

## **State Of Haryana And Ors. vs Khalsa Motors Ltd. And Ors. on 30 August, 1990**

**Equivalent citations: JT1991(5)SC1, 1990(2)SCALE374, (1990)4SCC659, 1990(2)UJ526(SC), AIRONLINE 1990 SC 270**

**Author: S.C. Agrawal**

**Bench: P.B. Sawant, S.C. Agrawal**

### **JUDGMENT**

S.C. Agrawal, J.

1. This appeal by special leave has been filed against the judgment of the High Court of Punjab & Haryana dated November 24, 1989 in Civil Appeal No. 2488 in Regular Second Appeal No. 2488 of 1988 whereby the High Court has held that the order dated September 25, 1970 passed by the Collector of Hissar under the Punjab Public Premises and Land (Eviction & Land Recovery) Act, 1959 (hereinafter referred to as the '1959 Act') is illegal and void and a declaration was granted in favour of Respondent No. 1, M/s. Khalsa Motor Co. Ltd., that the State of Haryana, appellant No. 1 will not be entitled to dispossess the said respondent from the disputed property in pursuance of the said order of the Collector Hissar and the State of Haryana has been restrained from dispossessing respondent No. 1 in pursuance of that order.

2. The Sub-Divisional Engineer, B & R, P.W.D., Hissar, filed an application before the Collector, Hissar under the 1959 Act wherein it was stated that respondent No. 1 is in unauthorised possession over an area measuring 1354 sft. in Kila Stone 102/2, Delhi-Hissar Road and that the said land is in the ownership of the State Government and it was prayed that respondent No. 1 may be evicted from the said land forthwith in public interest. On the said application a show cause notice was issued to respondent No. 1 and after hearing respondent No. 1, the Collector, Hissar passed an order dated September 25, 1970 wherein it was held that respondent No. 1 has encroached upon PWD land and respondent No. 1 was ordered to vacate the land in dispute measuring 1354 sft. within 30 days of the date of receipt of the said order. Respondent No. 1 filed a writ petition (C.W. No. 3394 of 1970) in the High Court of Punjab & Haryana wherein he challenged the validity of the provisions of the 1959 Act as well as the order of the Collector, Hissar dated September 25, 1970. During the pendency of the said writ petition in the High Court the Haryana State Legislature enacted the Haryana Public Premises and Land (Eviction & Land Recovery) Act, 1972 (hereinafter referred to as the '1972 Act'). The said Act was brought into force with effect from August 10, 1959 except Sections 11, 18 and 19 which came into force with effect from the date of publication of the said Act in the Gazette, i.e. November 9, 1972. By Section 18 of the 1972 Act, the 1959 Act was repealed and in Section 19 of the

1972 Act it was provided that notwithstanding any judgment, decree or order of any Court, anything done or any action taken (including rules or orders made, notices issued, evictions ordered or effected, damages assessed, rents or damages or costs recovered and proceedings initiated) or purported to have been done or taken under the 1959 Act shall be deemed to be as valid and effective as if such thing or action was done or taken under the corresponding provisions of the 1972 Act, which shall be deemed to have come into force on August 10, 1959. C.W. 3394 of 1970 filed by respondent No. 1 was dismissed by the High Court by order dated December 12, 1979. Thereafter respondent No. 1 filed an appeal before the Commissioner, Hissar Division, against the order of the Collector, Hissar dated September 25, 1970. The said appeal of respondent No. 1 was dismissed by the Commissioner by order dated October 7, 1982. The Commissioner affirmed the finding recorded by the Collector, Hissar, that the land in dispute is in the ownership of the State Government and the possession of respondent No. 1 over the same is illegal and unauthorised. Respondent No. 1 filed another writ petition (C.W. 5268 of 1982) in the High Court of Punjab & Haryana wherein he challenged the order of Commissioner, Hissar Division, dated October 7, 1982. The said writ petition was dismissed by the High Court by order dated December 1, 1982. Respondent No. 1 filed a petition in this Court for grant of special leave to appeal against the judgment of the High Court dated December 1, 1982. The said special leave petition was dismissed as withdrawn by order of this Court dated October 24, 1984 wherein it has been mentioned that respondent No. 1 was praying for permission to withdraw the special leave petition as he proposes to approach the High Court for review. It appears that no review petition was filed by respondent No. 1 in the High Court.

