

(1989) 12 P&H CK 0004
In the Punjab And Haryana At Chandigarh
Case No : S.A.O. No. 83 of 1986

Union of India (UOI) and Another	Vs	APPELLANT
Maj. Mohinder Singh Sarkaria and Another		RESPONDENT

Date of Decision : 20-12-1989

Acts Referred:

Civil Procedure Code, 1988 — Section 11
Constitution of India, 1950 — Article 226

Citation : (1990) 97 PLR 224

Hon'ble Judges : G.R. Majithia, J

Bench : Single Bench

Advocate : G.S. Chawla, for the Appellant; Ram Singh, for the Respondent

Judgement

G.R. Majithia, J.—This appeal is directed against the judgment of the First Appellate Court which on appeal set aside the judgment of the trial judge and remanded the case to the latter under Order 21. Rule 23-A C P.C.

2. The facts as gathered from the pleadings of the parties and the earlier writ petition filed by respondent No. 1 are that the disputed premises were purchased by the Ministry of Defence from the Rehabilitation Department in the year 1969. The respondent's request for transfer of the property to him was rejected by the Settlement Commissioner. He was allowed to occupy the premises by the Station Superintendent. Thereafter, he started paying rent to the District Rent and Managing Officer, Rehabilitation Department at the rate of Rs 113/- per month and acquired the status of a tenant under the Rehabilitation Department. The Military Estate Officer through a notice dated, March 18, 1968 called upon the respondent to vacate the premises. He filed reply to the notice on April 1, 1969. After considering the reply, the Military Estate Officer issued a show cause notice under sub Section 1 of Section 4 of the Public Premises (Eviction of unauthorised Occupants) Act, 1958 (for short the Act) on May 13, 1969. Reply to this notice was filed. Thereafter, the Military Estate Officer passed an order of eviction u/s 5 (1) of the Act on September 12, 1965. The respondent unsuccessfully challenged

the order before the Appellate Authority under the Act. The appeal was dismissed on November 6, 1974. The order of the Appellate Authority under the Act was challenged in Civil Writ petition No. 62 1 of 1974. The same was dismissed on October), 1982 The order of the Military Estate Officer and of the Appellate Authority under the Act was upheld." After the dismissal of the writ petition respondent No. 1 filed a civil suit on October 29, 1983 challenging the notice dated July 4, 1983 under Sub-Section 3 of Section 7 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 issued by the Estate Officer, Jalandhar. The trial judge treated the following issues as preliminary issues :-

1. Whether the Civil Court has got jurisdiction to try the present suit ? OPP
2. Whether the suit is barred u/s 15 of the Public Premises (Eviction of the Unauthorised Occupants) Act, 1971 ? OPP

He answered both these issues against respondent No. 1 and held that Civil Court had no jurisdiction to entertain the suit in view of the provisions of Section 15 of the Act.

3. Respondent No. 1 assailed the judgment in appeal The First Appellate Court held that the Civil Court had to decide whether the premises in question were a public premises or an evacuee property and after deciding this question the trial court had to arrive at a conclusion whether the civil court's jurisdiction was barred.

4. The Union of India has come up in appeal against the order passed by the First Appellate Court, The First Appellate Court to say the least has not tried to understand the controversy between the parties. It has thought convenient to ignore the material facts brought on record. If it had made a little attempt to examine the file, it would have become known to it that in a judgment inter se the parties, it has been finally settled by the highest court in the State that the property in dispute was purchased by the Ministry of Defence in the year 1969 and that the order passed by the Military Estate Officer u/s 5 of the Act against respondent No. 2 was upheld by the Appellate Authority under the Act and both these orders were unsuccessfully challenged by the respondent in the writ petition under Article 226 of the Constitution of India. The judgment rendered by this court will operate as res judicata between the parties. All the material questions which are now being raised in the suit were materially and substantially in issue in this court in the writ petition which were answered against respondent No. 1. Respondent No. 1 cannot raise the plea that the property in suit is an evacuee property in the light of judgment rendered by this court. The judgments rendered in other cases, will not render the judgment inter parties invalid. The judgment of the First Appellate Court cannot be sustained. The same is set aside and the case is remanded to the first Appellate Court for decision in accordance with law. The file of this case will stand transferred on the file of Mr. P.C : Singal, Additional District Judge, Jalandhar who will dispose of the same within one month from the date of receipt of this order. The parties through

their counsel are directed to appear before him on January 23; 1990. The office is directed to send , the record of the case alongwith a copy of the judgment to the Additional District Judge, Jalandhar Without any delay.