

rights in certain colony land and after his death these rights were mutated in favour of his widow in 1904, and in 1906, she acquired occupancy rights which she gifted in favour of her three daughters. They in due course became full owners of the land by paying the necessary sums to the Government. The plaintiffs claiming to be the reversioners of Hari Singh brought a suit challenging the alienation by the widow of the occupancy rights and it was held by Broadway and Jai Lal, JJ., that the widow acquired the occupancy rights for herself and not as representative of her deceased husband and her right to dispose of such self-acquired property was unlimited.

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These cases do not in my opinion differ in any way in principle from the present case and with respect I am of the opinion that a correct view was taken therein. I am, therefore, of the opinion that there is no ground for interference and would dismiss the appeal with costs.

BHANDARI, C.J.—I agree.

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*B.R.T.*

#### LETTERS PATENT APPEAL

*Before Bhandari, C.J. and Falshaw, J.*

SAMPURAN SINGH,—Appellant.

*versus*

THE CHIEF SETTLEMENT COMMISSIONER, DELHI  
AND ANOTHER,—Respondents.

**Letters Patent Appeal No. 129 of 1957.**

*Displaced Persons Claims (Supplementary) Act (XII of 1954)—Section 5—Opportunity of being heard—Meaning of—Notice to the party—Whether essential—Notice to the party—Purpose of—Notice not duly served—Effect of—Modes of service—Actual or personal and substituted—Substituted service—When to be resorted to and how to be effected—Case transferred from one tribunal to another—Notice to persons concerned—Whether necessary.*

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*Held*, that Section 5 of the Displaced Persons Claims (Supplementary) Act, 1954 imposes a statutory obligation on the Tribunal which proposes to pass an order to the detriment of a person, to issue a notice to the person concerned of the nature and object of the proceeding that is proposed to be taken in regard to him and the date on and time at which the matters in controversy would be taken up for consideration. This notice should ordinarily be served personally on the person concerned. If, however, a statutory rule provides for substituted service it must incorporate provisions which are reasonably designed to give the necessary notice to the party in interest.

*Held*, that a process or notice is usually issued to a person with the object of informing him that a proceeding has been commenced against him and that he must answer within a specified time, failing which orders would be passed against him. If this notice is not duly served or if the person concerned is not given an opportunity of appearing before and being heard by the tribunal, the *quasi-judicial* order passed by the tribunal loses all force and vitality and may be declared to be void and of no effect. A judgment against a person who was not given notice in the manner required by law of the action or proceeding in which such judgment was given, lacks all the attributes of a judicial determination. It is a judicial usurpation and oppression and can never be upheld where justice is fairly administered.

*Held*, that there are two modes of effecting service of process, namely (1) actual or personal service and (2) substituted service. Personal service is the usual method but substituted service may be resorted to in special circumstances designated by the statute when the defendant cannot after due diligence be found or when personal service is for any reason impracticable. As the law authorising substituted service constitutes a departure from the general rule that personal service should be effected, the mode of service prescribed by law should be such as is reasonably calculated to give the person concerned actual notice of the proceeding and an opportunity to be heard. Substituted service is the law's substitute for actual service, for compliance with the requirements of the statute raises a presumption that the person concerned had received information of what was proposed and when and where he would be heard.

*Held*, that although service by publication in a newspaper is often resorted to when it is not possible to effect personal service, it is never regarded as a satisfactory method of imparting information to the person concerned. The right to resort to substituted service is based on the ground of necessity. As publication in a newspaper is designed to secure that the notice may reach the party intended, it is of importance that the notice should appear in a suitable newspaper, that is in a newspaper of general circulation or in a newspaper which is likely to be read by the person concerned or his friends or relations. If a notice is issued in an obscure newspaper or in a newspaper which does not circulate in the locality in which the party in interest resides, or if it is issued in a manner in which it is extremely improbable that it could have come to the notice of the party concerned, a proceeding based on such notice may be held to be invalid even though the letter of the law has been observed. If a closely printed notice covering several columns and containing hundreds of names is issued in a newspaper, it is certainly unlikely that all the parties concerned would be apprised of the proceedings.

*Held*, that when a case is transferred from one tribunal to another a notice of the transfer must be given to the person concerned.

