

CIVIL WRIT

Before Khosla, J.

S. HARNAM SINGH,—Petitioner

versus

THE DEPUTY CUSTODIAN-GENERAL OF EVACUEE
PROPERTY, NEW DELHI, AND OTHERS,—Respondents

Civil Writ No. 231 of 1954.

Constitution of India, 1950—Article 226—Sufficient hearing—Meaning of—No injustice done—Whether High Court will interfere.

1955

Nov. 23rd

Held that when an aggrieved party moves the High Court under the provisions of Article 226 of the Constitution on the ground that he was not afforded an adequate opportunity to present his case before the particular authority, it is not enough for him to show that summons were not received by him in the ordinary course or that personal service was not effected upon him but he must show that despite vigilance and prudence exercised by him, he did not have an opportunity of placing his case before the appropriate authority or that no opportunity whatsoever was given to him.

Where, therefore, the petitioner had knowledge of the proceedings and the date of hearing, had engaged a Counsel who inspected the file and a request was made on his behalf by his son by a letter for adjournment of the hearing which was not granted, it cannot be held that the petitioner did not have ample opportunity to present his case before the appropriate authority.

Held, that the High Court will not interfere with an order where no injustice has been done to the petitioner.

Petition under Articles 226 and 227 of the Constitution of India, praying that by issuing a writ of mandamus, prohibition, certiorari or such other writ or direction as may be deemed fit, the order of the respondent No. 1, dated the 2nd January, 1954, may kindly be quashed and an interim stay order maintaining the possession of the petitioner may kindly be issued. Costs may be awarded.

H. S. DOABIA, for Petitioner.

A. M. SURI, and H. S. GUJRAL, for Respondents.

ORDER.

Khosla, J. **KHOSLA, J.**—This is an application under Article 226 of the Constitution of India challenging certain proceedings which took place before the Deputy Custodian General on the ground that the petitioner was not given an adequate opportunity to place his case before him and his order has resulted in manifest injustice.

The matter relates to the allotment of evacuee property and the dispute now is between the petitioner Harnam Singh and the respondent Arjan Singh. The land is situated in village Khambra, tehsil and district Jullundur.

It is admitted on all sides that Arjan Singh was a sitting allottee in this village whereas Harnam Singh was not. It was on this ground that Arjan Singh's claim was preferred. On behalf of Harnam Singh it is, however, submitted that under the rules only the largest non-sitting allottee could have been ousted in order to provide for a sitting allottee. It is further submitted that Harnam Singh is not the largest non-sitting allottee and that there are five or six other persons whose allotments are larger than his and, therefore, one of them and not he should have been ousted in order to provide for Arjan Singh.

The first point to be considered is whether Harnam Singh was given an adequate opportunity to be heard. The case was fixed for the 30th of December, 1953. Notices issued to Harnam Singh were not received by him but were sent to a Major Harnam Singh who is totally different person. This Major Harnam Singh returned the notices with the report that he was not the person who was concerned with the matter. It appears that no fresh notices were sent to the petitioner Harnam Singh but he did come to know that proceedings in the matter were pending

before the Deputy Custodian General. On the 18th of December, 1953, he executed a power of attorney in favour of a lawyer Mr. Darshan Singh. On the 25th of December, 1953 Mr. Darshan Singh inspected the file of the case. On the same day the son of the petitioner sent a letter to the Deputy Custodian General asking him to adjourn the case for a few weeks as his father could not appear on the date fixed. This letter does not appear to have been brought to the notice of the Deputy Custodian General and on the 30th of December, when the case came up he decided to proceed *ex-parte*. The case was adjourned to the 2nd of January, 1954 and, on that date the Deputy Custodian General passed an order cancelling Harnam Singh's allotment and allotting the land to Arjan Singh. Immediately after this Harnam Singh petitioner applied for a review of the order on the ground that he had not been heard. The Deputy Custodian General considered all the facts and came to the conclusion that Harnam Singh was well aware of the proceedings and that his absence on the 30th of December, 1953, was without good cause. He thereupon decided not to review his order.

From these facts it is quite clear that Harnam Singh had ample opportunity to present his case before the Deputy Custodian General. It must be remembered that when an aggrieved party moves this Court under the provisions of Article 226 of the Constitution it is not enough for him to show that summons were not received by him in the ordinary course or that personal service was not effected upon him. These are matters which might well be agitated in an appeal. But when the extraordinary powers of this Court are invoked under Article 226 of the Constitution, the aggrieved party must show something more. He must show that despite vigilance and prudence exercised by him he did not have an opportunity of placing his case before the appropriate

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authority or that no opportunity whatsoever was given to him. In the present case we find that although notices were not served personally on the petitioner he did know of the proceedings. He executed a power of attorney in favour of a counsel 12 days before the date of hearing. His counsel actually inspected the file and the date of hearing was known to the counsel because it was mentioned on the file. The petitioner's son actually wrote to the Deputy Custodian General asking him to adjourn the hearing from the 30th of December to a later date. In the circumstances, it cannot be said that the petitioner did not know of the date of hearing or that he had no opportunity to put his case before the Deputy Custodian General. Opportunity was given to him and had he been vigilant, he would have appeared before the Deputy Custodian General on the 30th December, either personally or through a duly authorised agent.

