

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.5147 of 2000

Anil Kumar Singh, S/o Gajendra Narayan Singh, aged about 42 years, R/o Kedarpur, Ambikapur, Distt. Sarguja (M.P.) (now C.G.)

---- Petitioner

Versus

1. Uddami Vikas Sansthan Madhya Pradesh, Rajiv Gandhi Bhawan, 35, Shamlia Hills, Bhopal, through its Managing Director.
2. The Kendriya Prabandhak, Uddami Vikas Sansthan, Ambikapur, Distt. Sarguja.
3. The Assistant Commissioner, Tribal Welfare Department, Ambikapur, Distt. Sarguja.
4. The Competent Authority/Nazul Officer, Purporting to be under Madhya Pradesh Lok Parisar (Be-dekhli) Adhiniyam, 1974.
5. The Collector, Ambikapur, Distt. Sarguja.
6. The Commissioner, Bilaspur (Appellate Authority under Lok Parisar (Be-dekhli) Adhiniyam 1974).

---- Respondents

Writ Petition No.5148 of 2000

Musarrat Ali, S/o Abbas Ali, aged about 26 years, R/o Village Nawagarh, Ambikapur, Distt. Sarguja (M.P.) (now C.G.)

---- Petitioner

Versus

1. Uddami Vikas Sansthan Madhya Pradesh, Rajiv Gandhi Bhawan, 35, Shamlia Hills, Bhopal, through its Managing Director.
2. The Kendriya Prabandhak, Uddami Vikas Sansthan, Ambikapur, Distt. Sarguja.
3. The Assistant Commissioner, Tribal Welfare Department,

Ambikapur, Distt. Sarguja.

4. The Competent Authority/Nazul Officer, Purporting to be under Madhya Pradesh Lok Parisar (Be-dekhli) Adhiniyam, 1974.
5. The Collector, Ambikapur, Distt. Sarguja.
6. The Commissioner, Bilaspur (Appellate Authority under Lok Parisar (Be-dekhli) Adhiniyam 1974).

---- Respondents

Writ Petition No.5174 of 2000

Shyamlal Motwani, S/o Brijlal Motwani, aged about 35 years,  
Ambikapur, Distt. Sarguja (M.P.) (now C.G.)

---- Petitioner

Versus

1. Uddami Vikas Sansthan Madhya Pradesh, Rajiv Gandhi Bhawan, 35, Shamlia Hills, Bhopal, through its Managing Director.
2. The Kendriya Prabandhak, Uddami Vikas Sansthan, Ambikapur, Distt. Sarguja.
3. The Assistant Commissioner, Tribal Welfare Department, Ambikapur, Distt. Sarguja.
4. The Competent Authority/Nazul Officer, Purporting to be under Madhya Pradesh Lok Parisar (Be-dekhli) Adhiniyam, 1974.
5. The Collector, Ambikapur, Distt. Sarguja.
6. The Commissioner, Bilaspur (Appellate Authority under Lok Parisar (Be-dekhli) Adhiniyam 1974).

---- Respondents

AND

Writ Petition No.5175 of 2000

Anadi Vishwakarma, S/o Ramsajeevan, aged about 26 years,  
R/o Banaras Road, Ambikapur, Distt. Sarguja (M.P.) (now C.G.)

---- Petitioner

Versus

1. Uddami Vikas Sansthan Madhya Pradesh, Rajiv Gandhi Bhawan, 35, Shamlia Hills, Bhopal, through its Managing Director.
2. The Kendriya Prabandhak, Uddami Vikas Sansthan, Ambikapur, Distt. Sarguja.
3. The Assistant Commissioner, Tribal Welfare Department, Ambikapur, Distt. Sarguja.
4. The Competent Authority/Nazul Officer, Purporting to be under Madhya Pradesh Lok Parisar (Be-dekhli) Adhiniyam, 1974.
5. The Collector, Ambikapur, Distt. Sarguja.
6. The Commissioner, Bilaspur (Appellate Authority under Lok Parisar (Be-dekhli) Adhiniyam 1974).

