

(2011) 11 UK CK 0077
In the Uttarakhand High Court
Case No : Special Appeal No. 279 of 2011

Smt. Shanti Bhatt

APPELLANT

Vs

State of Uttarakhand and others

RESPONDENT

Date of Decision : 29-11-2011

Acts Referred:

Uttar Pradesh Kshetra Panchayat and Zila Panchayat Adhiniyam, 1961 — Section 15(2), 2(5)

Citation : (2011) 11 UK CK 0077

Hon'ble Judges : Barin Ghosh, C.J; Umesh Chandra Dhyani, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Hon"ble Barin Ghosh, C. J.

1. If the Statute requires a thing to be done in a particular manner the same is required to be done in that manner and in no other manner, is a settled law, and the learned counsel for the appellant harps upon the same. According to him in terms of the provisions contained in sub-section (2) of Section 15 of the Uttar Pradesh Kshetra Panchayat and Zila Panchayat Act, the notice of intention and the copy of the proposed motion is required to be delivered in person to the Collector having jurisdiction over the Kshetra Panchayat. It is the contention of the appellant that admittedly, on the date the written notice and the copy of the proposed motion was purportedly delivered to the Collector, the Collector was away on some personal reason and accordingly, the same was not delivered to the Collector. Drawing our attention to sub-section (5) of Section 2 of the Act, the counsel for the appellant submitted that Collector includes an Additional Collector to whom the Collector may by order in writing delegate any of his functions under the Act, and submitted that accordingly, Collector may be the Collector himself or an Additional Collector; whereas in the instant case, admittedly, the person to whom the notice and the copy of the proposed motion was allegedly delivered was neither a Collector, nor an Additional Collector. It was

submitted by the learned counsel that since the Statute requires delivery of the notice and the copy of the motion to the Collector and since, the same was not delivered to the Collector, on the basis of the settled law as above, it must be deemed that the action of delivering the notice and the copy of the proposed motion has no sanction of law and as such the same could not be acted upon.

2. The fact remains that it has come on record that the Collector was not discharging the duties of his office at the relevant time, for he had to leave Station for some other work. At the same time it has come on record that in order to ensure that the functions of the Collector are discharged appropriately he had authorized a person to discharge the duties attached to the office of Collector to a person who was not designated as an Additional Collector at the relevant time. The question here is what the Statute intended? Did it intent that in the event the notice and the copy of the proposed motion is not personally handed over to the Collector, the notice and the copy of the proposed motion would lose its effect? The Statute requires delivery in person of the notice and the copy of the proposed motion and also requires that such delivery should be to the Collector, but for all practical purposes it must be deemed that such delivery in person is required to be effected to the person who infact, being otherwise entitle to, is discharging the duties of Collector with the authority of the State. Definition of "Collector" contained in sub-section (5) of Section 2 of the Act includes an Additional Collector to whom by order in writing functions of the Collector have been delegated. "Collector" denoted in sub-section (2) of Section 15 of the Act, no doubt, is also such an Additional Collector as mentioned in sub-section (5) of Section 2 of the Act, but the fact remains that Additional Collector has not been defined in the Act. It, therefore, cannot be said that the person to whom the Collector had assigned his duties in his absence, cannot be said to be an Additional Collector. Furthermore, in terms of the provisions contained in Uttar Pradesh Land Revenue Act an Additional Collector is to hold office during the pleasure of the State Government. In the instant case, therefore, whether the person concerned was or was not holding the post of Additional Collector can only be questioned by the State Government and no one else. Further it is an inclusive definition. It is not so much important that the delegate should be an Additional Collector. Important is delegation. The other contention of the appellant is that the person who discharged the duties of the Collector under sub-section (3) of Section 15 of the Act was though an Additional Collector, but he was not specifically assigned the duties of the Collector to discharge such functions of the Collector as mentioned in sub-section (3) of Section 15 of the Act. The fact remains that the Collector has many duties under the Act as well as under many other Acts, including the Uttar Pradesh Land Revenue Act. In terms of the provisions of the Uttar Pradaesh Land Revenue Act an Additional Collector is entitled to exercise such powers and discharge such duties of a Collector in such cases or classes of cases as the Collector concerned may direct. However, under the Act an Additional Collector can discharge such functions and duties of the Collector as delegated to him by order in writing. It

must be noted here that while delegating by an order in writing functions of the Collector under the Act it is not necessary to specify each function of the Collector under the Act individually. It has to be gathered from the order in writing whether all the functions or a particular function under the Act has been delegated. A look at the order in writing would show that the functions of the Collector including those contained under sub-section (3) of Section 15 of the Act were delegated to the Additional Collector.

3. In the circumstances there was no question of interference by the writ court in the actions purporting to be of the Collector in discharge of his obligations under sub-sections (2) and (3) of Section 15 of the Act. We, accordingly, also find no reason to interfere with the judgment and order under appeal, a certified copy whereof has not been annexed to the memorandum of appeal, but we have considered the appeal on the undertaking of the appellant that within fifteen days from today, a certified copy thereof shall be filed in the court. While, therefore, we dismiss the appeal, but before doing so, we may also point out that by the reason of what has been done by the writ court in Writ Petition No. 2275 of 2011 (M/S) dealt with also in Special Appeal No. 276 of 2011, the lacuna, if any, in convening the meeting stands removed by reason of a direction for issuance of a fresh notice. The appeal fails, and the same is dismissed.