*Appeal under Clause 10 of the Letters Patent against the order of Hon'ble Mr. Justice Bishan Narain passed in Civil Writ No. 348 of 1955, dated 9th May, 1957.*

H. R. SODHI & NARINDER SINGH, for Appellant.

S. M. SIKRI, ADVOCATE-GENERAL, for Respondents.

#### JUDGMENT

BHANDARI, C.J.—This appeal under clause 10 Bhandari, C. J. of the Letters Patent raises the question whether the petitioner was afforded a reasonable opportunity of being heard before his verified claim was reduced from Rs. 5,67,500 to Rs. 2,63,250.

The petitioner is a displaced land-owner of Pakistan. The Claims Officer appointed under the

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provisions of the Displaced Persons (Claims) Act, 1950, verified his claim for a sum of Rs. 5,67,000. The Displaced Persons (Claims) Supplementary Act, 1954, came into force on the 18th March, 1954, and a registered notice was issued to the petitioner to appear before Mr. Salig Ram Malik, Additional Settlement Commissioner, Delhi, on the 17th January, 1955, and show cause why his claim should not be revised. This notice was received back unserved. A notice was then published in "The Tribune" of the 15th November, 1954, requiring a number of claimants, including the petitioner, to appear before Mr. Malik on the 17th January, 1955. The petitioner did not appear before Mr. Malik on the due date, but he was later informed that his case was transferred to Mr. Jugal Kishore Khanna on or before the 17th, and that Mr. Khanna passed an *ex parte* order on the 18th January, 1955, reducing the petitioner's verified claim from Rs. 5,67,500 to Rs. 2,63,250. The petitioner challenged the validity of this *ex parte* order by means of a petition under article 226 of the Constitution on the ground that he had never received the notice which was issued to him by post, that he never saw the notice which had appeared in "The Tribune", and that the order in question was passed without affording him an opportunity of being heard. The learned Single Judge, before whom this petition came up for consideration, found in favour of the Department and dismissed the petition. The petitioner has now preferred an appeal under clause 10 of the Letters Patent.

The petitioner's case before the learned Single Judge and before us today was that he never received the notice which was sent to him by post and that he never read the notice which was published in "The Tribune" of the 15th November,

1954. One day towards the end of January, 1955, Sampuran Singh, he was informed by one Sampuran Singh, a namesake of the petitioner, that a notice had appeared in "The Tribune" calling upon several persons to appear before Mr. Malik on the 17th January, 1955. The petitioner verified the correctness of this information, but as the date had already expired he applied immediately for a copy of the order passed by Mr. Malik. On the 25th March, he received a communication from the office of the Chief Settlement Commissioner to the effect that his case had been heard and determined in his absence by Mr. Khanna on the 18th January, 1955 and that his claim had been reduced by a sum of over three lacs.

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Two submissions have been placed before us on behalf of petitioner viz., (1) that the form of service adopted by the Chief Settlement Commissioner was not reasonably calculated to give the petitioner actual notice of the proceedings and an opportunity to be heard, and (2) that in any case the petitioner was not informed that his case had been transferred to Mr. Khanna and that he should appear before the said officer on the 18th January.

Sub-section (1) of section 5 of the Act of 1954 empowers the Chief Commissioner, either on an application by a person aggrieved by the decision of a Claims Officer or of his own motion, to call for the record of the case and make such order in the case as he thinks fit. Sub-section (2) provides that no order varying the decision of the Claims Officer or revising any verified claim which prejudicially affects any person, shall be made without giving him an opportunity of being heard. Rule 19 of the Rules made by Central Government under section 12 of the Act of 1954, requires that every notice issued under the said Rules shall be served

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upon the claimant by pre-paid registered post with an acknowledgement due at the address mentioned in the claim file or at such other address as may be supplied by he claimant. Sub-rule (1) of Rule 19 A declares that where a notice or-order served on any claimant under Rule 19 is returned undelivered before the date fixed for hearing the Settlement Officer or the Revising authority as the case may be, shall order the notice or order to be served on the claimant by notice in Form E published in a newspaper circulating within the area in which the claimant is stated to have resided or to be carrying on business according to the address given in the claim file of such claimant. Sub-rule (3) provides that a notice in Form E may be addressed to one or more claimants. Sub-rule (4) declares that where service of a notice or order is substituted by an order of the Settlement Officer or a Revising authority under this rule, such service shall be as effectual as if it had been made on the claimant personally.

