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between them as to the manner in which they were to be paid, the necessary consequence would have been that after payment of the costs out of pocket, the net profits made by the business would have been divisible equally between them, and that neither of them could say to the other:—I have done more business than you have, and am, therefore, entitled to a larger share of profits. It was the duty of the party who intended that this should not be a partnership transaction, and that he should be paid for the amount of business which he did without participating in that of the other, so to express himself."

In the absence of any proof as to the respective shares of the parties in profits and losses I have no alternative but to hold that their shares shall be equal. The cross objections of the defendant are, therefore, dismissed.

LETTERS PATENT APPEAL

Before Bhandari, C.J. and Chopra J.

S. BAKHSHISH SINGH AND OTHERS,—*Appellants*

versus

HAZARA SINGH AND OTHERS,—*Respondents*

Letters Patent Appeal No. 113 of 1955.

1957

Feb. 19th

Administration of Evacuee Property Act (XXXI of 1950)—Sections 12 and 26—Administration of Evacuee Property (Central) Rules, 1950—Rule 14—Order of re-allotment of all the lands in village—Whether amounts to cancellation of allotment—Notice to allottees—Whether necessary—Section 26—Scope of—Whether applicable to original orders of cancellation of allotment—Constitution of India—Article 226—Powers of High Court—When to be exercised—Principles of natural justice—Affording of opportunity to be heard—Meaning and extent of.

Held, that there is no point of distinction between cancellation of allotment and re-allotment of all lands in the village. Re-allotment pre-supposes cancellation of the previous allotment and it is only possible when the already existing allotment is cancelled. An order of re-allotment includes first, an order for cancellation of the previous allotment and secondly, an order for making a fresh allotment.

Held, that the law only requires the Custodian, before passing an order of cancellation or variation of the terms of a lease, to serve person or persons concerned with a notice to show cause against the order proposed to be made but no notice is provided for cancellation of an allotment under the Rules. Rule 14 does not say that a notice shall also be given to the allottee before the Custodian cancels his allotment or evicts him from the land allotted to him. Nor is such a notice necessary on the principles of natural justice.

Held also, that section 26 describes the general powers of review and revision of certain authorities mentioned therein and lays down that no order in review or revision shall be made without giving notice to the person concerned. This section, however, is to be confirmed in its operation only to the orders made in exercise of the powers of revision or review. It shall have no application to the making of an original order under any other provision of the Act.

Held, that the principle of natural justice that every litigant must be given a fair opportunity of being heard and allowed to represent his case to the utmost is always subject to exceptions and where the exceptions are clearly defined, they must be given effect to the relevant law makes a distinction between cancellation of an allotment and of a lease. While providing for notice in one case, it is silent in respect of the other. Moreover, the respondents had filed a petition for revision against the order and got the opportunity of being heard by and to represent their case before the Deputy Custodian-General. In revision under section 27 of the Act the Custodian-General may call for the record of any proceeding in which the Custodian has passed an order, for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order as he thinks fit. The fact that the petition was

dismissed *in limine* does not mean that the petitioners were not heard. The question whether a fair opportunity has or has not been given to the party adversely affected depends on the particular facts of each case. The rule does not require that the party adversely affected should be heard at every stage of the administrative proceedings.

Held further, that the discretionary relief by way of writ ought not to be granted unless it is shown that the error or omission had resulted in substantial and manifest injustice to the petitioners. Under Article 226 the High Court is not to act as a Court of appeal or revision so as to set right technical mistakes or mere errors of law.

Duni Chand Hakim and others v. *Deputy Commissioner, (Deputy Custodian Evacuee Property), Karnal, State of Punjab and others* (1), followed, *Nanak Singh and others* v. *Director Rural Rehabilitation Pepsu and another* (2), *Sangram Singh* v. *Election Tribunal, Kotah and another* (3), referred to.

Letters Patent Appeal under clause 10 of the Letters Patent against the judgment of the Hon'ble Mr. Justice Bishan Narain, dated the 9th December, 1955, accepting the petition of the respondents, ordering issue of writ of certiorari, setting aside the order of the Financial Commissioner, Relief and Rehabilitation, and ordering re-allotment of lands. ... ...

