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IN THE COURT OF **ABDUL BASIT**  
ADDITIONAL SESSIONS JUDGE-II, ORAKZAI

**Order---08**

Complainant in person present.

05.11.2024

Through this order I shall decide that whether complaint filed by Essa Khan, herein referred complainant, against Mohabbat Shah & fourteen others, herein referred respondents, under sections 3 & 4 of The Illegal Dispossession Act, 2005 for awarding punishment to respondents and the restoration of possession of the property is maintainable or not.

Complainant contended that he was a respectable citizen of Pakistan and belonged to a respectable family; that a house & landed property situated in Kharki Dabori, District Orakzai, the suit property, was ancestral property of respondent no. 1, who through oral agreement had leased it out to him for a period of 12 years in 2016; that the suit property was in his possession since then and he was cultivating it but few months ago, respondent no. 1 intended to dispossess him from suit property and made many attempts to evict him from there; however, due to intervention of elders of the locality, the issue was resolved; that the respondent no. 1 continued his illegal interference, whereupon, he had filed a civil suit against him in the district Courts Kalaya, where, he was granted injunction; that on 12.08.2024 at 1000 hours, respondents no. 1-12 armed with deadly weapons attacked him and forcibly dispossessed him along with his family from the suit property and forcibly retained all the household articles and cattle laying there; therefore, complainant has prayed for awarding the maximum punishment to respondents no. 1-12 in accordance with law and to restore him possession of the suit property.

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05/11/2024  
Abdul Basit  
Addl. District & Sessions Judge-II  
Orakzai at Bahar Mela,  
Haragu

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On receipt of complaint, it was marked/sent to the SHO concerned for investigation. SHO filed his report. Arguments on maintainability of complaint heard and record perused.

In view of the valuable arguments advanced by the learned counsel for parties, record before the court & investigation report, it is held that the SHO concerned has clearly mentioned that the disputed property was the ancestral property of respondent no. 1, who had leased out to complainant and was in his possession for the last seven years but since the respondent no. 1 intended to shift to his house; therefore, complainant had allegedly vacated the suit property and left to his village at district Khyber. Besides this, admittedly there existed a relationship of landlord and tenant between complainant and respondent no. 1, whereas, the Act specifically speaks about the protection of lawful owners and occupiers of immovable properties from their illegal or forcible dispossession therefrom by the property grabbers.

The basic idea and philosophy behind the enactment of Illegal Dispossession Act, 2005 was to rid the people from menace of *qabza* group, property grabbers and land mafia and curb their activities to the maximum. In order to qualify to be a member of either of the three groups or categories mentioned above, complainant had to bring sufficient evidence to show that respondents belonged to a *qabza* group, land mafia or have credentials or antecedents of being property grabbers, the wisdom is drawn from case law reported in PLJ 2012 Peshawar 198 (DB).

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Likewise, in case law reported 2022 MLD 630, it was held that the main object and purpose of promulgation of the IDA is to curb the activities of the property grabbers and this Act applies only to dispossession from immoveable properties by grabbers/land mafia and not to the cases of dispossession by ordinary persons who cannot, by any stretch of imagination, be termed as land grabbers/land mafia/*qabza* group. Such disputes include disputes over possession of the immoveable properties between co-owners or co-sharers, between landlord and tenants, between persons claiming possession on the basis of inheritance, between persons claiming to be the owners of the land on the basis of title documents in their favour or cases with a background of an ongoing private dispute over the relevant property.

Since, a land owner cannot be a land/property grabber; therefore, the proper course for the complainant was to knock the door of civil court for his alleged eviction without due course of law, which remedy he had already availed by filing a civil suit pending adjudication before the court of learned Civil Judge, Kalaya. In the backdrop of my detailed discussion, it is held that the complaint in hands is not maintainable, hence, dismissed.

File consigned to record room after completions and compilations.

**Announced**  
05.11.2024

  
**(Abdul Basit)**  
Additional Sessions Judge-II,  
Orakzai