
(1952) 02 P&H CK 0007
In the Punjab And Haryana At Chandigarh
Case No : Civil Miscellaneous No. 179 of 1951

Sajjan Singh

APPELLANT

Vs

Custodian General Muslim Evacuees Property and Others

RESPONDENT

Date of Decision : 12-02-1952

Acts Referred:

Administration of Evacuee Property (Central) Rules, 1950 — Rule 13(4), 14
Administration of Evacuee Property Act, 1950 — Section 2
Constitution of India, 1950 — Article 226

Citation : (1952) 02 P&H CK 0007

Hon'ble Judges : Teja Singh, C.J;Passey, J

Bench : Division Bench

Advocate : S. Hanwant Bir Singh, for the Appellant; Sardar Narinder Singh, General and Banwari Lal, for the Respondent

Judgement

Passey, J.—This is a petition under Article 226 of the Constitution of India for a writ of certiorari or other appropriate direction to the respondents to forbear from giving effect to the super session of allotment of house No. 965 Ward 3, in Patiala that had already been made in favour of the Petitioner. Sajjan Singh Petitioner belonged to the Attack District and had migrated to India after the disturbances of 1947. He has been residing in Patiala ever since. House No. 965 had been given on lease by the Custodian Muslim Evacuee Property to Kesar Singh, a Mistry of the Irrigation Department. On coming to know of the transfer of Kesar Singh from Patiala the Petitioner on 2-3-2006/15-6-1949 approached the Custodian with the request that the house be allotted to him. His application was accepted on 11-10-1949 and the house allotted to him as applied for. The Petitioner then applied for delivery of possession of the house, but the Custodian on being informed that the order of Kesar Singh's transfer had not been given effect to, cancelled the allotment in favour of Sajjan Singh on 1-11-1949 and allowed the lessee to continue to occupy the house. Subsequently, on the transfer of Kesar Singh taking place one Bawa Budh Singh applied for allotment of the house to him and his prayer was accepted by the Custodian on 31-1-1950

without any notice to the Petitioner that it was proposed to cancel the allotment in his favour. Sajjan Singh applied to the Custodian to review his order allotting the house to Bawa Budh Singh but remained unsuccessful. He then went up to the Custodian General of India but his revision met with a similar fate.

2. The only point on which stress has been laid by S. Hanwant Bir Singh is that the cancellation of allotment to the Petitioner and the subsequent allotment of the house to Bawa Budh Singh was illegal, as no notice of the contemplated cancellation had been issued to him. In support of his contention he could only refer to Sub-clause (4) of Rule 14, Administration of Evacuee Property (Central) Rules, 1950 which is a reproduction of the former Rule 13(4) framed by the Central Government u/s 53, Administration of Evacuee Property Ordinance 1949. Sub-clause (4) of Rule 14 runs as follows:

Before canceling or varying the terms of a lease or before evicting any lessee, the Custodian shall serve a person or the person concerned with a notice to show cause against the order proposed to be made and shall afford him a reasonable opportunity of being heard.

This rule makes it incumbent upon the Custodian to give notice to the person concerned to show cause against the order proposed to be made against him only when it is intended to cancel or vary the terms of the lease on the basis of which he is occupying a certain premises or where the lessee is proposed to be evicted. The rule does not enjoin that the Custodian must give notice to the allottee and hear him before canceling his allotment. An "allotment" as defined by Section 2, Administration of Evacuee Property Act (31 of 1950) means the grant by a person duly authorised in this behalf of a right of use or occupation of any immovable evacuee property to any other person, but does not include a grant by way of lease. A lease is thus distinct from allotment and Sub-clause (4) of Rule 14 mentioned above relates to leases only and has no applicability to allotments. Although I am of the view that an allotment once made should not be lightly or arbitrarily cancelled and that no order of cancellation should ordinarily be made at the back of the allottee, I am, because of the absence of a specific provision in the relevant law prescribing issue of a notice before cancellation of allotment, unable to hold that the Custodian in the present case acted illegally or without jurisdiction in cancelling the allotment in favour of Sajjan Singh which existed on paper only and has not been given effect to by delivering possession of the house to him. The petition must, therefore, fail and is dismissed. No costs.

Teja Singh, C.J.

3. I agree.