

(2023) 07 MP CK 0077

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 574 Of 2023

Aadiwasi Matsyodyog Sahakari Sanstha Mydt Tej. Rajpur

APPELLANT

Vs

State Of Madhya Pradesh And Others

RESPONDENT

Date of Decision : 13-07-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Madhya Pradesh Uchha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Madhya Pradesh Panchayat Raj And Gram Swaraj Adhiniyam, 1993 — Section 53, 85, 85(1), 85(2), 91

Citation : (2023) 07 MP CK 0077

Hon'ble Judges : Sushrut Arvind Dharmadhikari, J;Prakash Chandra Gupta, J

Bench : Division Bench

Advocate : Ashutosh Nimgaonkar, Anand Soni

Final Decision : Disposed Of

Judgement

Sushrut Arvind Dharmadhikari, J

1. Heard finally with the consent of both the parties.

The present writ appeal under Section 2(1) of the Madhya Pradesh Uchha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 has been filed assailing the order dated 16.03.2023 passed by the learned Single Judge in W.P. No. 5870/2023 whereby the petition has been dismissed only on the ground of availability of alternative remedy by filing appeal u/S 91 of the M.P. Panchayat Raj and Gram Swaraj Adhiniyam, 1993(for short referred to as the 'Act of 1993' hereinafter).

2. Brief facts of the case are that the appellant is a society registered under the provisions of M.P. Cooperative Societies Act,1960(for short referred to as 'Act of 1960' hereinafter) established with the objective to perform activities related to fisheries within its area of operation for the benefit and welfare of its members.

3. The respondent no. 4 is responsible for allotting different tanks for fishing purpose within its jurisdiction under the Act of 1993. The appellant moved an application for allotment of "Bhaami Tank" for fishing activities. Another applicant namely "Kahar Matsyodyog Sahakari Sanstha Maydt", Anjad also filed application for allotment of "Bhaami Tank". Respondent no.3 after scrutinizing applications received in its office issued instructions that allotment of tanks shall be made in accordance with Fisheries Policy, 2008.

4. As a consequence, meeting of Agriculture Committee of Janpad Panchayat, Barwani took place on 28.02.2023, in which applications received were scrutinized and a resolution was passed fixing the criteria for allotment of reservoirs for fishing purpose. Being aggrieved by the aforesaid resolution passed by the respondent no.5 resolving to allot "Bhaami Tank" to "Kahar Matsyodyog Sahakari Sanstha Maydt.", Anjad for a term of ten years against the priority and rights of livelihood of appellant society. Thereafter, appellant filed W.P. No. 5870/2023 which was dismissed by the learned Single Judge on the ground of availability of alternative remedy.

5. The learned Single Judge while dismissing the writ petition passed the following order.

"1. Learned counsel for the petitioner is heard on the question of admission.

2. By this petition the petitioner has challenged the resolution passed by Krishi Stayi Samiti Janpad Panchyat Rajpur District Barwani, respondent No.5 whereby respondents 4 and 5 have allotted "BHAMMI TANK" to respondent No.6 society for a period of 10 years for fishing activities.

3. The impugned resolution has been passed by respondent No.5 under the Madhya Pradesh Fisheries Policy, 2008 which has been framed in exercise of powers under Section 53 of M.P Panchayat Raj and Gram Swaraj Adhiniyam, 1993. As per Section 91 of the said Adhiniyam an appeal or revision against order or proceeding of a Panchayat under the said Act shall lie to such authority and in such manner as may be prescribed. The impugned resolution has been passed by respondent No.5 Panchayat under the Adhiniyam, 1993 since the Fisheries Policy has been made thereunder. The impugned resolution is hence appealable before the appellate authority as per provisions of Section 91 of the Adhiniyam, 1993.

4. Thus, in view of availability of alternate remedy to the petitioner to prefer appeal before the appellate authority against the impugned resolution, I do not find it to be a fit case for entertaining the petition against the same in exercise of powers under Article 226 of the Constitution of India. Thus, in view of availability of alternate remedy, admission is declined.