A process or notice is usually issued to a person with the object of informing him that a proceeding has been commenced against him and that he must answer within a specified time, failing which orders would be passed against him. If this notice is not duly served or if the person concerned is not given an opportunity of appearing before and being heard by tribunal, the quasi-judicial order passed by the tribunal loses all force and vitality and may be declared to be void and of no effect. A judgment against a person, observes an eminent jurist, who was not given notice in the manner required by law of the action or proceedings in which such judgment was given, lacks all the attributes of a judicial determination, It is a judicial usurpation and oppression and can never be upheld where justice is fairly administered.

There are two modes of effecting service of process, namely (1) actual or personal service when the original notice is read out to the person concerned or when a copy of it is delivered to him or to someone who is authorised to receive it on his behalf ; and (2) substituted service when a copy of the notice is left at the usual place of abode of the person concerned when he is absent or when the notice is sent by mail or published in a newspaper in accordance with the provisions of the relevant statute. Personal service is the usual method but substituted service may be resorted to in special circumstances designated by the statute when the defendant cannot after due diligence be found or when personal service is for any reason impracticable. Generally an affidavit is required to be made or filed showing the existence of such circumstances and upon such affidavit, the Court is authorised to direct the service of summons by publication and to determine in what newspaper and for what length of time the publication shall be made. As the law authorising substituted service constitutes a departure from the general rule that personal service should be effected, the mode of service prescribed by law should be such as is reasonably calculated to give the person concerned actual notice of the proceeding and an opportunity to be heard. Indeed, all laws relating to service of process are designed to secure that such notice should be given to the person concerned as would in the nature of things bring the attention of the person concerned to the commencement of the proceedings against him. Substituted service is the law's substitute for actual service, for compliance with the requirements of the statute raises a presumption that the person concerned had received information of what was proposed and when and where he would be heard. If, therefore, a statute provides for substituted service and

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if the statutory formalities are fully complied with, substituted service is as effectual as personal service even though actual information may not reach the ears of the party concerned.

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Although service by publication in a newspaper is often resorted to when it is not possible to effect personal service, it is never regarded as a satisfactory method of imparting information to the person concerned. Every person is presumed to know the law of the land but every person is not presumed to know every fact which happens to be published in a newspaper even though he is a subscriber or a habitual purchaser of it. The right to resort to substituted service is based on the ground of necessity. It is authorised on the assumption that if a notice is published in a newspaper requiring a person to appear before a particular tribunal on a particular date it is probable that it would be seen by the person concerned or by one or more of his friends or relations who would inform him of it. If the person concerned receives information of the nature of the proceeding against him and of the date and time of the hearing, or if he receives information in regard to a notice which is sufficient to put reasonably prudent man upon an enquiry as to the nature of the notice issued to him, then even though this information does not of itself amount to an actual notice, he is absolutely charged with constructive notice, for the object of the publication is merely to convey knowledge to the person for whom it is intended of the claim or charge against him so that he may properly prepare himself to answer it. As publication in a newspaper is designed to secure that the notice may reach the party intended, it is of importance that the notice should appear in a suitable newspaper, that is in a newspaper of general circulation or in a newspaper which is



likely to be read by the person concerned or his friends or relations. If a notice is issued in an obscure newspaper or in a newspaper which does not circulate in the locality in which the party interest resides, or if it is issued in a manner in which it is extremely improbable that it could have come to the notice of the party concerned, a proceeding based on such notice may be held to be invalid even though the letter of the law has been observed. Answer to the question whether a notice appearing in a newspaper has been duly served is furnished by the answer to the question whether the mode of service is reasonably calculated to give the person concerned actual notice of the proceedings and an opportunity to be heard.

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The Displaced Persons (Claims) Supplementary Act, 1954, makes no provision for substituted service. Sub-section (2) of section 5 of the said Act declares merely that no order varying the decision of the Claims Officer or revising any verified claim which prejudicially affects any person shall be made without giving him an opportunity of being heard. This provision imposes a statutory obligation on the tribunal which proposes to pass an order to the detriment of a person, to issue a notice to the person concerned of the nature and object of the proceeding that is proposed to be taken in regard to him and the date on and time at which the matters in controversy would be taken up for consideration. This notice should ordinarily be served personally on the person concerned. If, however, a statutory rule provides for substituted service it must incorporate provisions which are reasonably designed to give the necessary notice to the party in interest. If the mode of service prescribed by a statutory rule is such as to render it reasonably probable that the party concerned would be apprised of the proceeding

Sampuran Singh and afforded an opportunity to appear and to protect his interest the service would be valid. If, on the other hand, the mode of service is not reasonably calculated to achieve this object the service must be deemed to be void and of no effect.

