

## CIVIL MISCELLANEOUS

Before R. S. Narula, J.

PAHARA SINGH AND OTHERS,—*Petitioners.*

*versus*

THE ADDITIONAL DIRECTOR, CONSOLIDATION OF HOLDINGS  
BHATINDA, AND OTHERS,—*Respondents.*

**Civil Writ No. 1780 of 1965**

February 5, 1969.

*Punjab Land Revenue Act (XVII of 1887)—Section 20—East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act (L of 1948)—Section 42—Proviso—Service of notice under—Procedure under Section 20, Punjab Land Revenue Act—Whether to be imported into the requirements of the proviso—Service of notice by affixation on the last known residential house of a litigant—Whether legal.*

Held, that clause (k) of section 2 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948, states that "words and expressions used in this Act but not defined, have the meanings assigned to them in the Punjab Land Revenue Act, 1887." The expression 'service of notice' is neither defined in the Act nor in the Punjab Land Revenue Act, 1887. By operation of clause (k) of section 2 of the Act, the procedure prescribed by section 20 of the Punjab Land Revenue Act cannot, therefore, be imported into the requirements of the proviso to section 42 of the Act. It is also significant to notice that whereas section 20 of the Punjab Land Revenue Act prescribes the mode of "service of summons", the requirement of the proviso to section 42 of the Act is that the parties interested have to be "given a notice" to appear in order to avail of an opportunity to be heard. In the absence of any statutory provisions to the contrary, service of notice of hearing of a cause by affixation on the last known residential house of a litigant is such a well known and recognised mode of service that it cannot be said that such service is illegal. (Para 3)

*Writ Petition under Articles 226 and 227 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 dated 7th September, 1964, passed by the respondent No.*

K. K. CUCCRIA, ADVOCATE, for the Petitioners.

INDER SINGH KAREWAL, ADVOCATE, FOR ADVOCATE-GENERAL, (PUNJAB), for Respondent No. 1.

R. L. AGGARWAL, ADVOCATE, for Respondents Nos. 2 and 3.

## JUDGMENT

**NARULA, J.**—Pahara Singh and two others filed this petition under Articles 226 and 227 of the Constitution of India for the issue of an appropriate writ or direction setting aside certain reservation of land made in the consolidation scheme of village Lambi Dhab, Tehsil

Muktsar, District Ferozepore, and for quashing the order of the Additional Director, Consolidation of Holdings, Punjab, Bhatinda, dated September 7, 1964 (Copy Annexure 'A' to the writ petition). Though a large number of points had been taken up in the writ petition, only three submissions have been made by Mr. Cuccria, the learned counsel for the petitioners, at the hearing of this case.

(2) It has been firstly submitted that the impugned order, copy Annexure 'A' to the writ petition, deserves to be set aside as it was passed without conforming to the requirements of the proviso to section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), hereinafter called the Act, inasmuch as no notice of the hearing fixed for September 7, 1964, was issued to petitioner No. 1, and that, in any case, he had not been served with any such notice. In the written statement filed on behalf of the Additional Director, Consolidation of Holdings, it is mentioned in reply to this allegation that notice of the hearing in question was duly issued to the said petitioner, but since he was away from the village a copy of the notice was pasted on his residential house and thus service was effected on him. The service of the notice of the said hearing on petitioners Nos. 2 and 3 is not in dispute. The learned State counsel has shown to me the original record of the case which shows that the requisite notice was issued to petitioner No. 1 on August 18, 1964. In the notice, which was in Urdu script, the following mode of service of notice was prescribed:—

“Service may be got effected on all the parties in person through the Halqa Patwari, directing them to appear of the date and at the place fixed in the notice at 9/7 a.m. to pursue the case. If personal service of the notice is not found to be possible, a copy of this notice may be made out and affixed on the residential house of the person concerned.”

The notice was served on persons other than petitioner No. 1 by the Patwari *vide* his report dated September 5, 1964. Regarding petitioner No. 1, it was reported by him that he was not in the village and could not, therefore, be served. There is then a report of the same Patwari, dated September 6, 1964, wherein it is stated that he had gone to the village on that day again and, since Pahara Singh was not available in the village, a copy of the notice was

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affixed on his residential house. The submission of Mr. Cuccria, the learned counsel for the petitioners, is that the service of the notice on petitioner No. 1 in this matter was not in conformity with the provisions of section 90 of the Punjab Tenancy Act, 1887. No provision in the Act requires service of notice issued under the Act to be effected in the manner provided by section 90 of the Tenancy Act. The statutory requirements of section 90 of the Tenancy Act cannot, therefore, be imported into the procedure for effecting service of notice under the Act.