3. On February 6, 1981, respondent No. 1 had filed a Civil Suit against the appellants and respondent No. 2 seeking a declaration to the effect that land marked A B C D E F in the site plan attached to the plaint measuring about 450 sq. yards situated in the Revenue Estate of Hissar, between Gurudwara Siri Guru Singh Sabha and Talaqi Gate, Hissar-Sirsa Road is of the Abadi Deh Hissar on which he has his possessory title as owner and the defendants have no concern with it nor have any title on it. In the said suit respondent No. 1 also sought consequential relief of grant of permanent injunction against the defendants that they should refrain from dispossessing respondent No. 1 from the premises in dispute. The said suit was contested by respondent No. 2, Municipal Council, Hissar, which had been impleaded as a defendant in the said suit, and had filed a written statement wherein it was stated that the land in dispute is part and parcel of the P.W.D. Road, National Highway No. 10, i.e. Delhi-Multan Road, and that the Municipal Council has been joined unnecessarily. In the written statement filed on behalf of the appellants an objection was raised regarding jurisdiction of the civil court to try the suit in View of Section 15 of the 1972 Act and it was also submitted that the suit was barred by the principle of res judicata in view of the decision of the High Court of Punjab & Haryana in writ petition No. 3394 of 1970. It was also submitted that the suit was barred by the provisions of order 2 Rule 2 C.P.C. On the merits it was submitted on behalf of the appellants that the land in question is a public premises and respondent No. 1 is in unauthorised occupation of the same. It was also submitted that respondent No. 1 has encroached on 1354 sq. ft. of land, that respondent No. 1 is not the owner thereof and the same is owned by the Public Works Department of the State. It was also stated in the said written statement that the Collector, Hissar had afforded full opportunity to respondent No. 1 to prove his case and that respondent No. had failed to produce any document in order to prove his ownership and after considering the evidence produced by the Department, the Collector had passed the order dated September 25, 1970 and the writ petition filed

by respondent No. 1 in the High Court of Punjab & Hariyana challenging the said order of the Collector, was dismissed by the High Court by judgment dated December 12, 1979 and as a result of the order of the Collector dated September 25, 1970, the land in question is a public premises and not Abadi Den.

4. The Sub-Judge First Class, Hissar, by his judgment dated November 20, 1986 dismissed the said suit of respondent No. 1. The Sub-Judge held that the order dated September 25, 1970 passed by the Collector, Hissar, is legal and valid and the same having become final the premises in dispute is established to be a public premises and not in the ownership of respondent No. 1 on the basis of his possession. The Sub-Judge further held that the respondent No. 1 is in possession of the premises in dispute measuring 450 sq. yards but he is not the owner thereof and rather has encroached upon the same and that he is in illegal possession of 1354 sq. ft. since 1950 and he became in illegal occupation of the remaining portion of the premises in dispute subsequently. It was also held that the premises in dispute is public premises within the meaning of the 1972 Act. The Sub-Judge also held that the Judgment of the High Court dated December 12, 1979 in C.W. No. 3394 of 1970 operates as res judicata and bars the filing of the suit for the same purpose and that order of the Collector, Hissar, dated September 25, 1970 has become final because the appeal of respondent No. 1 against the said order has been dismissed by the Commissioner, Hissar by his order dated October 7, 1982 and the writ petition (C.W. No. 5268 of 1982) filed by respondent No. 1 to challenge the said order of the Commissioner has been dismissed by the High Court and the special leave petition filed against the said decision of the High Court has also been dismissed by this Court. The Sub-Judge further held that the civil court has no jurisdiction to entertain the suit in view of the bar imposed by Section 15 of 1972 Act and further that the suit was barred by limitation.

