

(1961) 05 P&H CK 0021
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 849 of 1959

Hiralal Kher

APPELLANT

Vs

Chief Settlement Commissioner and Others

RESPONDENT

Date of Decision : 25-05-1961

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11
Displaced Persons (Compensation and Rehabilitation) Act, 1954 — Section 24, 24(3)
Displaced Persons (Compensation and Rehabilitation) Rules, 1955 — Rule 105

Citation : AIR 1961 P&H 545 : (1962) 1 ILR (P&H) 165

Hon'ble Judges : G.D. Khosla, C.J;P.C. Pandit, J;A.N. Grover, J

Bench : Full Bench

Advocate : H.R. Sodhi and S.K. Jain, for the Appellant; L.D. Kaushal, Sr. Dy. A.G., for the Respondent

Final Decision : Allowed

Judgement

G.D. Khosla, C.J.—In this reference we are concerned with the manner in which a revision before the Chief Settlement Commissioner u/s 24 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, must be dealt with. The matter arose in the following manner : A house was allotted to the petitioner, Hira Lal, who is a displaced person. This house had to be evaluated under the provisions of the Displaced Persons (Compensation and Rehabilitation) Act, 1954. On 31-1-58 the Managing Officer assessed the value of the house at Rs. 4901.

This value was contested by the petitioner on the ground that other houses in the neighbourhood had been assessed at lower figures. An appeal filed against the order of the Managing Officer was dismissed by the Settlement Commissioner on 7-11-1958. Then the petitioner filed a revision petition to the Chief Settlement Commissioner u/s 24 of the Act. The Chief Settlement Commissioner did not fix any date of hearing, nor did he give an oral hearing to the petitioner or his counsel. He made a brief order dismissing the petition which was communicated to the petitioner. The order is annexure "D" to the petition and is

in the following terms :

"With reference to his revision petition dated 5-12-1958 Shri Hira Lal is hereby informed that the same has been rejected in limine".

2. The petitioner thereupon put in a petition for a writ in this Court urging that the order was wholly illegal and liable to be set aside, because it was not in conformity with the provisions of the Act and the rules framed thereunder. His contention was that the Chief Settlement Commissioner should have given an oral hearing to him as required by Order 41, Civil Procedure Code, which had been made applicable to revision petitions by the terms of rule 105 framed under the Act.

3. The question for our consideration, therefore, is what is the legal procedure for dealing with a revision petition filed u/s 24 of the Act? Can such a revision petition be dismissed without giving an oral hearing to the petitioner, or is the Chief Settlement Commissioner obliged to fix a date and hear the petitioner or his counsel before he can dismiss it?

4. It has been urged before us by Mr. Sodhi who appeared on behalf of Hira Lal petitioner that u/s 24 there is a lawful duty cast upon the Chief Settlement Commissioner to hear the petitioner before he can make an order adverse to him. He relies upon Sub-section (3) of Section 24. This sub-section is in the following terms :

"No order which prejudicially affects any person shall be passed under this section without giving him reasonable opportunity of being heard."

5. Mr. Sodhi argues that "being heard" here means being heard orally or through counsel. A reading of this sub-section, however, makes it quite clear that what is here intended is that when a revision petition comes before the Chief Settlement Commissioner or he examines the case himself after sending for the record, he must not pass an order varying the original Order unless he hears the party to whose detriment the new order will operate. This sub-section is not intended to deal with cases where the revision petition is dismissed in limine, because in essence the petitioner's revision petition has been heard.

Also the principle upon which this section is based is derived from the old legal maxim *audi alteram partem* which means "hear the other party". This maxim means that a Court or an authority must not make an order to the detriment of the other party without hearing him. It can make an order to the detriment of the petitioner, because the petitioner's grievance is set out in the petition which he makes and the authority can, on examining it, say that no case is made out for interference and that, therefore, there is no need to "hear the other party".

But where it is considered necessary to vary the order in favour of the petitioner, then that order will operate to the detriment of the other party and such an order must not be made before that other party is given an opportunity of being heard; he may be heard either in person or through an agent or he may merely be

asked to submit a written representation.