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Now what was the mode of service adopted in the present case? The issue of "The Tribune" dated the 15th November, 1954, has been brought to our notice. This issue contains a notice under rule 19A of the Displaced Persons (Verification of Claims) Supplementary Rules, 1954, and is in the following terms :—

"Whereas the claimants described in table annexed hereto are untraceable and notices cannot be served on them in the manner laid down in rule 19, notice is hereby given that the claims of the claimants will be taken up for verification—revision before the officers mentioned below on the dates and time specified therein. Now, therefore, it is ordered that unless the claimants concerned appear in person or through an authorised agent before the officers concerned along with the evidence, documentary or otherwise, on which they propose to rely their claims shall be determined *ex parte*."

Then follow eight columns of closely printed names of persons who are required to appear before the officers concerned on various dates commencing from the 18th January, 1955, to the 22nd January, 1955. The name of the petitioner appears in column 4 under the heading "Before Shri Salig Ram Malik, Additional Settlement Commissioner, Metcaff House, Delhi, 17th January, 1955, at 10 a.m." The petitioner has sworn an affidavit to the

effect that he did not see this paper and that the first time on which he was informed that his name had appeared in the paper was on a date between the 17th January, 1955, and the 24th January, 1955. I have no hesitation in accepting his statement on this point. In the first place there is not an iota of evidence on the record to show that he is a subscriber of "The Tribune" or a habitual purchaser of it. Secondly, it appears that his claim had been duly verified several years before and he had not asked for a revision of the verification. The Chief Settlement Commissioner decided of his own accord to revise it and the petitioner was not aware of this decision. He was not expecting a notice and was not looking for one. Thirdly, the manner in which the notice was published renders it improbable that a friend or relation of the petitioner could have read it or have informed him of it. It is true that the rule empowers the Chief Settlement Commissioner to address the notice to one or more claimants and to effect service by publication in a newspaper, but this rule could never have contemplated that notices in regard to hundreds of cases which are to come up for hearing before different officers on different dates should be all jumbled up together in one omnibus notice. Substituted service by publication in a newspaper is usually authorised on the assumption that the person for whom the notice is intended, would read the paper himself, or that a friend or relation of the said person would read it and inform the person concerned that his presence is required before a particular officer on a particular day. If, however, a closely printed notice covering several columns and containing hundreds of names is issued in a newspaper, it is extremely unlikely that all the parties concerned would be apprised of the proceedings particularly when they are wholly unaware that any proceedings are pending against

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them at all. The law requires that no order should be passed to the detriment of a person unless he has been afforded an opportunity of being heard. The mode of service which has been adopted in the present case was not, in my opinion, likely to give notice to the petitioner that his case was to come up for hearing on the 17th January, 1955.

There is another aspect of the matter which needs to be considered. According to the notice appearing in "The Tribune" of the 15th November, 1954, the petitioner's case was to come up for hearing before Mr. Malik on the 17th January, 1955. The case was not put up for hearing before this officer on the 17th January, 1955, but was put up for consideration before Mr. Khanna on the 18th January, 1955. It has been held repeatedly that when a case is transferred from one tribunal to another a notice of the transfer must be given to the person concerned. If no such notice is given, the *ex parte* order passed is liable to be set aside [*Ganga Ram and others v. Gujar Mal* (1); *Satya Pal and others v. Sant Ram and others* (2); *Krishan Lal Malhotra v. Madan Lal and others* (3)].

For these reasons I am of the opinion that the petitioner was not duly served with the notice and that he was not afforded a reasonable opportunity of being heard in defence. I would accordingly allow the appeal, set aside the order of the learned Single Judge and quash that of the Settlement Commissioner. The petitioner will be entitled to the costs of this Court.

Falshaw, J.

FALSHAW, J.—I agree.

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(1) A.I.R. 1923 Lah. 444  
(2) A.I.R. 1934 Lah. 91  
(3) A.I.R. 1950 Lah. 43