On this ground alone the petition is liable to be dismissed. I find, however, on an examination of the case that no injustice has been done to the petitioner. Indeed, it seems to me that the order by which the allotment of land in village Khambra was made in his favour was scarcely justified. The facts are that this land was originally in the possession of one Harjit Singh. Arjan Singh had originally applied for allotment of land in village Khambra. This application was made by him on the 15th of May, 1949. Soon after this Arjan Singh was allotted land in the Garden Colony of Jalalabad. On the 25th October, 1949, Arjan Singh again applied for allotment in village Khambra and on the 26th October, 1949, i.e., the very next day his allotment in Jalalabad was cancelled and an order was passed that he should be accommodated in village Khambra. This order was passed by Mr. Randhawa and he did not at that time know that Harjit Singh's land had become available for re-allotment to Arjan Singh or someone else. On the 19th

of March, 1951 the petitioner applied for allotment in village Khambra. Mr. Randhawa observed that if previous allotment was cancelled, some allotment may be made in favour of the petitioner. The papers were sent to the R. A. R. who reported that no area was available. On the 21st of March, 1951, Mr. Randhawa passed an order in favour of the petitioner Harnam Singh. In this order it was not specified that Harjit Singh's allotment was to be given to the petitioner. All Mr. Randhawa said was that since some area had now become available it should be allotted to Harnam Singh. In pursuance of this order Harnam Singh obtained possession of Harjit Singh's land on the 18th of June, 1951. Six days earlier Arjan Singh had come to know what was about to happen and he filed a review application before Mr. Randhawa. Two more applications were filed by him on the 7th of November, 1951, and 27th of June, 1952, and the matter was considered by Mr. Vikram Singh, D. R. R. who came to the conclusion that although Arjan Singh was entitled to the allotment he could not help him because the allotment had already been made in favour of Harnam Singh and he was precluded from cancelling that allotment by virtue of the amended rule 14(6) framed under the Administration of Evacuee Property Act. It is clear that since a revision had been filed by Arjan Singh, the view taken by Mr. Vikram Singh was erroneous. Arjan Singh then moved the Deputy Custodian General for the revision of Mr. Vikram Singh's order and the Deputy Custodian General cancelled the petitioner's allotment and awarded the land to Arjan Singh.

From the above recital of the facts it will be clear that the application for allotment in this village was made in the original instance by Arjan Singh. An order favourable to him was passed and an actual allotment was made. The order of allotment is not available, but a reference to it appears in the despatch

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register produced before me. It was after this that the petitioner sought allotment in this village and behind Arjan Singh's back he was given Harjit Singh's land. Arjan Singh had much better claim to this land than Harnam Singh petitioner and that being so, it cannot be said that any injustice has been done to the petitioner.

On these grounds, this petition must fail and I must dismiss it with costs.

LETTERS PATENT APPEAL

Before Bhandari, C.J. and Bishan Narain, J.

FIRM PAHARIA MAL-RAM SAHAI,—*Defendants-
Appellants*

versus

BIRDHI CHAND JAIN AND SONS,—*Plaintiffs-
Respondents*

Letters Patent Appeal No. 16 of 1952.

1956

Jan. 4th

*Sale of Goods Act (III of 1930)—Sections 23 and 25—
Sale of Goods—Goods sold to be despatched by the seller
to the buyer—Seller himself the consignor and the con-
signee—Receipt sent to the Bank to be delivered to the
buyer on payment of the price and buyer informed—Buyer
refusing to pay the price as goods could not be traced and
lost—Property in goods whether passed to the buyer—
Buyer, whether liable for the price of the goods.*

*Held, that the property in goods passed to the buyer
when the goods were sent out of the godown of the seller
to the transport company and that the seller was entitled to
recover their price from the buyer.*

*Letters Patent Appeal under Clause 10 of the Letters
Patent, from the decree of the Hon'ble Mr. Justice Kapur,
dated the 17th day of April, 1952, reversing that of Shri
Harbans Singh, 2nd Additional District Judge, Delhi, dated
the 31st July, 1950, which affirmed the decree of the Sub-*