5. Respondent No. 1 filed an appeal against the said judgment and decree of the Sub-Judge, Hissar, which was dismissed by the Additional District Judge, Hissar by judgment dated October 15, 1988. The Additional District Judge affirmed the finding recorded by the Sub-Judge that the premises in dispute belongs to the State Government and is a public premises in view of the 1972 Act and that the order of Collector, Hissar, dated September 25, 1970 is legal and valid. The Additional Judge held that the suit of the respondent No. 1 is barred by the principle of res judicata in view of the decision of the High Court in C.W. No. 3394 of 1970. The Additional District Judge also held that the respondent No. 1 failed to prove that he is owner in possession of the suit land. The Additional District Judge further held that the suit was not maintainable as the jurisdiction of the civil court was barred by Section 15 of the 1972 Act.

6. Respondent No. 1 filed a second appeal in the High Court which was allowed by judgment dated November 24, 1989. The High Court held that apart from the plan, Ex. D-I, which only gives the measurement of the area encroached upon, there is no other evidence that the disputed property is a public premises and vests in the State and that the Collector had wrongly held that the disputed property was a public premises. The High Court has made a reference to the written statement filed by the Municipal Committee, Hissar in the High Court in reply to the averments made in C.W. No. 3394 of 1970 wherein it was pleaded that the disputed premises is a part of Khasra No. 3138 and was their sole ownership and they supported the said ownership on the basis of the settlement of 1909 as well as the Khasra Register of the Municipal Committee, Hissar, for the year 1941-42 and observed

that this plea was not controverted by the State. The High Court held that it was difficult to hold on the basis of the plan Ex. D-I that the premises in dispute is a public premises as defined under the 1972 Act more particularly when the Municipal Committee in the earlier litigation (C.W. No. 3394 of 1970) had taken a positive stand that the disputed property is not a part of the public premises belonging to the State. On the question of res judicata the High Court held that the principle of res judicata could not be invoked in the present case inasmuch as there was no decision that the disputed property is a public premises as defined under the 1959 Act in C.W. No. 3394 of 1970. The High Court further held that the bar of limitation could not be invoked inasmuch as the order of Collector, Hissar, is void and illegal. The High Court did not accept the contention of respondent No. 1 that he has become owner of the disputed property since it is a part of Abadi Deh and he is in possession of the same since 1950. It was held that respondent No. 1 took the property on lease from Municipal Committee, Hissar and he continued to pay rent to the Municipal Committee till the year 1972 and never surrendered the possession of disputed property to the Municipal Committee, Hissar, before asserting his title and that respondent No. 1 cannot be allowed to urge that the Municipal Committee is not the owner of the disputed property. The High Court, therefore, held that the order of Collector dated September 25, 1970 is illegal and void and it granted a declaration in favour of the respondent No. 1 to the effect that the Public Works Department, Haryana, will not be entitled to dispossess respondent No. 1 from the disputed property in pursuance of the order of the Collector dated September 25, 1970 passed under the 1959 Act and appellant No. 1 was restrained from dispossessing respondent No. 1 in pursuance of that order. The authorities were, however, left to take such action against the respondent No. 1 as permissible under the law. The High Court did not advert to Section 15 of the 1972 Act which bars the jurisdiction of the civil court.

7. Shri Mahabir Singh, the learned Counsel for the appellants, has submitted that the High Court was in error in holding that the property in dispute is not public premises and that it does not belong to State of Haryana. He has urged that the question whether the property vests in Municipal Committee, Hissar, was not in issue in the suit and only question in issue was whether the property belongs to State of Haryana or respondent No. 1 has become the owner thereof by virtue of possessory title being in possession of the same since 1950. The submission of Shri Mahabir Singh is that in view of its finding that respondent No. 1 could not claim to be the owner of the disputed property on the basis of possessory title, the High Court ought to have dismissed the suit of respondent No. 1. It has also been submitted by Shri Mahabir Singh that the jurisdiction of the civil court has been expressly barred by Section 15 of the 1972 Act and it was not permissible for the High Court to hold that the premises is not a public premises and the order dated September 25, 1970 is illegal and void.