A. N. GROVER, *H. S.* GUJRAL and H. L. MITTAL, for Appellants.

H. S. DOABIA, for Respondents.

JUDGMENT.

Chopra, J. CHOPRA, J.—This is an appeal under the Letters Patent against an order of a Single Bench of this Court issuing writ of *certiorari* to set aside an order of the Financial Commissioner, Relief and Rehabilitation, (Custodian) and directing that "the petitioners should be heard before further orders of cancellation of their previous allotments or new allotment orders are passed".

Allotments of evacuee land in village Mohan on quasi-permanent basis were made in 1949. On 11th

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(2) A.I.R. 1953 Pepsu 53
(3) A.I.R. 1955 S.C. 425

July, 1950, the present appellants and some others presented an application before the rehabilitation authorities that the allotments had not been properly made, inasmuch as lands of the worst type situate on one side of the village were allotted to them and lands of much better quality on the other side of the village were allotted to the respondents. They prayed for re-allotment of the entire land by dividing it into two separate blocks. This application presented to the Revenue Assistant was sent to Naib-Tehsildar for report. The Naib-Tehsildar visited the spot and arrived at the conclusion that the allotment was really unfair. He, therefore, suggested that there should be a re-allotmtent of the total land and that it should be made by classification of the land into two blocks, one towards the east and the other towards the west of the village *abadi,* and each allottee be given good and bad land proportionately out of the two blocks. The Revenue Assistant agreed with the report and submitted the papers to the Deputy Commissioner (Deputy Custodian),—*vide* his order, dated 24th April, 1951. The Deputy Custodian and then the Additional Custodian forwarded the papers expressing their approval to the Financial Commissioner, Relief and Rehabilitation (Custodian). On the 21st May, 1951, Shri P. N. Thapar, Financial Commissioner, Relief and Rehabilitation, accorded sanction to the re-allotment as suggested. In pursuance of this order, the Revenue Assistant (Rehabilitation) re-allotted the evacuee property by dividing it into two blocks, each of the allottees getting proportionate land out of the two blocks. The re-allotment was put into effect by exchange of possessions in May, 1952. A revision was filed against the order of re-allotment to the Custodian-General. The Deputy Custodian-General, after hearing the petitioners before him, dismissed the revision *in limine* on 4th August, 1953. On 24th September, 1953, the persons aggrieved, the respondents before us, approached this Court in a writ

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petition under article 226 of the Constitution and challenged the order of the Custodian and also that of the Deputy Custodian-General. The learned Single Judge accepted the petition and issued a writ of *certiorari* quashing the first order, on the short ground that it was made without notice to the petitioners and without affording them opportunity to be heard.

The main points urged by Mr. A. N. Grover, learned counsel for the appellants, are: (i) The law does not enjoin that any notice shall be given before an order cancelling allotment is made, (ii) Even if any such notice was necessary, the respondents have had sufficient opportunity to represent their case before the Deputy Custodian-General, (iii) In any case, no writ should have been issued because substantial justice had in fact been done by the order of re-allotment, and (iv) Before the writ was issued, the evacuee property had vested in the Central Government by virtue of section 12, of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, and the notification issued thereunder, which made the writ futile and infructuous.

On the first ground, it is pointed out that section 12 of the Administration of Evacuee Property Act, No. XXXI of 1950 (hereinafter referred to as the Act) bestows unfettered authority on the Custodian to cancel any allotment or terminate any lease, whether such allotment or lease was granted before or after the commencement of the Act. The section does not require that any notice shall be given before an order for cancellation is made. To carry out the purposes of this Act, certain Rules were framed by the Central Government under section 56 of the Act. Rule 14 of these Rules provides that a notice shall be given before cancelling or varying the terms of a lease or before evicting any lessee. The rule is silent as regards an order cancelling allotment, it does not say that a notice shall also be given to the allottee before

the Custodian cancels his allotment or evicts him from the land allotted to him.