---- Respondents

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| For Petitioners:                   | Mr. Manoj Paranjpe, Advocate.        |
| For Respondents No.1 and 2: -      | Mr. Y.S. Thakur, Advocate.           |
| For State/Respondents No.3 to 6: - | Mr. Shashank Thakur, Govt. Advocate. |

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Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

03/07/2017

1. Since common question of law and fact is involved in all the above writ petitions, they were clubbed together and heard analogously and are being disposed of by this common order.
2. Madhya Pradesh Udyami Vikas Sansthan is a society registered under the provisions of the Madhya Pradesh Societies Registrikaran Adhiniyam, 1973, controlled and managed by the Department of Tribal Welfare, State of Madhya Pradesh. It leased out the suit shops to the

petitioners herein for the purpose of carrying on their business. In order to evict the respective petitioners, show cause notice dated 8-3-2000 was issued to them which was replied and thereafter, respondent No.1 made an application before competent authority under the Madhya Pradesh Lok Parisar (Bedakhali) Adhiniyam, 1974 (for short, 'the Act, 1974') and in which the petitioners were issued notice under Section 4 of the Act, 1974 to show-cause why they should not be evicted as they are in unauthorized occupation of public premises. The petitioners herein filed their specific reply taking specific objection that the competent authority who issued notice under Section 4 of the Act, 1974, has not been authorized under Section 3 of the Act, 1974, to act as competent authority under the Act and also took a specific objection that Udyami Vikas Sansthan is not a local authority within the meaning of Section 2 (e) (ii) of the Act, 1974 and as such, the show cause notice deserves to be dropped and no order for eviction could be passed. The competent authority, however, passed the order of eviction which was challenged by the petitioners herein under Section 9 of the Act, 1974 before the appellate authority. The appellate authority by its order dated 14-8-2000 held that the subject building was constructed on Government land and Udyami Vikas Sansthan is an undertaking of the State of Madhya Pradesh and, therefore, under Section 2 (e)

of the Act, 1974, it is “public premises” within the meaning of that clause. The appellate authority also held that by notification dated 5-2-1975, the State Government has delegated the power to the Collector to appoint a competent authority and in exercise of that power, by way of distribution memo, Nazul Officer has been authorized to exercise the power under Section 5 of the Act, 1974.

3. Feeling aggrieved against the order of the appellate authority, these writ petitions have been preferred by the petitioners herein calling in question legality, validity and correctness of the order of the appellate authority by which the order of eviction passed by the Nazul Officer has been upheld by the appellate authority.
4. Mr. Manoj Paranjpe, learned counsel appearing for the writ petitioners, would submit that in order to exercise the power under Section 5 of the Act, 1974, competent authority must be appointed by the State Government by notification in the Official Gazette under Section 3 (a) of the Act, 1974 or if the power is delegated by the State Government under Section 17 of the said Act to any officer of the State Government, then also, notification in the Official Gazette is necessary to clothe the said officer or the Deputy Collector to exercise the power of competent authority under Section 5 of the Act, 1974. In this case, only the State Government has authorized the

Collector by notification dated 5-2-1975 to appoint competent authority, but in exercise of that power the Collector did not issue any notification authorizing Nazul Officer to exercise the power under Section 5 of the Act, 1974 and only issued the distribution memo which is not proper delegation in accordance with Section 3 read with Section 17 of the Act, 1974, therefore, the order passed by the Nazul Officer as a competent authority evicting the petitioners duly affirmed by the learned appellate authority, deserves to be set aside. He would further submit that Udyami Vikas Sansthan is not any Corporation established by the State Act, owned and controlled by the State Government and it is not a local authority, therefore, the provisions of the Act, 1974 are not applicable as such, the impugned order is liable to be set aside.

5. Replying the submission made by Mr. Paranjpe, Mr. Shashank Thakur, learned Government Advocate appearing on behalf of the State/respondents No.3 to 6, would submit that the State Government by notification dated 5-2-1975, authorized the District Collector to appoint competent authority and in accordance with the said notification, the Collector, Sarguja, by its distribution memo has authorized Nazul Officer to exercise the power under Section 5 of the Act, 1974 which is strictly in accordance with law and no exception can be taken

to hold that such an authorization has not been made in accordance with law. He would further submit that Udyami Vikas Sansthan is a society constituted under the Madhya Pradesh Societies Registrikaran Adhiniyam, 1973, fully controlled and/or managed by the State Government, therefore, the premises leased out by it would be “public premises” within the meaning of Section 2 (e) of the Act, 1974 and as such, the writ petitions deserve to be dismissed and the order of the appellate authority deserves be affirmed.

