FEDERAL CONSTITUTIONAL COURT OF PAKISTAN
(Original/Appellate/Advisory Jurisdiction)

PRESENT:
Justice Ali Baqar Najafi
Justice Rozi Khan Barrech
Justice Syed Arshad Hussain Shah

C.P.L.A. No.07-L of 2017
[against the impugned order dated 19.12.2016 passed by the Lahore High Court, Lahore in Writ Petition No.12411 of 2011]

Tahir Mustafa .... Petitioner (s)

Versus

Additional Sessions Judge, Chiniot & others .... Respondent

For the Petitioner(s) : Mr. Mudassar Khalil Abbasi, ASC

For the Respondent(s) : Nemo.

Date of Hearing : 03.11.2026

JUDGMENT

ALI BAQAR NAJAFI, J. Through this Civil Petition for Leave to Appeal **[CPLA]** under Article 185(3) now 175-F(1)(c) of the Constitution of the Islamic Republic of Pakistan, 1973 [**the Constitution, 1973**] leave to appeal is sought against the impugned order dated 19.12.2016 passed by the Lahore High Court, Lahore [**High Court**] whereby the Writ Petition filed by the petitioner against the acquittal order passed by the Additional Sessions Judge, Chiniot dated 02.05.2011, was dismissed

2. **Brief facts** giving rise to the filing of instant **CPLA** are that petitioner's father namely Ghulam Mustafa and his uncles, namely, Muhammad Siddique and Muhammad Aslam had jointly purchased one Kanal land situated in Khata No.17/2, Khasra No.537 in village Lalian through a registered sale deed dated 24.11.1975 for a consideration of Rs.5,000/- from Zafar Abbas and Mazhar Abbas etc. and also took over the possession of the land.

Mutation No.5151 dated 29.12.1975 was also sanctioned in their names. Thereafter, they also got approved a site plan from the Town Committee and had also laid down the foundation of eight shops, one room and gallery at the said property. However, some part of the land measuring 04-Marlas and 47-square feet was acquired by the Provincial Government [date not disclosed] for the construction of a road, whereas, they remained in possession over 15-Marlas and 225-square feet of piece of land.

3. **According to the petitioner,** on 30.05.2010, at about 09:00 a.m., the petitioner was informed by the witnesses that Saif son of Khuda Bakhsh and Ghulam Ali son of Burkuhdar respondents No.2 and 3 respectively, had forcibly taken over the possession of the land and dismantled the foundation. They also extended threats of dire consequences to him. According to the petitioner, the respondents No.2 and 3 belonged to Qabza Group and criminal case was also registered against them. However, the trial court while acquitting the respondents categorically observed that no documentary evidence was produced by the petitioner to show his possession over the disputed property on the alleged date and that the parties were joint owners in the same Khata, therefore, without resorting to a partition of the said property, the possession under the Illegal Dispossession Act, 2005 could not be recovered. Both respondents were acquitted by the trial court vide judgment dated 02.05.2011 which was upheld by the High Court vide impugned order dated 19.12.2016, hence this CPLA.

4. **Arguments heard. File perused.**

5. **Admittedly,** in the complaint under Sections 3,4,5,6,7 & 8 of the Illegal Dispossession Act, 2005, filed by the petitioner against the respondents No.2 and 3, it was categorically mentioned in Paragraph No.6 that on 30.05.2010 at about 09:00 a.m., when the complainant was present in his house situated at Lalian, he got information that respondents were trying to take possession of the said land upon which he along with Sheikh Muhammad Bakhsh [PW-2] and Muhammad Khan [given up] went at the spot where they saw the said respondents, armed with firearm weapons, were present along with tractor and were dismantling the