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The matter is fully covered by a decision of the Supreme Court in *Dunichand Hakim and others* v. *Deputy Commissioner, (Deputy Custodian, Evacuee Property), Karnal, State of Punjab and others* (1). The facts of this case were these : The petitioners were allotted specific areas of land on quasi-permanent basis in lieu of the lands left by them in Pakistan Subsequently, the petitioners' lands left in Pakistan were down-graded, with the result that the lands allotted to them were re-allotted and granted to the respondents. The order of cancellation was challenged by a revision under section 27 of the Act. The Deputy Custodian-General dismissed the revision petition holding that the order of the Deputy Custodian was not illegal or without jurisdiction on the ground that no notice of the cancellation of allotment had been given to the petitioners. Both these orders were challenged in the petition under article 32 of the Constitution. On behalf of the petitioners, it was contended that so long as the land remained vested in the Custodian the petitioners could not be deprived of the lands which had been granted to them on a quasi-permanent basis and that the allotment could not be cancelled without notice to the petitioners. Their Lordships did not accept the contention and dismissed the petition holding that the law only requires the Custodian before passing any order of cancellation or variation of the terms of a lease, to serve person or persons concerned with a notice to show cause against the order proposed to be made and to afford him a reasonable opportunity of being heard, and that no notice is provided for cancellation of an allotment under the Rules. It was observed that the obvious reason for this differentiation appeared to be that a

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lease is granted for a definite period and it is only fair to give the lessee a notice before his lease is terminated before the expiry of the stipulated period, whereas the allottee of land under the quasi-permanent settlement stands on a different footing.

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The learned Judge following the judgment of a Division Bench of this Court, distinguished the above decision of the Supreme Court, on the ground that the present was not a case of cancellation of allotment but "one of re-allotment of all the lands in the village". This, in my view, cannot be regarded as a point for distinction. Reallotment presupposes cancellation of the previous allotment. Re-allotment is only possible when the already existing allotment is cancelled. An order of re-allotment, therefore, includes, first, an order for cancellation of the previous allotment, and secondly, an order for making a fresh allotment in its place. In the case before the Supreme Court, previous allotment in favour of the petitioners was cancelled and the land was re-allotted to the respondents. Here too, what the petitioners mainly complain of is the cancellation of the prior allotment in their favour, as this was the necessary result of the order for re-allotment. Cancellation of a single allotment or of more than one allotment also would not be a point for distinction, the order in either case is one made under section 12 of the Act. Rule 19(3) at p. 167, of "the Land Resettlement Manual for Displaced Persons in Punjab and PEPSU" (a compilation regarded as bearing the stamp of authenticity by the Supreme Court in the case referred to above), says :—

> "Where the Deputy Commissioner or the Additional Deputy Commissioner considers that substantial injustice has occurred in the allotment of field numbers in any village, he may, with the concurrence

of the Financial Commissioner, Rehabilitation, order re-allotment of fields amongst the allottees and lessees."

The instructions embodied in this rule were fully complied with in the present case, and re-allotment was ordered by the Financial Commissioner on the recommendation made by the Deputy Commissioner through the Director-General, Rehabilitation. Obviously, the order was made under section 12 of the Act, and for that no notice was necessary.

On behalf of the respondents, it is contended that as held by the learned Single Judge, the order in question is one made in exercise of the powers of revision under section 26 (2) of the Act. Section 26 describes the general powers of review or revision of certain authorities mentioned in the section, and lays down that no order in review or revision shall be made without giving notice to the persons concerned. This section, however, is to be confined in its operation only to the orders made in exercise of the powers of revision or review. It shall have no application to the making of an original order under any other provision of the Act. Section 12 is the specific provision on the subject and, therefore, even if there be any overlapping or contradiction between the two provisions, the specific provision ought to be regarded as an exception to the general provision. *In Nanak Singh and others* v. *Director, Rural Rehabilitation, Government of PEPSU, Patiala, and another* (1), while dealing with an identical question, I had the occasion to observe:—

"But I cannot help thinking that the law does not enjoin that every order cancelling an allotment can only be made by way of revision or review of the order granting

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the allotment. My own view is that section 26 does not cover all cases in which an allotment can be cancelled by the Custodian under section 12 of the Act. The two sections are to be read, interpreted and applied separately and one cannot be said to over-ride or govern the other. There appears to be no force in the argument of the petitioners' counsel that section 12 only gives the authority while section 26 provides the procedure for cancelling an allotment. The Act does not say so expressly and the indications are just the other way."