8. Shri Rajinder Sachar, the learned Counsel appearing for Municipal Committee, Hissar, has submitted that the question as to whether the property belongs to the State Government or Municipal Committee is of little consequence in view of the definition of the expression 'public premises' contained in Section 2(e) of the 1972 Act whereunder premises belonging to local authority is also public premises.

9. Shri Tewatia, the learned Counsel for the respondent No. 1, has on the other hand urged that since the order dated September 25, 1970 was a nullity, the civil suit filed by the respondent No. 1

was maintainable and the bar of jurisdiction contained in Section 15 is not attracted. Shri Tewatia has also urged that the High Court was right in holding that the property in dispute does not belong to State Government and the premises is not public premises and that the order of Collector, Hissar, dated September 25, 1970 is illegal and void.

10. In our opinion the High Court was not justified in going into the question whether the premises in dispute is public premises under the 1972 Act. As to whether the premises in dispute is public premises was a matter to be determined by the Collector, Hissar, in exercise of the powers conferred on him under the 1972 Act. In his order dated September 25, 1970 the Collector has held that the premises in question belong to Public Works Department of the Government of Haryana and is public premises and that respondent No. 1 is in unauthorised occupation of the same. The said finding was recorded by the Collector, Hissar, on the basis of evidence produced before him by the Public Works Department, Government of Haryana. Respondent No. 1 had appeared before the Collector and had full opportunity to refute the said evidence. Respondent No. 1 filed an appeal against the said order of Collector, Hissar, before the Commissioner, Hissar Division, which appeal was dismissed by the Commissioner, Hissar, by order dated October 7, 1982. Before the Commissioner, the respondent No. 1 did not challenge the finding recorded by the Collector, Hissar, with regard to the premises being public premises and raised other contentions which have been rejected by the Commissioner. The Commissioner has confirmed the finding recorded by the Collector that land in dispute is in the ownership of State Government and possession of the same by respondent No. 1 is illegal and unauthorised. Respondent No. 1 filed a writ petition (C.W. No. 5268 of 1982) against the said order of the Commissioner and the said writ petition was dismissed by the High Court of Punjab & Haryana by order dated December 1, 1982 and the special leave petition filed by respondent No. 1 against the said order of the High Court was dismissed as withdrawn by this Court on October 24, 1984. This would show that in proceedings taken under the 1972 Act the premises in question has been found to be belonging to the State Government of Haryana and it has been held to be public premises. While pursuing his remedies referred to above, namely, appeal to the Commissioner followed by writ petition in the High Court and special leave petition in this Court, respondent No. 1 instituted the suit giving rise to this appeal wherein he challenged the validity of the order dated September 25, 1970 passed by the Collector, Hissar. In our opinion such a course was impermissible in view of the express bar to the jurisdiction of the civil court contained in Section 15 of the 1972 Act, which reads as under:

No court shall have jurisdiction to entertain any suit or proceeding in respect of the eviction of any person who is in unauthorised occupation of any public premises or the recovery of the arrears of rent payable under Sub-section (1) of Section 7 or the damages payable under Sub-section (2) of that section or the costs awarded to the State Government, or the local authority under Sub-section (5) of Section 9 or any portion of such rent, damages or costs.

