NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 2554 of 2016

- Gautam Verma, S/o Dinesh Chandra Verma, Aged About 44 Years, R/o Juni Line, Near Japan Tal, Bilaspur, Tahsil And District Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. Virendra Kumar Verma, S/o Babulal Verma, R/o Juni Line, Bilaspur, Tahsil And Distt Bilaspur, Chhattisgarh
2. Board Of Revenue, Chhattisgarh At Bilaspur, Through The President, Board Of Revenue, Chhattisgarh, Bilaspur, Chhattisgarh
3. Commissioner, Bilaspur Division, Bilaspur, Chhattisgarh
4. Collector, Bilaspur, Chhattisgarh
5. Nazul Officer, Bilaspur, District Bilaspur, Chhattisgarh

---- Respondents

For Petitioner	Shri Malay Shrivastava, Advocate
For Respondent No.1	Shri Anup Majumdar, Advocate
For Respondent/State	Shri Amrito Das, Additional Advocate General

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

16/09/2019

1. The instant petition arises out of the order dated 24.06.2016, (Annexure P-1) passed by the Board of Revenue, Bilaspur.

2. The brief facts of this case is that, the respondent No.1 filed an application before the Nazul Officer, Bilaspur on a subject that illegal lenter has been constructed by the petitioner over house of respondent. The said application is Annexure P-6 and is dated

21.07.2006. The application purports that the complaint was made that the petitioner is owner of the house adjoining house with the complainant Virendra Kumar Verma (Respondent No. 1), and the petitioner has illegally constructed a lenter over the wall of the complainant. It is further stated that neither any permission have been obtained nor the map was sanctioned from municipal corporation, therefore, stay order may be passed against the construction of the house and illegal placing of lenter by the petitioner.

3. The Nazul Officer pursuant to such complaint carried out an inspection and found that the complaint so made is devoid of all force and false by Annexure P-7 and report was filed on 18.07.2007. Pursuant to such report, the Nazul Officer by an order dated 08.08.2008 observed that the nature of complaint made about the illegal construction and encroachment would not be within the seisin of the Nazul Officer and the respondent may approach the competent Court to seek his redressal.

4. The said order was subject of challenge before the Additional Collector, Bilaspur. The Additional Collector, Bilaspur by order dated 23.07.2009, (Annexure P-4) observed and directed to the Commissioner Municipal Corporation, that construction so made is without any permission. Therefore, the suitable orders may be passed and further observed direction be given to the Nazul Officer that until and unless the construction so made are not removed, it should be deemed to be a breach of the terms of lease and proper procedure may be drawn for cancellation of lease. The said order was subject of further revision before the Additional Commissioner, Bilaspur. The Additional Commissioner Bilaspur, by order dated 29.07.2011

(Annexure P-3) dismissed the revision preferred by the petitioner. In the meanwhile a review petition was filed by the petitioner and that too was dismissed on 29.11.2014 and eventually the Revenue Board, Bilaspur by Annexure P-1 dated 24.06.2016 has affirmed the order of the Additional Collector.

5. Learned Counsel for the petitioner would submit that all the impugned orders are without jurisdiction. The nature of orders which have been passed by the Collector, the authority was not vested with it under the law. It is further submitted that though the purported actions have been taken under the Revenue Book Circular, but the Revenue Book Circular too do not have statutory force. He relies on the principles laid down by this Court and the ratio of Judgment in Second Appeal No. 72 of 2005, dated 23.09.2016 and submit under the circumstances, the cause of the petitioner cannot be defeated on the complaint which is in private nature that of the Respondent No.1. He further relies on *(2007) 13 SCC 154, (2011) 15 SCC 398, (2011) 5 SCC 435 & (2011) 5 SCC 341.*

6. Per contra, learned counsel for the Respondent No.1 would submit that the actual lis is in between the State and the petitioner. The Revenue Book Circular gives the power to regulate the construction of building and the development of the city and if the illegal development are being carried out, then in such case, the Collector was within his power to issue the like nature of order; therefore, the petition has no merit and requires to be dismissed.

7. Learned State counsel also submits that the order is well merited and do not call for any interference.

8. I have heard learned counsel for the parties and perused the documents.

9. Primarily, facts would reveal that the issue start rolling with the complaint made by the Respondent No.1 on 21.07.2006, to the Nazul Officer that the petitioner is making illegal construction and had laid down a lenter, therefore, he may be immediately stopped. It was referred for an enquiry and on the spot inspection, primarily it was found that the complaint made by Respondent No.1 was false by Annexure P-7. Consequently the order dated 08.08.2008, was passed by the Nazul Officer, wherein, the Nazul Officer refused to take cognizance of the issue on the ground that respondent can approach the competent Civil Court as the nature of complaint can not be adjudicated by the Nazul Officer.

10. This order was subject of appeal. The Additional Collector while deciding the appeal directed the Commissioner to inspect the construction and take cognizance and simultaneously also passed the order that Nazul Officer to proceed for the cancellation of the lease. Perusal of such order, which is the initial primary order and nucleus of the issue would reveal that the Additional Commissioner while passing the order called for certain reports from the Revenue Officer Nazul and admitted the report given by the Revenue Inspector Nazul on 25.08.2006. The report as shown in order was to the effect that petitioner had not obtained any NOC from the Nazul Officer to construct the lenter. Likewise, another communication was made from the Commissioner, Municipal Corporation, the information was received by letter from the Municipal Corporation on 24.02.2007 to the effect no building permission existing in name of the petitioner. Another

report from the Sub Engineer of the Municipal Corporation has also been relied on that the petitioner has laid down the slab. By considering such communications, conclusively it was held that order passed by the Nazul Officer is bad in law.