5. The petition is dismissed."

6. Being aggrieved, the appellant preferred the present writ appeal. The appellant placed reliance on the case of Ram Lakhan Rawat Vs. State of M.P. &

Others reported in 2000(2) MPLJ 176 wherein it was held that from the intent of Adhiniyam, 1993, no powers are conferred upon the authorities for canceling the resolution under Section 91 of the Act of 1993, therefore, no alternative remedy is available.

7. Learned counsel for the appellant contended that learned Single Judge has committed error apparent on the face of record in not entertaining the writ petition. He further submitted that learned Single Judge ought to have considered the Fisheries Policy, 2008, which is the only basis on which the priority and eligibility can be decided.

8. Learned counsel for the appellant has further placed reliance on the case of Raj Kumar Kushwah Vs. State of M.P & Others reported in 2013(1) MPLJ 238 to contend that order passed under the provisions of the Act of 1993 is appealable u/S 91 whereas resolution passed by the Panchayat is not appealable. Section 85(1) of the Act of 1993 gives power to the Sub Divisional Officer to suspend execution of such resolution which is to be affirmed by the next higher authority u/S 85(2) of the Act of 1993. He further contended that once such illegal resolution is suspended, such resolution cannot be implemented.

9. Per contra, learned counsel for the respondent/State vehemently opposed the prayer and submitted that the appellant has misled this Court by relying upon the judgment rendered in the case of Ram Lakhan Rawat (Supra) in as much as, the same stands overruled by Devi Dayal Raikwar Vs. State of M.P. & Others reported in 2008(4) MPLJ 647 and, therefore, it cannot be said there is no alternative remedy available and the learned Single has committed any error apparent on the face of record.

10. Heard, learned counsel for the parties and perused the record.

11. The question as to whether the resolution is appealable or not came up in reference before the Division Bench of this Court in the case of Sagar Machhua Sahakari Samiti, Seoni Vs. Chief Executive Officer, Janpad Panchayat, Seoni reported in 2008(2)MPLJ 194 in which the following question cropped up for consideration:

“Whether the resolution passed by the Gram Panchayat can be challenged in an appeal or a revision as per substantive provision of the Act of 1993?”

In answer, it was held that:

“There has to be a remedy for a person aggrieved and the same cannot be totally nullified because of absence of forum. It was also held that a person aggrieved bring his grievance to the notice of the State Government and the State Government is obliged to take a decision u/S 85 of the Act of 1993. It was further held that while taking the said decision, the State Government shall be guided by the concept of promptitude which is an intrinsic and insegregable facet of suo-motu exercise of jurisdiction. However, State Government shall be guided by the parameters provided therein and the nomenclature given to a

proceedings under Section 85 of the Act of 1993.”

12. The decision so taken by the SDO thereafter would be required to be affirmed by the next higher authority as per sub-section 2 of Section 85 of the Act of 1993. At any rate, there is no power conferred upon the prescribed authority or affirming authority to set aside the resolution. If once, the resolution is suspended and the said order of suspension is affirmed by the competent authority, the resolution is pocketed for all times to come and is not required to be implemented at all. The writ Court instead of relegating the appellant to avail the remedy u/S 85 of the Act of 1993 has granted liberty to the appellant to avail the remedy u/S 91 of the Act of 1993, therefore, impugned order cannot sustain.

13. In view of the aforesaid legal position, the view taken by the learned Single Judge that the appellant has the alternative remedy of appeal u/S 91 of the Act of 1993, cannot be countenanced.

14. In the light of the law laid down in the case of Sagar Machhua (supra) and Rajkumar Kushwah (supra), the appellant has an alternative remedy of approaching the State Government u/S 85 of the Act of 1993, instead of filing an appeal u/S 91 of the Act as directed by the writ Court.

15. Accordingly, the impugned order dated 16.03.2023 passed in W.P. No. 5870/2023 is hereby set aside. However, the appellant would be at liberty to avail the alternative remedy u/S 85 of the Act, if so advised.

16. Looking to the peculiar facts and circumstances of the case and the fact that no specific rules or any forum having been constituted/available to deal with such kind of matters/disputes under the Act of 1993, the State Government shall dwell upon the issue and prescribe the competent authority to deal with such matters. The aforesaid exercise be completed within a period of six months from today.

17. The writ appeal is disposed of accordingly. No order as to cost.