6. Mr. Y.S. Thakur, learned counsel appearing for respondents No.1 and 2, would support the submission of Mr. Shashank Thakur, learned Government Advocate, and submit that the order passed is strictly in accordance with law and the writ petitions deserve to be dismissed.
7. I have heard learned counsel for the parties, considered their rival submissions and also gone through the record with utmost circumspection.
8. For the sake of convenience, I would take-up the second submission raised by Mr. Paranjpe, first that the property in question is not covered by the definition of Section 2 (e) (ii) of the Act, 1974.
9. On a careful perusal of the record, it would be apparent that Udyami Vikas Sansthan is a society constituted under the provisions of the Madhya Pradesh Societies Registrikaran

Adhiniyam, 1973, it is controlled by the State Government, Department of Tribal Welfare. Its bye-laws have been filed as Annexure R-2. It is a body fully controlled by the State Government.

10. Section 2 (e) (ii) of the Act, 1974 provides as under: -

(e) “public premises” means any premises belonging to or taken on lease or requisitioned by or on behalf of, the State Government, and includes any premises belonging to, or taken on lease by, or on behalf of—

(ii) any Corporation not being a company as defined in Section 3 of the Companies Act, 1956 (No. 1 to 1956) established by or under a Central or State Act and owned or controlled by the State Government or a local authority;

11. On a studied perusal of sub-clause (ii) of clause (e) of Section 2 of the Act, 1974, it would be apparent that the property leased out by any corporation, which is established by a State Act, owned or controlled by the State Government, would be “public premises”.

12. Section 2 (e) (ii) of the Act, 1974 came up for consideration before a Full Bench of the M.P. High Court in the matter of **Meena Agrawal (Smt.) v. Chief Municipal Officer, Municipal Council, Shivpuri and others**<sup>1</sup> in which the Full Bench has clearly held that premises belong to, or taken on lease by, or on behalf of local authority, created by Central or State Act or under the control of State Government or the local

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<sup>1</sup> 2008(3) M.P.L.J. 153



authority are public premises. In paragraphs 22 and 23, it has been held as under: -

“22. This judgment of Ashoka Marketing Limited<sup>2</sup> (supra) relates to interpretation of section 2(e)(ii) of Public Premises (Eviction of Unauthorised Occupants) Act, whether any corporation not being a company as defined under section 3 of the Companies Act, 1956 or a local authority is excluded from the definition of public premises, whereas under M.P. Lok Parisar (Bedakhali) Adhiniyam, 1974, any corporation established by Central or State Act, and owned and controlled by the State Government or a local authority except company established under section 3 of Companies Act, 1956 will fall within the ambit of public premises. Corporation has been explained and they will include local authority. In the case of S.S. Dhanoa<sup>3</sup> (supra), the Apex Court has considered the meaning of corporation and it is held that the term corporation is wide enough to include private corporation. The word 'corporation' is wide enough to include private corporation. The word corporation occurring in the section 2 (e)(ii) of the Adhiniyam, will include the properties of local authorities including municipalities and other local authorities. In the case of Ashoka Marketing Limited (supra), it is held that the word corporation includes municipalities and other local authorities. Thus, we are of the opinion that the language of section 2(e)(ii) of the Adhiniyam is clear and specific and it will mean that any corporation which is established by any Central or State Act or under them and is owned and controlled by State Government or local authority or taken on lease, therefore, corporation except the companies registered under section 3 of the Companies Act, will fall in the definition of public premises. Therefore, any corporation under the control of State Government and local authority will include any premises owned or taken on lease by the bodies under the control of State Government including local authority.

23. We are of the view that the properties owned

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2 Ashok Marketing Ltd. v. Punjab National Bank, AIR 1991 SC 855

3 S.S. Dhanoa v. Municipal Corporation Delhi and others, AIR 1981 SC 1395

and controlled by local authority will fall within the ambit of public premises under section 2(e)(ii) of Adhinyam, and we hold that Hariom Verma<sup>4</sup> (supra), has not laid down the correct law, and law laid down in the case of R.P. Sharma<sup>5</sup> (supra), is the correct law. We answer the reference as under :

“That the public premises as defined under section 2(e) of the Adhinyam includes the premises belonging to local authority created by Central or State Act, or under the control of State Government or the local authority.”