11. This provision bars the jurisdiction of the civil court in relation to proceedings taken under the 1972 Act for eviction of a person in unauthorised occupation of public premises. We are unable to agree with Shri Tewatia that the bar of Section 15 is not attracted because the order of the Collector dated September 25, 1970 is a nullity and the suit is maintainable for declaring it to be void. The

only ground on the basis of which the order of Collector dated September 25, 1970 is claimed to be void by Shri Tewatia is that the premises in question is not public premises and the jurisdiction that has been conferred on the Collector under the 1972 Act is confined to public premises only. As to whether the premises in question in a proceeding under the 1972 Act is public premises or not is a matter which is required to be determined by the Collector while exercising the power conferred on him under Section 5 of the 1972 Act. This means that the Collector has the jurisdiction to determine whether the premises in question in a proceeding under the 1972 Act is public premises. Such a determination by the Collector can be right or it may be wrong. Merely because the Collector has made an error in making the determination about a premises being public premises would not mean that the order passed by the Collector is without jurisdiction and a nullity. The 1972 Act provides a remedy, namely, an appeal to the Commissioner under Section 9, for the rectification of the error committed by the Collector. In the present case, respondent No. 1 availed this remedy and filed an appeal against the order of the Collector dated September 25, 1970. The Commissioner while dismissing the said appeal by order dated October 7, 1982, affirmed the order of the Collector and held that the premises in dispute belongs to the State Government of Haryana and is public premises. Respondent No. 1 did not rest content but filed a writ petition (C.W. No. 5268 of 1982) in the High Court which was also dismissed. In these circumstances it is not possible to hold that the order dated September 25, 1970 passed by the Collector was a nullity and the suit filed by respondent No. 1 was not barred by Section 15 of the 1972 Act. The trial court and the first appellate court had rightly held the suit to be barred by Section 15 of 1972 Act and the High Court was in error in passing a decree in favour of respondent No. 1 without advertting to Section 15 of the 1972 Act.

12. It may also be mentioned that on the basis of the evidence on record the trial court and the first appellate court had concurrently found that the premises in dispute belongs to the State Government of Haryana and is public premises under the 1972 Act. The High Court, in second appeal, reversed the said concurrent finding only on the basis of the written statement filed by the Municipal Committee, Hissar, in C.W. No. 3394 of 1970 in the High Court wherein it claimed title over the premises in dispute. The High Court failed to note that the said claim of the Municipal Committee was not allowed by the Court in those proceedings and that in the present suit the Municipal Committee, in its written statement, had taken a definite stand that the premises in dispute is part and parcel of P.W.D. Road, National Highway No. 10, i.e. Delhi-Multan Road. This shows that the Municipal Committee was not disputing the title of the State Government over the premises in dispute. The High Court was, therefore, not justified in law in reversing, in second appeal, the concurrent finding of fact recorded by both the courts below that the premises in dispute belongs to the State Government of Haryana and is public premises under the 1972 Act.

13. In the circumstances, the judgment and decree of the High Court holding that the premises in question is not public premises and the order of the Collector dated September 25, 1970 is illegal and void, cannot be sustained.

14. Shri Tewatia has urged that the suit filed by respondent No. 1 was in respect of an area measuring 540 sq. yards whereas the order dated September 25, 1970 passed by the Collector relates to 1354 sq. ft. only. It is true that the order passed by the Collector under the provisions of the 1972 Act is in respect of area measuring 1354 sq. ft. only. But the decree passed by the High Court in

favour of respondent No. 1 is also confined to the said area covered by the order of the Collector because otherwise the High Court has negatived the claim of respondent No. 1 with regard to the ownership of the suit land on the basis of possessory title.

15. In the result, the appeal is allowed and the judgment and decree of the High Court dated November 24, 1989 in R.S.A. No. 2488 of 1988 is set aside and the judgment and decree passed by the courts below dismissing in the suit filed by respondent No. 1 are restored. There will be no order as to costs.

16. It appears that petrol and diesel oil are being stored by respondent No. 1 in tanks on the premises in dispute. It will be open to respondent No. 1 to remove the said petrol and diesel oil from the premises in dispute. The appellants as well as respondent No. 2 would accord the necessary facilities to enable the respondent No. 1, to remove the same. The said work of removal of petrol and diesel oil from the premises in dispute shall be completed within the period of four weeks from the date the said facilities are made available to him.