

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on : 28.02.2007

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WP (C) 1012/2007

HAR DEVI

...Petitioner

- versus -

UNION OF INDIA & ORS

...Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Mr Sudhir Kumar Gupta with Ms Saumya Sharma
and Mr Miihbir Choudhary

For the Respondents : Ms Shobhana Takial.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

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| 1. | Whether Reporters of local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the Reporter or not? | YES |
| 3. | Whether the judgment should be reported in Digest? | YES |

BADAR DURREZ AHMED, J (ORAL)

+ **CM No. 2723/2007 in WP (C) 1012/2007**

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This is an application for restoration of the writ petition which was dismissed for non-prosecution.

After hearing the counsel for the parties, this application stands allowed. The writ petition shall be taken up for disposal today itself.

WP (C) 1012/2007

1. On 07.02.2007 when this matter came up for the first time, the learned counsel for the petitioner questioned the authority of Mr Nitin

Wakankar to continue as the Estate Officer in respect of the premises, *inter alia*, comprised in President's Estate in New Delhi. He had submitted that in view of Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as the said Act) the power to appoint an Estate Officer vests with the Central Government. Section 3 of the said Act reads as under:

“3. Appointment of Estate Officers.- The Central Government may, by notification in the Official Gazette,-

(a) appoint such persons, being Gazetted Officers of Government ¹[or of the Government of any Union Territory] or officers of equivalent rank of the ² [Statutory Authority], as it thinks fit, to be Estate Officers for the purposes of this Act; ³[xxx]

⁴[Provided that no officers of the Secretariat of the Rajya Sabha shall be so appointed except after consultation with the Chairman of the Rajya Sabha and no officer of the Secretariat of the Lok Sabha shall be so appointed except after consultation with Speaker of the Lok Sabha:

Provided further that an officer of a Statutory Authority shall only be appointed as an Estate Officer in respect of the public premises controlled by that authority; and]

(b) define the local limits within which, or the categories of public premises in respect of which, the Estate Officers shall exercise the powers conferred, and perform the duties imposed, on Estate officers by or under this Act.”

1 Inserted by Act No. 7 of 1994

2 Substituted by Act 61 of 1980, section 2, for “corporate authority.”

3 The word “and” omitted by section 3, Act 61 of 1980

4 Added by section 3, Act 61 of 1980

2. The learned counsel further submitted that the Gazette of India No. 29 for the period July 13 – July 19, 2003 contained a notification dated 15.07.2003 issued by the President's Secretariat designating Shri Nitin Wakankar as the Estate Officer for premises comprising the President's Estate in New Delhi, Shimla (Himanchal Pradesh), Dehradun (Uttaranchal) and Bolarum, Secunderabad (Andhra Pradesh). The said notification reads as under:-

“PRESIDENT'S SECRETARIATE

New Delhi, the 15th July, 2003

S.O. 1955.- in exercise of the powers conferred by Section 3 of the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and in supersession of the then Government of India in the Ministry of Works and Housing Notification No. S.O. 720 dated the 10th March, 1973, the Central Government hereby appoints the officer mentioned in column (1) of the Table below being a Gazetted Officer of the Government to be the Estate officer for the purposes of the said act who shall exercise the powers conferred and perform the duties imposed on Estate officer by or under the said Act within local limits of his respective jurisdiction in respect of the public premises specified in corresponding entry in column (2) of the said table.

Designation of the Officer	Categories of Public Premises and local limits of jurisdiction
1	2
Shri Nitin Wakankar Deputy press Secretary to the President President's Secretariat	Premises comprising the president's Estate in New Delhi, Shimla (Himanchal Pradesh), Dehradun (Uttaranchal) and Bolarum, Secunderabad (Andhra

[F.No.D-11020/1/90-EBA]
SATISH MATHUR, Director”

3. It was further contended on behalf of the petitioner that the above notification was framed by the President's Secretariat and that would not amount to a notification issued by the Central Government which was a requirement under Section 3 of the said Act. He referred to the allocation of Business Rules framed by the President which indicates that the proceedings under the said Act would fall within the purview of Department of Urban Development, Ministry of Urban Development and Poverty Alleviation. It was the submission of the learned counsel for the petitioner that the said Mr Nitin Wakankar ought to have been appointed by the Ministry of Urban Development and Poverty Alleviation, according to the allocation of Business Rules, being part of the Central Government and not by the President's Secretariat. Since, this has not been done, Mr Nitin Wakankar had no authority to be appointed as an Estate Officer and to continue as such and it is for this reason that this writ of *quo- warranto* has been filed by the petitioner.

4. The learned counsel appearing on behalf of the respondent submitted that the provisions of Section 3 of the said Act have been fully complied with. She submitted that the notification was issued by the President's Secretariat and was authenticated by Mr Satish Mathur, Director. In this connection, she referred to the Authentication (Orders and other Instruments)

Rules 2002 which was notified on 16.02.2002. As per the said Rules, all orders and other instruments made and executed in the name of the President shall be authenticated in the case of orders and other instruments relating to the President's Secretariat by, inter alia, “a Director” in the President's Secretariat. There is no dispute that Mr Satish Mathur is a Director in the President's Secretariat and the said notification has been authenticated by him.

5. The next submission that was made by the learned counsel for the respondent was that the President's Secretariat itself would be covered by the definition of Central Government given in Section 3(8) (b) of the General Clauses Act, 1897. The said provision defines “Central Government” to mean, inter alia, in relation to anything done or to be done after the commencement of the Constitution, “the President”. Even as per the allocation of Business Rules, the President's Secretariat falls within the purview of the Central Government. Therefore, according to the learned counsel for the respondent, the notification appointing Mr Nitin Wakankar as the Estate Officer was clearly one issued by the Central Government inasmuch as the President's Secretariat is the Central Government. The learned counsel for the respondent further submitted that vide Office memorandum dated 29.11.1972 issued by the Central Government, Government of India, Ministry of Works and Housing, Directorate of Estates, after a review of the entire position, indicated that the work relating to appointment of Estate officers by the Central Government ought to be decentralized. It was decided that any such notification, appointing /

authorising an Estate officer for action under the said Act, would be issued by the concerned Ministry / Department. She submits that in view of this Office Memorandum, the President's Secretariat had the authority to issue the notification and it would be deemed to be a notice issued by the Central Government.

6. Having considered the submissions made by the counsel for the parties, I am of the view that the position is now crystal clear that the notification, in question, was issued by the Central Government. That being the case. The provisions of Section 3 of the said Act were complied with. The notification was properly authenticated by a Director in the President's Secretariat in view of the said Authentication Rules 2002. It is therefore, clear that Mr Nitin Wakankar was legitimately appointed as the Estate Officer and continues to have the authority to operate and function as the Estate Officer in respect of the properties mentioned in the notification which includes the President's Estate in New Delhi.

In these circumstances, the writ petition is dismissed.

**BADAR DURREZ AHMED
(JUDGE)**

February 28, 2007
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