13. Since Udyami Vikas Sansthan is a body which is controlled by the erstwhile State of Madhya Pradesh and now, by the State of Chhattisgarh, therefore, it fully answers the description of body controlled by the State Government and as such, the property held by Udyami Vikas Sansthan would be “public premises” within the meaning of Section 2 (e) of the Act, 1974, following the principles of law laid down in the Full Bench decision of the Madhya Pradesh High Court i.e. **Meena Agrawal** (supra).

14. This determination would bring me to the star submission raised by Mr. Paranjpe that the competent authority, who exercised the power under Section 5 of the Act, 1974 directing eviction of the petitioners, was not competent under Section 5 to exercise the power under the competent authority, as there was no notification issued either by the State Government or by the Collector in the Official Gazette authorizing him to

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4 Hariom Verma and another v. State of M.P. and others, 1992(2) Vidhi Bhasvar 184

5 R.P. Sharma v. Competent Authority, 1992(2) MPWN 74

exercise that power, therefore, the impugned order passed by the competent authority duly upheld by the appellate authority is liable to be set-aside.

15. In order to judge the correctness of the plea raised at the Bar, it would be appropriate to notice Sections 2 (a) and 3 (a) of the Act, 1974. Section 2 (a) defines, “competent authority” means an authority appointed as such by the State Government under Section 3. Section 3 (a) states as under: -

**“3. Appointment of competent authority.—**  
The State Government may, by notification in the Official Gazette,—

(a) appoint such person being an officer not below the rank of Assistant Collector or Deputy Collector as competent authority for the purposes of this Act; and

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16. Likewise, Section 17 of the Act, 1974, which deals with delegation of powers, authorizes the State Government to delegate the power to any other officer of the State Government. It states as under: -

**“17. Delegation of powers.—**The State Government may, by notification in the Official Gazette, direct that any power exercisable by it under this Act shall subject to such conditions, if any, as may be specified in the notification, be exercisable also by an officer of the State Government.

17. On a conjoint reading of Section 2 (a) with Section 3 (a) of the Act, 1974, it is quite vivid that the State Government is empowered to notify the competent authority to exercise the

power under the Act, 1974 including Section 5 of the Act and that appointment has to be made by the State Government by issuing a notification in the Official Gazette and that officer should not be below the rank of Assistant Collector or Deputy Collector. Whereas, Section 17 of the Act, 1974 authorizes the State Government to delegate that power to any other officer of the State Government. According to Section 17, the State Government may, by notification in the Official Gazette, direct that any power exercisable by it under the Act shall subject to such conditions, if any, as may be specified in the notification, be exercisable also by an officer of the State Government, and that has to be done only by a notification published in the Official Gazette. Thus, the power to appoint competent authority as conferred to the State Government can also be exercised by the officer appointed by the State Government.

18. In the present case, exercising the power under Section 17 of the Act, 1974, the State Government has issued notification dated 5-2-1975 published in the M.P. Rajpatra, Part I, dated 16-4-1976. According to the notification, in exercise of the powers conferred by Section 17 of the Act, 1974, the State Government directed that the powers exercisable by it under Section 3 of the Act shall also be exercisable by all Collectors within their respective jurisdictions. The powers which vested

in the Government under Section 3, by virtue of the notification can also be exercised by the Collectors within their respective jurisdiction.

19. Since the power to appoint competent authority has been delegated by the State Government to the Collectors, but the power to appoint competent authority by the Collector has to be exercised in the manner indicated in Section 3 of the Act 1974 and that has to be done by notification in the Official Gazette. Therefore, while exercising power under Section 3 of the Act, 1974, by the Collector, by virtue of notification issued under Section 17 of the Act, 1974, notification was required to be issued by the Collector authorizing Deputy Collector or Assistant Collector to exercise power under Section 5 of the Act.