11. The order would reveal that three internal communication made by the Additional Collector was relied on to act against the petitioner to give a finding against the petitioner. However, how it was conclusively proved and finding were accepted against the petitioner is not clear. If such report on which the Additional Collector has placed reliance was acted upon against the petitioner, then in such case the petitioner should have been heard and given the opportunity of hearing before such adverse conclusion is made out. Apart from that under which provisions and authority, the order & directions were passed by the Collector is also not clear.

12. The orders were passed in purported power of Revenue Book Circular. The ratio of direction in Revenue Book Circular discussed by this Court in Second Appeal No. 72 of 2005, in which this Court has held as under:-

> '33. It is well settled law that the Revenue Book Circular is a compilation of executive orders and not law, these are the guidelines per se do not partake of the character of statute, such guidelines in absence of the statutory backdrop are advisory in nature and they per se do not confer any legal right. (See **State of U.P. v. Rakesh Kumar Keshari**[1] and **Poonam Verma v. DDA**.[2]) The M.P. High Court in the matter of **Ramcharan and others v. State of M.P. and others**[3] has held that Revenue Book Circulars have not been framed under the authority of any statute.'

1 (2011) 5 SCC 341
2 (2007) 13 SCC 154
3 1997 RN 141

13. The Supreme Court in the case of **Syndicate Bank Vs. Ramachandran Pillai and Others {(2011) 15 Supreme Court Cases 398}** has held thus in para 6 & 7 which are reproduced hereunder:

> 6. If any executive instructions are to have the force of statutory rules, it must be shown that they were issued either under the authority conferred on the Central Government or a State Government or other authority by some statute or the Constitution. Guidelines or executive instructions which are not statutory in character, are not "laws", and compliance therewith cannot be enforced through courts. Even if there has been any violation or breach of such non-statutory guidelines, it will not confer any right on any member of the public, to seek a direction in a court of law, for compliance with such guidelines. An order validly made in accordance with a statute (as in this case the public premises act), cannot be interfered with, even if there has been any transgression of any guidelines, except where it is arbitrary or mala fide or in violation of any statutory provision. These are well-settled principles (see Union of India v. S.L Abbas 1993 4 SCC 357, South Central Railway v. G. Ratnam 2007 8 SCC 212 and State of U.P v. Gobardhan Lal 2004 11 SCC 402).
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> 7. As the guidelines relied upon in this case were not issued in exercise of any statutory power under the Public Premises Act or any other statute, even if there was violation or non-compliance with the aforesaid guidelines by the appellant, relief to the appellant could not be denied by relying upon the guidelines. To do so would amount to reading the guidelines into the statute, which is impermissible. The only "remedy" of any person complaining of non-compliance with such guidelines, is to bring such violation to the notice of a higher authority. We therefore hold that the enforcement of any right or exercise of any power by the appellant, under the Public Premises Act cannot be set at naught by relying upon or referring to the guidelines issued by the Central Government.

14. Further the Supreme Court in the case of **Joint Action Committee of Air Line Pilots' Association of India (ALPAI) & ors. Versus Director General of Civil Aviation and others {(2011) 5 SCC 435}** has held thus in para 22 which is reproduced hereunder:-

> 22. Thus, it is evident from the above that executive instructions which are issued for guidance and to implement the scheme of the Act and do not have the force of law, can be issued by the competent authority and altered, replaced and substituted at any time. The law merely prohibits the issuance of a direction, which is not in consonance with the Act or the statutory rules applicable thereunder.

15. Reference is made to कंडिका 9 of खण्ड 4 क्रमांक 1 of Revenue Book Circular, by the Respondents to demonstrate the vested authority to pass order of like nature. On reading of the said clause no power can be traced out of the like nature which authorises the Additional Collector to pass the order of such nature. It is virtually an order for cancellation of lease and direction have been given to the Nazul Officer to issue a proceeding for cancellation. It was conclusively held that there have been breach of condition of lease. All the finding were behind the back of the petitioner. Therefore, if such conclusion is drawn, which goes to affect the Civil right of the petitioner, it cannot be acted upon as it would defeat the rule of audi alteram partem. Furthermore, the nature of order which has been passed which affects the rights of the petitioner to canvas the fact as the construction so made is illegal was based on internal communication made by the Additional Collector with the Municipal Authority cannot be acted upon. The said order of the Collector, however, when was subject of second appeal and subsequent revision before the Commissioner also suffered the same fate. The fact remains the initial order of Additional Collector if was without any statutory authority and jurisdiction was missing, then the subsequent order of higher authorities cannot be corrected. In a result, the order passed by the Revenue Board on 24.06.2016, cannot be allowed to sustain. Accordingly, the same is set

aside. The competent Authority however, shall be at liberty to draw any proceeding for cancellation of lease after following the due procedure of law and likewise the municipal corporation shall also be at liberty to proceed with respect to construction of the petitioner in accordance with law.

16. Accordingly, the petition is allowed.

Sd/-
(Goutam Bhaduri)
Judge

Jyoti