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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.1440 of 2011

Rai University, through the Associate Director, run and managed by the Indian Institute of Excellence Society, a society duly registered under the provisions of the Chhattisgarh Society Registration Act, 1973 having its registered office at First Floor, Mishra Bhawan, Tatyapara, Raipur (C.G.)

---- Petitioner

Versus

1. Commandant, P.L. Homes, Mana Camp, Raipur (C.G.)
2. Shri K. Vijay Nayar, S/o not known to the petitioner, age not known to the petitioner, R/o Mana, Raipur, District Raipur (C.G.)
3. Commissioner, Raipur Division, Raipur (C.G.)
4. Sub-Divisional Officer (Revenue), Arang, Abhanpur, District Raipur (C.G.)

---- Respondents

For Petitioner: Mr. Amrito Das, Advocate.
For Respondents No.1, 3 and 4 / State: -
Mr. Ratan Pusty, Govt. Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

25/04/2018

1. The petitioner was allotted land by the competent authority i.e. the Commandant, P.L. Homes, later-on, proceeding under the Chhattisgarh Lok Parisar (Bedakhali) Adhiniyam, 1974 (for short, 'the Act of 1974') was initiated against the petitioner by issuance of notice to which the petitioner raised objection before the competent authority under the Act of 1974 that since the Sub-Divisional Officer (Revenue) himself has allotted the land,

therefore, he cannot proceed with the hearing. Accordingly, the matter was sent to the Collector and the Collector by its order dated 22-2-2010, referred the matter to the Sub-Divisional Officer (Revenue), Arang-Abhanpur to deal with the matter under the proceeding initiated under Section 4 of the Act of 1974 and order was passed by the Competent Authority under the Act of 1974 on 23-9-2010 which was maintained in appeal also by the Commissioner, Raipur Division, Raipur against which this writ petition has been filed.

2. Mr. Amrito Das, learned counsel appearing for the petitioner, would raise a singular contention that the since the competent authority – Sub-Divisional Officer (Revenue), Arang-Abhanpur was ineligible to act as competent authority under Section 3 of the Act of 1974, therefore, a new competent authority ought to have been notified in accordance with the provisions contained in Section 3 (a) of the Act of 1974 which has not been done and merely by an executive order of the Collector, the matter has been referred to the Sub-Divisional Officer (Revenue) as competent authority to decide the matter and he has dealt with the matter which is unsustainable and bad in law.

3. Mr. Ratan Pusty, learned Govt. Advocate appearing on behalf of the State/respondents 1, 3 and 4, would support the impugned order.

4. I have heard learned counsel for the parties, considered their rival submissions and also went through the record with utmost

circumspection.

5. 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 of 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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> *** *** ***"

6. Likewise, Section 17 of the Act of 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."

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

8. In the present case, exercising the power under Section 17 of the Act of 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 of 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.

9. Reverting to the facts of the present case, there is no notification issued by the Collector under Section 3(a) of the Act of 1974

authorizing the Sub-Divisional Officer (Revenue), Arang-Abhanpur to act as competent authority under Section 3(a) and authorization by the Collector by order Annexure R-1/2 to the Sub-Divisional Officer (Revenue), Arang-Abhanpur to act as competent authority is in teeth of the provisions contained in Section 3(a) and (b) as such, the Sub-Divisional Officer (Revenue), Arang-Abhanpur was not competent to act and exercise the power as competent authority.

10. As a fallout and consequence of the aforesaid discussion, the order passed by the Sub-Divisional Officer (Revenue), Arang-Abhanpur duly affirmed by the Commissioner in appeal deserves to be and is hereby quashed being without authority of law. However, this will not bar the State authorities to initiate fresh proceedings, in accordance with law, against the petitioner.

11. The writ petition is allowed to the extent indicated herein-above leaving the parties to bear their own costs.

Sd/-
(Sanjay K. Agrawal)
Judge

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