

Ochhi Ram Hari Ram vs The Custodian General Of Evacuee ... on 16 July, 1951

Equivalent citations: AIR1951ALL821, AIR 1951 ALLAHABAD 821

JUDGMENT

Agarwala, J.

1. This is an application for a writ of certiorari, mandamus or other direction or order under Article 226 of the Constitution.
2. The applicant alleges himself to be a registered refugee and, as such, a national and citizen of India. He took possession as tenant of house No. 243, Chillipara, Shahganj, Agra, 3-5-1950 from one Syed Shahid Husain who is alleged to be a resident of Achnera, in the district of Agra. He applied for the allotment of the house to the Manager, Evacuee Property, Shahganj Beat, Agra. On receipt of this application the house in question was declared evacuee property and the Manager, Evacuee Property, reported the matter to the Assistant Custodian and recommended that the need of the applicant for the house was a genuine one. While the matter was pending before the Assistant Custodian, the Custodian, Evacuee Property U.P. passed an order in August 1950 allotting the house to one Sri Harbans Singh directing at the same time that the applicant be evicted therefrom. In passing the order the Custodian U. P. did not give the applicant an opportunity of being heard. The applicant went up in revision against this order to the Custodian General, New Delhi. This application was made under Section 27, Administration of Evacuee Property Act, No. XXXI of 1950. The Custodian General called for a report from the Custodian U. P. and ordered that the eviction of the applicant may be stayed meanwhile. On receiving a report from the Custodian U. P., however, the Custodian General dismissed the revision application without giving the applicant an opportunity of being heard in support of his application. The applicant then made an application to the Custodian General praying that his order rejecting the revision application may be reviewed. This application was also rejected. The applicant has, therefore, moved this Court under Article 226.
3. It is urged on behalf of the applicant that under Section 27, Administration of Evacuee Property Act the Custodian General was not authorised to dismiss the revision application without giving him an opportunity of being heard. Section 27 of the aforesaid Act runs as follows :

"(1) The Custodian General may at any time either on his own motion or on application made to him in this behalf, call for the record of any proceeding in which any District Judge or 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 in relation thereto as he thinks fit : Provided that the Custodian General shall not pass an order under this sub-section prejudicial to any person without giving him a

reasonable opportunity of being heard "

Under the proviso, the right of being heard is confined to cases in which the Custodian General proposes "to pass an order under this section prejudicial to any person." The expression, "an order under this section" must have reference to the order mentioned in the main part of the section. The section mentions an order to be passed by the Custodian General after he has called for the record of any proceeding of any District Judge or Custodian. It follows, therefore, that the right of being heard, is confined to orders passed, after the Custodian General has called for the record and is not applicable to a case in which a revision application has been dismissed without calling the record. In the present case, however, the record was called for, but ultimately the revision application was dismissed and the Custodian General took the view that the applicant had no right of being heard when his application was being dismissed, and that it is only when he passes an order against some other party to the case that that party has a right to be heard. With all respect we consider that this view is not sound.

4. The words "any person" in the proviso are not confined to an opposite party in an application for revision. They include the applicant in revision as well and an order passed dismissing the application in revision is certainly prejudicial to him, and such an order confirming the order of the District Judge or the Custodian is an order "in relation" to the order of the District Judge or the Custodian.

5. It appears to us that the section contemplates two stages in dealing with a revision application--a stage before the record of the proceeding is called for and a stage after the record has been called for. The Custodian General is not bound to call for the record of any proceeding. He is, therefore, entitled to dismiss an application made to him under Section 27 outright and in this case he is not bound to hear the applicant. But once he decides to call for the record of proceedings of any District Judge or Custodian, the order that he passes thereafter is an order in relation to the order passed by the District Judge or the Custodian. Even if he dismisses the application in revision it will be prejudicial to the applicant. If he modifies or sets aside the order of the District Judge or the Custodian, it will be prejudicial to the person in whose favour that order was passed. In either event, the Custodian General is bound to hear the person against whom a prejudicial order is passed by him after he has called for the record.

6. In the present case, admittedly, the Custodian General was satisfied that there was some prima facie case for calling for the record of the proceedings of the Custodian. As already stated he called for the record and, after perusing the report of the Custodian, dismissed the application. This order of dismissal was clearly prejudicial to the applicant. In our opinion, the Custodian General was bound to give the applicant an opportunity of being heard in support of his application.

7. We, therefore, quash the order of the Custodian General dated 27-12-1950 and direct him to dispose of the revision application of the applicant after affording him an opportunity of being heard. We make no order as to costs.