

**240 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP-12905-2020 (O&M)
Date of Decision: 06.04.2022**

AVTAR SINGH

.....Petitioner

vs.

STATE OF HARYANA AND OTHERS

.....Respondent

BEFORE:- HON'BLE MR. JUSTICE SUDHIR MITTAL

Present:- Mr. Ashok Kumar Khubbar, Advocate for the petitioner.

Ms. Tanushree Gupta, DAG, Haryana.

Sudhir Mittal, J. (Oral)

One Kehar Singh was the original owner of the land in dispute. He died on 03.03.1987, childless, as a bachelor and intestate. Since there was no successor to his property, the State of Haryana filed a suit for declaration of its title in the year 1988, which was decreed vide judgment and decree dated 23.02.1998. The father of the petitioner was a party in that suit as allegedly he had come into possession in the year 1989. He had claimed title to the suit property but his claim was rejected. Thereafter, mutation was entered in favour of the State in the year 2007, and consequently, the petitioner filed a civil suit in the same year seeking a declaration that decree dated 23.02.1998, was not binding upon his rights.

Vide judgment and decree dated 01.03.2016, the suit was partly decreed. It

was held that judgment and decree aforementioned was not binding upon his rights as he was not a party thereto and that he could not be dispossessed except in due course of law. The appeal filed by the State of Haryana was dismissed vide judgment and decree dated 09.05.2018. Thereafter, a petition under the Haryana Public Premises Land (Eviction and Rent Recovery) Act, 1972 (hereinafter referred to as the Act) was filed for eviction of the petitioner. The petitioner submitted objections but the same were not decided and, thus, the present writ petition was filed challenging the proceedings initiated under the aforementioned Act.

Written statement on behalf of the State of Haryana is on record, wherein, it has been stated that it is the owner of the land in dispute and, thus, it is a 'public premises'. The proceedings initiated were within jurisdiction and there was no illegality therein.

Learned counsel for the petitioner has relied upon judgment in *Raj Kumar Devindra Singh Vs. State of Punjab, 1973 AIR (SC) 66*, to argue that a person in possession of property which was declared to be a public premises subsequently could not be evicted under the Act.

Learned State counsel submits that the aforementioned judgment is distinguishable. In the said case, the petitioners were the sons of the erstwhile owner and they were in possession of the property in their own right. No general proposition of law has been laid down that a person in possession of a premises which has subsequently become a public premises cannot be evicted under the Act. Moreover, the Civil Court decree dated 01.03.2016, permits eviction of the petitioner in accordance with law and, thus, the proceedings are within jurisdiction. Admittedly, the father of the petitioner came in possession of the property after the original owner

left the village as has been pleaded in the writ petition itself. But he has not been able to explain the nature of his possession. In the earlier suits, he had sometimes claimed to be a tenant and other times to be the owner through sale deed, which was not found to be correct by the Civil Courts.

From the pleadings and arguments of the parties, it is established that the original owner namely Kehar Singh had left the village allegedly sometime in the year 1974. He died on 03.03.1987. Admittedly, the petitioner came in possession of the land in dispute after Kehar Singh had left the village. In the civil proceedings, he has not been able to establish his title to the said property. He has even failed to establish the nature of his possession. It is, thus, obvious that he was an encroacher. The judgment in **Raj Kumar Devindra Singh (supra)** cannot come to his rescue as it is distinguishable on facts. In the said case, the appellants before the Supreme Court were the sons of Maharaja Bhupinder Singh of Patiala and they constituted a joint Hindu family along with their elder brother Yadavindra Singh and their father Maharaja Bhupinder Singh. They were in possession of the property in dispute in their own right being the sons of Maharaja Bhupinder Singh and the property being ancestral in nature. Yadavindra Singh sold the property to the Government of Punjab and delivered actual possession of certain portion and agreed to deliver possession of the rest subsequently. Since possession was not delivered, proceedings under Punjab Public Premises Land (Eviction and Rent Recovery) Act, 1958 (hereinafter referred to as the Punjab Act) were initiated and this action was challenged by way of a writ petition which was dismissed by a learned Single Judge. Letter Patent Appeal also failed and, thus, the Supreme Court was approached. Under the circumstances, the

Supreme Court held that the appellants were in possession of the property in their own right before it was sold to the Government and, thus, it could not be said that they had come into possession of public premises before or after the commencement of the Punjab Act. They were already in possession in their own right. This judgment does not lay down any absolute proposition of law that a person in possession of property which becomes Government property after he has entered into possession, cannot be evicted under the Act. Section 2(e) of the Act defines public premises as a premises belonging to or taken on lease or requisitioned by or on behalf of the State Government. Section 3(a) thereof provides that a person in possession of public premises otherwise than under any allotment lease or grant is in unauthorized possession of a public premises whether possession is before the commencement of the Act or after its commencement. The facts of this case clearly show that the property in dispute came to be declared as owned by the Government vide judgment and decree dated 23.02.1998 and, thus, even though the petitioner came into possession prior to the said date, he is a person in unauthorized possession of a public premises (as defined by Section 2(e) of the Act) otherwise than in pursuance of allotment, lease or grant.

For the aforementioned reasons, the writ petition has no merit and is dismissed.

06.04.2022
Amandeep

(SUDHIR MITTAL)
JUDGE

Whether Speaking/Reasoned ?

Yes/No

Whether referred to Reporters ?

Yes/No