In this case, the allotment was cancelled because of down-grading of the lands left by the petitioners in Pakistan. It was held that the order of cancellation fell within section 12 of the Act and, therefore, no notice need have been given before the order was made. There, I did envisage the possibility of a case where an order of cancellation of allotment may be regarded as made in exercise of the power of revision or review under section 26 and not as an original order under section 12 of the Act. In view of the later pronouncement of their Lordships in *Duni Chand's case* (1), I am not quite sure if any distinction can really be made on the basis of the reasons for which the cancellation is ordered. But so far as the present case is concerned, I have no doubt that it cannot be taken out of the operation of section 12 and regarded as one made under section 26. The total area of evacuee land in village Mohan, to which the parties belong, is 132 standard acres and 8½ units. The entire area was allotted to nine allottees some time in the year 1949 on quasi-permanent basis. Para 11 of notification No. 7399 A. S. issued on 27th June, 1950, permitted a complete re-allotment of fields in any

(1) A.I.R. 1954 S.C. 150.

village on an application supported by not less than two-thirds of the evacuee area of the village. In other cases, where the Deputy Commissioner or Additional Deputy Commissioner as Authorised Deputy Custodian considered that substantial injustice had occurred in the allotment of field numbers in any village, he could, with the permission of Financial Commissioner, Relief and Rehabilitation, as Custodian, order re-allotment of fields amongst the allottees. It appears that the allotments made shortly before were being generally reconsidered at the time, and the whole thing was still in a fluid state. It was in this state of affairs that six out of the nine allottees, holding 77 standard acres and $4\frac{3}{4}$ units came forward with an application for re-allotment of the total area. The applicants were more than one-half of the total number of allottees, but the area allotted to them was not more than two-thirds of the evacuee area in the village. Re-allotment could, therefore, be ordered only on the basis of substantial injustice. The Revenue Assistant, on an inspection of the lands, reported that the lands situated towards east of the village and allotted to the applicants were mostly *"chau banda,* filled with course sand and small *jhiris* of *tallis"* and were thus far inferior in quality to the lands on the other side of the village, which were allotted to the non-applicants. Every one of the higher authorities agreed with the report. With a view to remedy the clear injustice done to the applicants, the Financial Commissioner, Relief and Rehabilitation, ordered re-allotment of the total evacuee area in the village. Undoubtedly, this was an original order under section 12 and not one in exercise of the revisional power under section 26 of the Act. The law under the circumstances did not require any notice to be given to the non-applicants.

Reliance is next placed on the principle of natural justice that every litigant must be given a fair and

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proper opportunity of being heard and allowed to represent his case to the utmost. In *Sangram Singh* v. *Election Tribunal, Kotah and another* (1), it was held that this rule is always subject to exceptions, and where the exceptions are clearly defined, they must be given effect to. As already observed, the relevant law makes a distinction between cancellation of an allotment and of a lease. While providing for notice in one case, it is silent in respect of the other. Moreover, the respondents had filed a petition for revision against the order and got the opportunity of being heard by and to represent their case before the Deputy Custodian-General. In revision under section 27 of the Act, the Custodian-General may call for the record of any proceeding in which the Custodian has passed an order, for the purpose of satisfying himself as to the legality or propriety of any such order and may pass such order as he thinks fit. The fact that the petition was dismissed *in limine* does not mean that the petitioners were not heard. The question whether a fair opportunity has or has not been given to the party adversely affected depends on the particular facts of each case. The rule does not require that the party adversely affected should be heard at every stage of the administrative proceedings.

