

## **Amendment in the Illegal Dispossession Act, 2005**

The Illegal Dispossession Act was enacted on 30<sup>th</sup> June 2005. The preamble of the Act clarifies the purposes of its enforcement, which reads as follow:

"Whereas it is expedient to protect the lawful owners and occupiers of immovable properties from their illegal or forcible dispossession there from by the property grabbers".

The object of the Act was to provide deterrent punishment to the offender (Property grabbers) and to provide speedy, effective and adequate relief to the illegally dispossessed of immovable property. In order to discourage and reduce the menace of illegal dispossession, section 3(1) provides for punishment which extends to 10 years, imposes fine and victim of the offences are compensated in accordance with the provision of section 544A of Criminal Procedure Code 1898. Section 3(1) of the Act reads as under.

### **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 owner or occupier of such property".

(2) Whoever contravenes the provisions of 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 provisions of section 544 of the Code.

After the enforcement of the Act, it was observed that the law was being misused by the litigants co-sharers, persons claiming possession on the basis of inheritance or other legal rights. Persons having or claiming possession on the basis of lawful agreements instead of going to a civil court or appropriate court for claiming possession or determination of their rights in property they have started approaching to the Sessions Court

under the Act, the remedy being criminal in nature, it is speedy and can caused harassment to the other party.

A full bench of **Lahore High Court in a Writ Petition No.11952 of 2006** has examined the various provisions of the Act in the perspective of its practical implication and for the purpose of providing guidance to all the Courts of Sessions in the Province of the Punjab, the High Court declared as follows:-

- (i) The illegal Dispossession Act, 2005 applies to dispossession from immovable property only by property grabbers/qabza group/land mafia. A complaint under the illegal Dispossession Act, 2005 can be entertained by Court of Sessions only if some material exists showing involvement of the persons complained against in some previous activity connected with illegal dispossession from immovable property or the complaint demonstrates an organized or calculated effort by some persons or deceit property to which they have no lawful, ostensible or justifiable claim. In the case of an individual it must be the manner of execution of his design which may expose him as a property grabber.
- (ii) The Illegal Dispossession Act, 2005 does not apply to run of the mill cases of alleged dispossession from immovable properties by ordinary persons having no credentials or antecedents of being property grabber/qabza group/land mafia, i.e. cases of disputes over possession of immovable properties between co-owner or co-sharers, between landlords and tenants, between persons claiming possession on the basis of inheritance, between persons vying for.
- (iii) A complaint under the Illegal Dispossession Act, 2005 cannot be entertained where the matter of possession of the relevant property is being regulated by civil or revenue court.
- (iv) The Courts of Sessions in the Province of the Punjab were directed to examine all the complaints under the Illegal Dispossession Act, 2005 pending before them and dismiss those complaints forthwith which ere found not maintainable in terms of the above declarations.

The High Court further observed that:-

- (i) The law does not define the person or class of persons whose Illegal activities were desired to be curbed.

- (ii) There is no provision of appeal to challenge interim or final order passed by the court which is unjust and un-Islamic.
- (iii) There is no involvement of revenue authorities in the case under the Act, which appears to be relevant than the police authorities.

The Lahore High Court referred the judgment to the Ministry of Law, Justice and Parliamentary Affairs, suggesting to examine the Act in the light of Andhra Pradesh Land Crabbing (Prohibition) Act 1982 (Act XII of 1982) which deals with the issue somewhat identical to that dealt with by the Act of 2005.

In another reported judgment **PLD 2007 Peshawar 123 re: Yasfas vs. State**. The single bench of **Peshawar High Court** has observed that the provisions of general law contained in section 410 of Criminal Procedure Code will apply in absence of any right of first appeal in any special statute. The relevant para of the Judgment is reproduced below.

"The last point raised by the complainant with regard to maintainability the appeal has to be taken up, prior to the discussion on other points because the said objection goes to the root of the case.

Sections 9 of the Act provides that: "Unless otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1898 (V of 1898), shall apply to proceedings under this Act".

The whole body of the said Act does not contain any provision with regard to the right of the appeal. Therefore, in view of section 9, the remedy shall be available under the Criminal Procedure Code. The right of, at least, one appeal against any order (particularly against the order of conviction) is an undoubted established principle and practice of criminal justice. Thus the objection with regard to the maintainability of the appeal is without force because anything for which there is no contrary provision in the Act of 2005, the Criminal Procedure Code shall be applicable and since there is no provision of appeal in the Act, therefore, an appeal under section 410, Cr.P.C is the appropriate remedy which provides that "any person convicted on a trial held by a Sessions Judge, or an Additional Sessions Judge may appeal to the High Court".

