS**

1. Ubaid Gul son of Khayal Gul, resident of Hijam Mishti, District Orakzai.
  2. Umar Gul son of Khayal Gul, resident of Hijam Mishti, District Orakzai.
- ..... (Accused/Respondents)

**Present:**

Mr. Khursheed Alam Advocate for complainant.

**Complaint u/s 3, 7 & 8 Illegal Dispossession Act, 2005**

**JUDGMENT**

The story narrated in the contents of complaint is such that the complainants are owners of dwelling house consisting of 05 bedrooms and agriculture land attached to such house, situated at Alwara Mela behind Mishti Bazar. The house and property in question have been delivered peaceful possession to the accused/respondents against the services with further consideration of PKRs. 10,000/- per annum as lease money. A dispute was emerged between the parties to the petition that has been resolved through Local Jirga which has properly been documented vide Deed dated 16-04-2020. On completion of one year period, the lease money was not paid and in response to the demand of complainant, ruthless cutting of tree was started. This forcible dispossession with no title in the disputed property being unlawful act with criminal intention was subjected in instant petition under the provision of Illegal Dispossession Act, 2005.

**RAYED FAZAL WAHOOOD**  
District & Sessions Judge  
Orakzai at Hangu

(6)

2. Statement of complainant was recorded on oath and the matter was referred to SHO, Mishti Mela for investigation. Investigation report was received and counsel for petitioner was heard on maintainability.

3. The Investigation Officer has visited the spot and prepared report. He procured the documents pertaining to ownership as well. It is in report that the matter between the parties has already been resolved through local Jirga. The property was delivered to the accused/respondents against the services but such delivery of possession was only for utilization without transfer of ownership. The property was reported as ownership of the complainants and the possession of respondents was termed illegal and with no title.

4. Mr. Khurshid Alam Advocate representing complainant while arguing the maintainability of petition was of the stance that the ownership of the property is established in favor of complainants. The possession of the respondents has also been reported as illegal. It was added that all the ingredients required for taking cognizance are being fulfilled and the petition is fit for issuing notice to respondents and procuring evidence. The counsel for complainant concluded that the matter was also dragged to the Civil Court which is pending adjudication but the respondents being revolts recourse to quarrel which is being subjected in instant petition.

5. The Court after receipt of the Investigation Report is required to apply its mind whether to further proceed or not with the matter. Consequential power of the Court is flowing out to hold the complaint maintainable or otherwise (PLD-2008 Peshwar-49). This Court is therefore, determining the maintainability by examination of the contents of the petition, investigation report, the available evidence and professional assistance rendered by learned counsel representing complainant, in following terms.

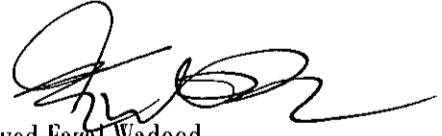
6. In order to constitute an offence under Section-3(I) of the Illegal Dispossession Act, 2005, the complainant is required to prove that; the

complainant is 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 without any lawful authority; that the accused have done so with the intention to dispossess (to grab or to control or to occupy) the complainant. In present case, the Investigation Reports, the Jirga of local elders and other material speaks about the ownership of complainant but possession of the respondents is covered under lease agreement that can easily exclude the existence of prerequisites for attracting the provisions of the Illegal Dispossession Act, 2005. Similarly, where dispute between the parties with regard to the property involved in the complaint is pending adjudication before Civil Court where both parties are leading evidence, proceedings under Illegal Dispossession Act cannot be initiated.

7. For what has been discussed above, this Court finds that the contents of the application are neither supported in Investigation Report nor documents procured during investigation. Similarly, law bars the lessee and lessor as well as persons in Civil litigation to move the Court under the provisions of Illegal Dispossession Act, 2005. Resultantly, the petition stands dismissed under Section-5(2) of the Illegal Dispossession Act, 2005, on the score of maintainability.

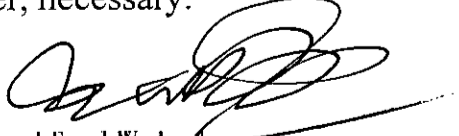
8. File be consigned to District Record Room Orakzai after necessary completion and compilation within span allowed for.

Announced in open Court  
15-06-2022

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

CERTIFICATE

Certified that this judgment is consisting of three (03) pages. Each page has been read, corrected and signed by me wherever, necessary.

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