Mr. H.S. Doabia, learned counsel for the respondents, relies upon the Division Bench judgment of this Court (in C.W. 148 of 1951, decided on 12th May, 1952) and another of a Single Bench (in C.W. 145 of 1952, decided on 6th August, 1953). The judgment under appeal is in fact based upon the Division Bench decision. In that case it was not disputed that notice was necessary, for the application on which re-allotment was ordered was one for review. The writ petition was contested on the sole ground that no manifest injustice to the petitioner's detriment had resulted

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from the order complained against. On facts, the Court found against the respondent and issued the writ prayed for. In C.W. 145, it was contended that the petitioners had been in possession of the lands allotted to them for a considerable time and had invested money on their lands and that a complete rearrangement was neither necessary nor just. The learned Judge found in favour of the petitioners in the following terms:—

> "This Court is not concerned with the departmental and executive actions of the Custodian's Department, but it seems to me that in this case the petitioners should at least have been given a hearing before an order to their deteriment was passed."

It is apparent that in neither of these cases the effect of section 12 or the Rules framed under the Act were taken into consideration, nor was any decision given thereon. Moreover, the cases were decided before the authoritative pronouncement in *Duni Chand's case* (1).

Even if it be held that a notice was necessary, the discretionary relief by way of writ ought not to be granted unless it is shown that the error or omission had resulted in substantial and manifest injustice to the petitioners. Under article 226, the High Court is not to act as a Court of appeal or revision so as to set right technical mistakes or mere errors of law. One of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction unless substantial injustice has ensued or is likely to ensue: *Sangram Singh* v. *Election Tribunal Kotah and other* (2).

In the present case, the point does not appear to have been urged before the learned Judge. There is no reference in the judgment to any injustice, in its

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general and broad sense, having been caused to the respondents. In my view, the facts are just the other way. A perusal of the record shows that substantial justice was in fact done by the order of re-allotment of the entire area in the manner proposed by the rehabilitation authorities. In the previous allotment, classification of the land was made according to old revenue records and not what it actually was at the site. Inspection of the spot made it clear that lands on one side of the village were almost useless for purposes of cultivation and were far inferior to those on the other side of the village. The result of allotment according to the alphabetical list naturally was that allottees on one side of the village got much inferior or almost useless lands as compared to those who got lands on the other side of the village. Consequently, the rehabilitation authorities arrived at the conclusion that the wrong done to some of the allottees could only be remedied by re-alloting lands in the manner ordered by them. In view of these facts, I am inclined to think that the order should not have been set aside merely because it was made without notice to the respondents, if one was at all necessary.

In the circumstances, I do not consider it necessary to deal with the objection, raised for the first time in this appeal, regarding the effect of section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954.

On behalf of the respondents, it is contended that the proceedings of re-allotment have also been carried out and completed behind their back and without giving any opportunity of being heard. The learned counsel has not been able to satisfy us that the law requires any notice to be given to the allottees before any allotment is made. Moreover, no specific order or proceeding is being challenged, and we do not know

if any substantial injustice has been done to the respondents. The re-allotment was made in 1952 and the parties are said to be in possession of the lands allotted to them since then. The respondents should have approached the rehabilitation authorities or they may do it even now, if so advised, for any relief that may be available to them in the matter. The point does not appear to have been specifically urged before the learned Single Judge. I do not think it is possible for us to grant any relief to the respondents in these proceedings.

In the result, the appeal is allowed and the order set aside. In view of the peculiar circumstances of the case, the parties are left to bear their own costs.

BHANDARI, C.J.—I agree.

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LETTERS PATENT APPEAL

Before Bhandari, C.J. and Tek Chand, J.

ARJAN SINGH,—*Appellant.*

versus

THE CUSTODIAN-GENERAL OF EVACUEE PROPERTY AND OTHERS,—*Respondents*

Letters Patent Appeal No. 115 of 1956.

1957

Feb. 25th

Constitution of India—Article 226—Power of High Court—Decision of a judicial or quasi—judicial tribunal within the scope of its powers—Whether can be interfered with—Administration of Evacuee Property Act (XXXI of 1950)—Section 27—Executive instructions—Whether abridge the powers of the Custodian-General.

Held, that although the High Court has power to compel a judicial or a *quasi*-judicial tribunal to perform a function imposed upon it by law, it has no power to correct the decision of a tribunal which is erroneous in point of law or to control the discretion and judgment of