**The Supreme Court of Pakistan in its judgment Rahim Tahir Vs Ahmed Jan and other (PLD 2007- 423) observed the following:**

"There is no cavil to the legal position that illegal Dispossession Act, 2005 having no retrospective effect, may not be applicable to the cases of unauthorized occupants pending before any other forum on the date of promulgation of the above Act but if the case of an illegal occupant was not already pending before any other forum on the date of enforcement of this Act, the same would squarely fall within the ambit of this Act. The expressions "grab, control or occupy" used in section 3 of the Act cannot be restricted to the illegal occupants who entered in the premises subsequent to the promulgation of the Act rather all cases of illegal and unauthorized occupants would be subject to the Illegal Dispossession Act, 2005 except the cases which were pending adjudication before other forums.

The Illegal Dispossession Act, 2005, is a special enactment which has been promulgated to discourage the land grabbers and to protect the right of owner and the lawful occupant of the property as against the unauthorized and illegal occupants. The careful examination of the relevant provisions in the Act would reveal that all cases of illegal occupants without any distinction would be covered by the Act, except the cases which were already pending before any other forum. The respondent admittedly was inducted into the premises by a person, who was neither owner nor a lawfully constituted attorney of the owner to have any authority to enter into an agreement of sale on behalf of the owner or deliver the possession of the property to the respondent and thus apparently, he was an illegal and unauthorized occupant of the premises. The contention that Illegal Dispossession Act, 2005, is not applicable to an illegal occupant, who was in occupation of the premises prior to the date of the promulgation of the Act, has no substance. The purpose of this special law was to protect the right of possession of lawful owner or occupier and not to perpetuate the possession of illegal occupants.

The Supreme Court has not directly or indirectly set aside the ratio settled in the judgment of Lahore High Court. Therefore, the proposals for amendments in law as suggested by the Lahore High Court are still relevant.

If the law is amended in the light of the proposals the application of the Act will also result in avoiding the misuse of the provisions in genuine dispute between co-owner or those who inherent the property from the other person.

The Lahore High Court in aforementioned judgment besides other found the following flaws.

- 1 Involvement of Revenue Officer, in section 5 of the investigation and procedure, where the dispute is primarily between the owners of contiguous properties and concerned only demarcation.
- 2 A provision needs to be added to provide for right of appeal against order made under sub section (1) of section 8 of the Act.

There is difference of opinion between the Peshawar High Court and the Lahore High Court with regard to the availability of the right of appeal against an order passed by the Court under the said Act.

According to the Peshawar High Court, any thing for which there was no contrary provision in illegal Dispossession Act, 2005, the Code of Criminal Procedure, 1898 would be applicable and since no provision of appeal existed in the Act, an appeal under section 410, Cr. P.C was appropriate remedy. On the other hand, the Lahore High Court is of the view that a right of appeal can be exercised only if it is so specifically provided in any law against conviction and sentence passed by the Court of Sessions and is available to the convict. The said Act is a penal statute and in an appropriate case a person guilty of an offence under the said law be sentenced to a term of imprisonment and fine. Absence of a right of appeal in such case appears to us to be extremely unjust and oppressive. The Lahore High Court has recommended amendments in Act to provide a right of appeal.

In a case titled Government of Pakistan through Ministry of Defence V the General Public (PLD 1989 SC 6) a right of appeal against one's conviction on a criminal charge was recognized by the Shariat Appellate Bench of the Supreme Court of Pakistan as Islamic right and the same was extended even to conviction recorded by the Court Martial. Through the said judgment the relevant provisions of the Army Act, 1952, the

Pakistan Navy Ordinance, 1961 and the Pakistan Air Force Act, 1953 were subsequently amended and a right of appeal is provided against the decision of Court Martial.

In order to resolve the issue and to clarify, it is more appropriate that a provision of appeal may be added. It is proposed that the Act may be amended to provide one right of appeal to the High Court against order of trial court. Even otherwise, section 404 of the Code of Criminal Procedure, 1898, provides;

"No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force."

Having examined the above observations of the Lahore High Court, it appears that the proposed amendments are justified and in accordance with the safe administration of the criminal justice and would be helpful for the effective application of the said Act. The proposed amendment is indicated below:-

Section 8-A Appeal.\_ A person aggrieved by any order made under sub-section (2) of section 3 and sub-section (1) of section 8 may within thirty days prefer an appeal to the High Court.

#### **Commission's Deliberations on 05 December, 2009**

While considering the consequential amendments in Laws as mentioned in reports 114, the Commission also approved amendment in the Illegal Dispossession Act, 2005 as suggested in the working paper.