

The Indian Law Reports

CIVIL MISCELLANEOUS

Before D. Falshaw and Tek Chand, JJ.

RANJIT SINGH,—Petitioner.

versus

THE UNION OF INDIA AND OTHERS,—Respondents.

Civil Writ No. 151 of 1961

Displaced Persons (Compensation and Rehabilitation) Act (XLIV of 1954)—S. 33—Central Government—Whether bound to hear the parties before deciding the application.

1961
August, 28th

Held, that any representation made to the Central Government with a view to causing it to exercise its residuary powers under section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, cannot be regarded as a revision petition nor is it governed by rule 105. The Central Government, when acting under section 33, should afford an opportunity to be heard to the person likely to be prejudicially affected by an order reversing any previous decision before the order of reversal is passed. This, however, does not mean that any person who chooses to make a request to the Central Government for the purpose of reversing some earlier decision must necessarily be given a personal hearing before the decision of the Government not to interfere is communicated to him.

Petition under Article 226 of the Constitution of India praying that a writ in the nature of certiorari mandamus or any other appropriate writ, order or direction be issued quashing the order of Settlement Commissioner exercising the powers of Chief Settlement Commissioner, New Delhi, dated the 19th May, 1960.

A. L. BAHRI, ADVOCATE, for the Petitioner.

K. N. TEWARI, ADVOCATE, for the Respondent.

ORDER

Falshaw, J. FALSHAW, J.—This is a petition under Article 226 of the Constitution filed by Ranjit Singh in the following circumstances.

The property in dispute consists of a small building comprising three shops, Nos. 16, 17 and 18 on the ground floor, and a *Chaubara* and open space on the upper floor. The building is an evacuee property.

The petitioner was in occupation of shop No. 18 and the *chaubara* situated above it, while Kundan Lal respondent was in occupation of shop No. 16 and one Rattan Singh was in occupation of shop No. 17 and the roof above. When the question of permanent allotment came to be considered the Managing Officer held that the property was indivisible and gave it to Ranjit Singh petitioner, whose compensation was nearest to the value of the property. Both the other allottees, the present respondent Kundan Lal and Rattan Singh, filed appeals against the order of the Managing Officer which were dismissed by an Assistant Settlement Commissioner on the 14th of December, 1959. Thereafter apparently Rattan Singh, ceased to take any interest in the matter, but Kundan Lal, carried the matter further in revision and obtained an order from a Settlement Commissioner with delegated powers of the Chief Settlement Commissioner on the 19th of May, 1960, to the effect that shop No. 16 was separable and should be transferred to him though the staircase giving access to the upper portion of the building should be left with Ranjit Singh. Thereafter Ranjit Singh sent a representation to the Government of India under section 33 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, regarding which he received a letter from an Under-Secretary dated the 5th of November, 1960, to the effect that Central Government saw no reason to interfere with the order of the 19th of May, 1960.

On behalf of the petitioner the point has been raised that the Government of India could not

reject the application or revision under section 33 of the Act without giving the petitioner an opportunity of being heard in person or through counsel. This contention was based on the decision of the Full Bench of this Court in *Hira Lal Kher v. The Chief Settlement Commissioner, New Delhi, and others*, (1). This decision related to the similar dismissal of a petition submitted to the Chief Settlement Commissioner under section 24 of the Act. It is prescribed by rule 105 of the Rules framed in connection with the Act that except as otherwise expressly provided in the Act or in these rules the procedure laid down in Order XLI of the Code of Civil Procedure shall so far as may be applicable apply to the hearing and disposal of appeals and revisions under the Act, and it was held by the Full Bench that such being the case a revision petition filed under section 24 of the Act could only be dismissed after hearing the petitioner or his Pleader as required by Order XLI rule 11 of the Code of Civil Procedure.

It is, however, quite clear that the provisions of section 33 are very different from those of section 24 which is headed "Power of revision of the Chief Settlement Commissioner". This clearly means that any petition filed under that section must be treated as a regular revision petition. On the other hand section 33 is headed "Certain residuary powers of Central Government". Some of the words of the two sections are undoubtedly similar but I do not regard any representation made to the Central Government with a view to causing it to exercise its residuary powers under section 33 as a revision petition or governed by rule 105. Our attention was drawn to a decision of D. K. Mahajan, J., in *Dewan Jhangi Ram v. Union of India and others*, (2), in which the view has been expressed that the petitioner should be heard before a decision is made by the Central Government under section 33, but in that case it appears that the person who moved this Court under Article 226 was one against whom some previous

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(1) (1961) 63 P.L.R. 560 : I.L.R. (1962) 1 Punjab 165.

(2) (1961) 63 P.L.R. 610.

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order in his favour had been reversed by the Central Government purporting to act under section 33 without giving him any opportunity to be heard. I would certainly agree that although the words which occur in sub-section (3) of Section 24 of the Act—"No order which prejudicially affects any person shall be passed under this section without giving him a reasonable opportunity of being heard"—do not occur in section 33, they embody a principle which should be applied by the Central Government when acting under section 33, and that before any previous decision is reversed under this section the person likely to be prejudicially affected by it should be given an opportunity to be heard. This, however, does not mean that any person, who chooses to make a request to the Central Government for the purpose of reversing some earlier decision must necessarily be given a personal hearing before the decision of the Government not to interfere is communicated to him.

As regards the merits I see no reason to interfere. *Prima facie* it would appear that the shop occupied by Kundan Lal, respondent can be conveniently separated from the rest of the property and given to him leaving the petitioner in possession of the remaining two shops on the ground floor and the whole of the accommodation on the roof to which access is available by staircase specifically allotted to him by the impugned order. The learned counsel for the petitioner sought to rely on the words of rule 30 which reads as follows :—

"If more persons than one holding verified claims are in occupation of any acquired evacuee property which is an allotable property, the property shall be offered to the person whose net compensation is nearest to the value of the property and the other persons may be allotted such other acquired evacuee property which is allotable as may be available :

provided that where any such property can suitably be partitioned, the Settlement Commissioner shall partition the

property and allot to each such person a portion of the property so partitioned having regard to the amount of net compensation payable to him."

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The argument is that these words mean that either the whole property should be allotted to the petitioner, as was ordered by the Managing Officer, or else that it must be divided into three and even Rattan Singh, the original allottee, who has taken no part in the controversy since his appeal was dismissed by the Assistant Settlement Commissioner, should have been given the shop occupied by him. I do not consider that the words of rule 30 are meant to be applied as rigidly as this, and I cannot see any objection, in a case where there are three occupants of portions of a property which can only be conveniently subdivided into two portions, why the claims of two occupants cannot be met. In this case as I have said it appears to be quite feasible to separate ground floor shop occupied by Kundan Lal from rest of the property whereas a sub-division into three portions would not be convenient since as was pointed out by the Assistant Settlement Commissioner the present petitioner can only have access to the upper portion of the property occupied by him through the portion formerly occupied by Rattan Singh. I would accordingly dismiss the petition and order the petitioner to pay the costs of Kundan Lal. (Counsel's fee Rs. 50.) The authorities who were made respondents have not been represented.

Falshaw, J.

TEK CHAND, J.—I agree.

B.R.T.

LETTERS PATENT APPEAL

Before S. S. Dulat and A. N. Grover, JJ.

PIARA SINGH,—Appellant.

versus

THE PUNJAB STATE AND OTHERS,—Respondents.

Letters Patent Appeal No. 3 of 1962.

Constitution of India—Article 226—Writ of Quo
Warrant filed by an elector dismissed in limine—Another

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March, 16th