20. In this regard, reference can conveniently be made to a decision rendered by the High Court of Madhya Pradesh in the matter of **Indu Gupta v. State of M.P. and others**<sup>6</sup> in which similar contention was raised that the State Government has issued notification dated 5-2-1975 authorizing the Collector to exercise the power under Section 3 of the Act, 1974, but the Collector did not issue any notification authorizing the Deputy Collector to exercise the power under Section 5 of the said Act, therefore, the order of the competent authority is

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6 1997(2) M.P.L.J. 146

unsustainable in law. Justice R.S. Garg, speaking for the M.P. High Court, in his report has clearly held that the Collector was required to issue notification authorizing the Deputy Collector to exercise the power under the provisions of the Act, 1974. His Lordship held as under: -

“4. Section 17 of the Act authorises the State Government to delegate the powers. According to section 17, the State Government may by notification in the official gazette, direct that any power exercisable by it under the Act shall subject to such conditions, if any, as may be specified in the notification being exercisable also by an officer of the State Government. Exercising the powers under section 17, the State Government has issued notification No. F-13-1-75-II-A(3), dated 5th February, 1975, published in M.P. Rajpatra, Part I, dated 16-4-1976 (page 694). According to the notification, in exercise of the powers conferred by section 17 of the Act the State Government directed that the powers exercisable by it under section 3 of the Act shall also be exercisable by all Collectors within their respective jurisdictions. According to section 3, as observed above, the State by notification in the official gazette may appoint certain person as competent authority for the purposes of the Act. The powers which vested in the Government under section 3, by virtue of the notification can also be exercised by the Collectors within their respective jurisdiction. The words "State Government may, by notification in the official gazette" after the notification may now be read because of the delegation of the powers in favour of the Collectors, as "the Collector may, by notification in the official gazette \_\_\_\_\_", if the State was required to issue a notification in the official gazette for appointment of certain person/persons as competent authority for the purpose of the Act and define the local limits within which or the categories of public premises in respect of which the competent authority should exercise the powers conferred and perform the duties imposed on competent authority by or under the Act, then any person in whose favour the

powers have been delegated by the State Government, as a delegatee of the powers cannot exercise the powers which did not vest in the person who delegated the powers. If the State was required to issue a notification then the Collector is also bound to issue a notification for appointing the person as competent authority and define the local limits, etc.

5. In the instant case, there is nothing on record to show, suggest or prove that the Collector, Rajnandgaon ever got a notification issued or published in the official gazette that a particular named S.D.O. would exercise the powers under the provisions of the Act. It is not the case of the respondents that such notification was ever issued or published. The S.D.O. in its order and the Commissioner while confirming the order in the appellate order have observed that as the matter was referred by the Collector to the S.D.O. and as under the distribution memo the S.D.O. was competent to hear and decide the matter, the competent authority had the jurisdiction. In my opinion, the approach of the S.D.O. and the Commissioner is patently illegal. If there was no notification in favour of the named S.D.O. to exercise the powers under the Act, then a mere reference by the Collector either personally or under the distribution memo would not clothe the S.D.O. with powers to act as competent authority.”

21. Reverting back to the facts of the case in hand, in the present case, no document has been filed on record or brought on record to establish or to remotely indicate that the Collector, Surguja has ever issued a notification that is duly published in the Official Gazette authorizing the Nazul Officer, Ambikapur to exercise the provisions of the Act. Even it is not the case of the official respondents herein that such notification was issued and published in the Official Gazette. It is their specific case that by way of distribution memo, the Collector, Surguja

has authorized the Nazul Officer to exercise the power under the Act, 1974. In the considered opinion of this Court, in absence of notification in favour of the Nazul Officer, Ambikapur, to exercise the power under the Act, 1974, issued by the Collector, Surguja, simple indication in the distribution memo would not clothe that particular Nazul Officer to exercise the power under the Act, 1974 as a competent authority to evict the petitioners by exercising the power under the Act, 1974. The Nazul Officer was not competent and authorized to act and exercise the power as a competent authority. The order passed by the Nazul Officer duly confirmed by the Commissioner in appeal deserves to be and is accordingly quashed being without authority of law. Consequently, the proceedings initiated by the Nazul Officer are also quashed. However, this quashing of proceedings would not bar the State authorities to initiate fresh proceedings, in accordance with law, against the petitioners.

22. The writ petitions are allowed to the extent indicated herein-  
above leaving the parties to bear their own costs.

Sd/-  
(Sanjay K. Agrawal)  
Judge