(3) It was then contended by the learned counsel that the procedure for effecting service of notice under the Act should have been the same as is prescribed by section 20 of the Punjab Land Revenue Act, 1887. This argument is based on clause (k) of section 2 of the Act which states that "words and expressions used in this Act but not defined, have the meaning assigned to them in the Punjab Land Revenue Act, 1887." The expression 'service of notice' is neither defined in the Act nor in the Punjab Land Revenue Act, 1887. By operation of clause (k) of section 2 of the Act, the procedure prescribed by section 20 of the Punjab Land Revenue Act cannot, therefore, be imported into the requirements of the proviso to section 42 of the Act. It is also significant to notice that whereas section 20 of the Punjab Land Revenue Act prescribes the mode of "service of summons", the requirement of the proviso to section 42 of the Act is that the parties interested have to be "given a notice" to appear in order to avail of an opportunity to be heard. In the absence of any statutory provision to the contrary, service of notice of hearing of a cause by affixation on the last known residential house of a litigant is such a well known and recognised mode of service that it cannot be said that such service is illegal. Even rule 17 of Order 5 of the Code of Civil Procedure provides *inter alia* that if a defendant cannot be found, the serving officer is bound to affix a copy of the summons on the outer door or some other conspicuous part of the house in which the defendant concerned ordinarily resides or carries on business or personally works for gain. In these circumstances, I am unable to agree with the learned counsel for the petitioners that service on petitioner No. 1 of notice of the hearing before the Additional Director fixed for September 7, 1964, was not sufficient.

(4) The second submission made by the counsel for the petitioners is that an error of law is manifest on the face of the impugned order

of the Additional Director inasmuch as he has allowed to prevail the contention of respondents Nos. 2 to 4 to the effect that their share in the land purchased by them had been wrongly recorded in the mutation proceedings as one-eleventh, though the correct fraction representing their share was one-fifth. Counsel submits that the authorities under the Act had no jurisdiction to depart from the share recorded in the mutation entry and should have left the party aggrieved by the resultant difference in allotment of its share to resort to a civil Court. The Additional Director in his impugned order dealt with the matter and, after obtaining a report of the Settlement Officer, dated May 16, 1963, to the effect that respondents Nos. 2 to 4 had in fact purchased one-fifth share,—*vide* mutation No. 68 and that their share had been wrongly entered as one-eleventh, made the correction. It appears from the order that the correction was made in order to bring the consolidation record in conformity with the mutation entry and not contrary thereto. In fact the order makes it clear that the case had been originally taken up by the Additional Director Consolidation II, who had observed that the contesting respondents had purchased one-fifth share,—*vide* mutation No. 68, but that the mutation had wrongly been implemented and the said respondents were shown as vendees of only one-eleventh share. It was on account of the earlier observation of the Additional Director Consolidation II that the report of the Settlement Officer had been called for by him on May 25, 1962, and the error was rectified in the impugned order. In this situation, there appears to be no justification, whatever, for interfering with the order of the Additional Director on the ground suggested by the petitioners' learned counsel. It is also significant that in the writ petition it has not even been suggested by the petitioners that the decision of the Additional Director in this respect was incorrect and that, in fact, the share of the contesting respondents was one-eleventh and not one-fifth.

(5) The last contention of Mr. Cuccria is that the petitioners being small landowners, the provision in the consolidation scheme reserving 240 *kanals* of land for the Gram Panchayat was violative of Article 31-A of the Constitution. The said reservation has admittedly reduced the permissible area of the petitioners without payment of any compensation to them. It is conceded by the learned counsel for the State as well as the learned counsel for the contesting respondents that this part of the scheme has to be rectified so as to bring it in accord with law.

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(6) No other point having been argued in this case, I allow this writ petition partially to the extent that the provision for reservation of 240 *kanals* of land in the consolidation scheme of the village is set aside and annulled and the State Government is directed to bring the said scheme in accord with the requirement of law laid down in this respect by their Lordships of the Supreme Court in *Bhagat Ram and others v. State of Punjab and others* (1). So far as relief claimed against respondents Nos. 2 to 4 is concerned, the petition is dismissed. In the circumstances of the case, there is no order as to costs.

K.S.K.

APPELLATE CIVIL

Before Mehar Singh, C.J., and R. S. Sarkaria, J.  
MUNSHI AND ANOTHER,—Appellants.

versus

HARI SINGH,—Respondent.

**Letters Patent Appeal No. 156 of 1964**

February 13, 1969.

*Transfer of Property Act (IV of 1882)—Section 119—Property subject to right of pre-emption—Whether covered by the expression “any defect in the title”—Section 119—Whether attracted.*

*Held*, that the right of pre-emption being a burden running with the land, the enforcement of the same leads to the deprivation of possession of the land so far as the person purchasing it is concerned or the person taking it in exchange from him is concerned. Because possession of land is thus lost in the exercise of the right, which runs as a burden with the land, it is within the expression ‘any defect in the title’ as that is used in section 119 of the Transfer of Property Act. The section is, therefore attracted.

(Para 7)

*Letters Patent Appeal under Clause 10 of the Letters Patent from the decree of the Court of the Hon’ble Mr. Justice S. B. Kapoor, dated the 23rd day of January, 1964, in R.S.A. 545 of 1961, reversing with costs that of Shri Brijindra Singh Sodhi, Additional District Judge, Karnal, dated the 17th December, 1960, and restoring the decree of Shri Shamsher Singh Kanwar, Extra Sub-Judge, IV Class, Karnal, dated the 26th February, 1960, granting the plaintiff a decree for possession of the land in dispute.*

D. C. GUPTA, ADVOCATE, for the Appellants.

H. L. SARIN, SENIOR ADVOCATE, with H. S. AWASTHY AND A. L. BEHL, ADVOCATES, with him, for the Respondents.

(1) 1967 P.L.R. 287.