foundation and were constructing on their land. The respondents No.2 and 3 were reprimanded but they threatened the petitioner and forcibly dispossessed him. It was also mentioned in the complaint that after the demise of father of the petitioner and his uncles, the property had devolved upon him and the other share holders but, as obvious, they did not join the petitioner. However, no inheritance mutation was enclosed but he filed the complaint in his own capacity. In paragraph No.7, it was mentioned that at present Khata number was 396/37, Khasra No.537/2 was comprised of 05-Kanals and 14-marlas. In the inquiry report dated 12.07.2010, it was found by the police that petitioner's father and uncles had got possession after demarcation over the land measuring 01-Kanal in Khasra No.537 in the year 1975. It was also mentioned that the grand-father of the petitioner namely Khizar Hayat was also related to respondents No.2 and 3 whose father namely Allah Dad had land in Khasra No.537 and that the said respondents had no land in Khasra No.537/1. It was also observed that the boundary wall had been constructed and a door had been installed by the respondents towards their Haveli which has been locked by them. After the cursory statements by the witnesses, the respondents No.2 and 3 were summoned and on 01.09.2010, a charge sheet was framed against the respondents to which they pleaded not guilty. Tahir Mustafa [petitioner/ complainant] appeared as PW.1 and in cross-examination he also admitted that there are other co-sharers in Khasra numbers and Khata numbers in which his land was situated and no suit for partition before any revenue court was filed by him but he claimed to have enjoyed the possession for the last 35-years. He also admitted that joint owner owned land in Khasra No.537/2 and 537 and that Khuda Bakhsh and Barkhudar were real brothers. He admitted that to his knowledge no demarcation had taken place but his father and uncle had laid down the foundation, but surprisingly, construction was not completed and even the boundary wall was not installed. Likewise, Sheikh Muhammad Bukash Safari [PW-2] admitted that the petitioner/complainant was not related to him but was from his Braderi and that his house

was situated 4/5 furlong from the place of occurrence. He had shown ignorance about the fact that property was a joint property and that the predecessor of both parties were real brothers. He admitted that the property was not demarcated in his presence. Riaz Hussain S.I [PW-3] admitted that he did not enclose any report from the concerned Patwari which is also not part of the record. The petitioner has referred to demarcation [Exh.PC] and Jamabandi for the year 2004 [Ex.PD] and mutation of land falling in Khasra No.537 and other revenue documents.

6. **The entire case** of the petitioner/complainant was the site plan [Exh. PG] and the dismantle foundation of the shops and other portions of the disputed land. However, we have no hesitation to hold that the documents, have not proved the exclusive and updated possession of the petitioner/complainant, who admittedly had not filed any application for preparation of a site plan. It is also not denied that due to afflux of time, Khasra numbers have been changed. The mutation of the property and the possession claimed by the petitioner in the year 1975, followed by the foundation for construction laid down did not culminate into a boundary wall or a constructed portion. As already observed, the report of the revenue officer/Patwari, on the basis of which the police had prepared its report, is not enclosed and was never presented in the evidence, which is fatal to the case of the petitioner. The record does not show that respondents were members of any Qabza Group yet the basic ingredients of an exclusive possession and its forcible dispossession are missing in the present case. Who remained in possession since 1975 to 2010 over the period of 35 years in the absence of inheritance mutation as well as demarcation/partition of the land and who was in exclusive possession is not answered from the record. This is the reason why the trial court after recording of evidence had acquitted the respondents. We have not been able to persuade ourselves to disagree with the acquittal order. Needless to mention here that after the acquittal there is double presumption of innocence and when the acquittal order has been upheld by the High Court the

presumption of innocence became stronger in favour of the respondents.

7. At this stage, we deemed appropriate to observe that petitioner, if so advised, may resort to the appropriate remedy on the civil/revenue side under the law so as to claim possession of the owned land measuring 15-Marlas, 225-square feet. A reference may be given to Najma Bibi case[1] rightly decided by the Supreme Court.

8. In view of above, this petition is meritless and is **dismissed** and leave is **refused.**

JUDGE

JUDGE

JUDGE

Islamabad
03.11.2026
'Not Approved for Reporting'
Adeel

[1] Najma Bibi Versus Zakir Abbasi [2026 SCMR 1250]