If any of these alternative courses is adopted, the provisions of law will have been complied with. Therefore, Sub-section (3) means, in my view, that the order of the lower Court must not be varied in revision before hearing a party who will be adversely affected by that order. The provisions of Sub-section (3) therefore, cannot be relied upon in order to support the case for oral hearing.

6. Mr. Sodhi next argued that Rule 105 gives clearly the right to the petitioner to be heard in the same manner as an appellant in a civil case is heard by the appellate Court. There is considerable force in this argument Chapter XVIII of the rules framed under the Act is headed "Procedure for appeals, review and revisions". Rule 103 deals with the manner in which a memorandum of appeal must be drawn up.

Rule 104 lays down that a petition for revision must be drawn up and presented in the same manner and within the same period as a memorandum of appeal and the petition must also be accompanied by a copy of the order sought to be revised. Therefore, Rules 103 and 104, when, read together, show that the authority making the rules did not wish to make any distinction whatsoever between, appeals and revisions filed under the Act. Rule 105 sets down the procedure to be adopted in respect of appeals and revisions. This rule is in the following terms :

"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, 1908 (Act V of 1908) shall, so far as may be applicable, apply to the hearing and disposal of appeals and revisions under the Act."

Order 41 deals only with appeals and makes no mention of revisions, but Rule 105 in specific terms provides that the provisions of Order 41 apply both to appeals and revisions filed under the Act. It cannot be argued that because Order 41 does not speak of revisions, no part of it applies to revision petitions before the Chief Settlement Commissioner, because to interpret Rule 105 in that manner would be to do violence to its clear and unequivocal terms.

It may be observed that Section 40(2)(a) of the Act authorises the Central Government to frame rules with regard to the form and manner in which applications for revision may be preferred and the procedure for hearing such petitions. In framing Rule 105, therefore, the Central Government exercised an authority which was expressly given to it by the Act. It must be pointed out that there is no provision for a second appeal and therefore, the Government considered it just and fair to apply the provisions of Order 41 to revision petitions under the Act.

7. Mr. Kaushal, who appeared on behalf of the State, tried to argue that only certain rules of Order 41 applied to revisions and he sought to make a distinction between entertaining and dealing: with revision petitions on the one hand and

hearing: and disposing them of on the other. He argued that Rule 12 onwards only applied to revision petitions and that a revision petition could, therefore, be dismissed in limine without giving the petitioner an opportunity of being heard.

I, however, find no substance in this argument. It is clear to me that hearing and disposing of a petition means the entire process beginning with the putting in of the petition and ending with its final conclusion which may entail the confirming of the original order or its being varied. In this view of the matter, the Chief Settlement Commissioner has a duty cast upon him to fix a date for hearing the petitioner or his Pleader as required by Order 41, Rule 11, Civil Procedure Code, and it is only after hearing the petitioner or his Pleader that the petition can be dismissed.

This will also be dismissed in limine, because the other party will not have been called upon.

The Chief Settlement Commissioner cannot, however, dismiss the petition without having recourse to the provisions of Order 41, Rule 11, Civil Procedure Code, because to do so would be to go contrary to the specific directions of Rule 105 of the Act.

8. It may be mentioned that the procedure laid down for dealing with revisions under the Administration of Evacuee Property Act is somewhat different. A revision petition under that Act may be dismissed without giving an oral hearing to the petitioner. Rule 31 framed under that Act applies Order 41 of the CPC to appeals under the Act only and not revision petitions also as in the case before us.

9. The result is that in my view the law clearly requires the Chief Settlement Commissioner to fix a date for hearing a revision petition filed before him u/s 24 of the Act and on that date he must give the petitioner or his Pleader an opportunity to plead his case. The present petition was dismissed without such opportunity being given and the order dismissing the petition was, therefore, contrary to law. The Chief Settlement Commissioner failed to exercise jurisdiction which was vested in him by law and I would, therefore, set aside his order as contrary to law. The petitioner will recover costs of this petition which I would assess at Rs. 150/-.

A.N. Grover, J.

10. I agree.

Prem Chand Pandit, J.

11. I agree that the Chief Settlement Commissioner acted illegally in dismissing the petition without hearing the petitioner and his order therefore, must be quashed.