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**(1975) 08 OHC CK 0021**  
**In the Orissa High Court**  
**Case No : O.J.C. No. 144 of 1974**

Maliput Grama Panchayat

APPELLANT

Vs

Kundali Grama Panchayat and Others

RESPONDENT

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**Date of Decision :** 20-08-1975

**Acts Referred:**

Orissa Grama Panchayat Act, 1964 — Section 72(1)

**Citation :** AIR 1976 Ori 128

**Hon'ble Judges :** G.K. Misra, C.J.; S.K. Ray, J

**Bench :** Division Bench

**Advocate :** R.C. Ram, for the Appellant; R.K. Patra, for the Respondent

**Final Decision :** Allowed

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## Judgement

G.K. Misra, C.J.—Maliput Grama Panchayat is the petitioner. Kundali Grama Panchayat, Pattangi Grama Panchayat and Kotia Grama Panchayat are opposite parties 1 to 3 respectively. There is a Hat called the Kundali Hat. It is now within the jurisdiction of Maliput Grama Panchayat: Accordingly, the petitioner is collecting the entire income from the Hat which comes to about Rs. 20,000/-per annum. An application was made by opposite party No. 1 before the Collector for retransferring the Kundali weekly market to its control and management. It may be noted that prior to the constitution of Maliput Grama Panchayat, Kundali Hat was within the jurisdiction of Kundali Grama Panchayat and it is on account of this that the application was made. This application was rejected by the Collector by his order Annexure B/4 dated 8-7-1972. He, however, directed that the entire income from the Kundali Hat should be distributed in the ratio of 25%, 20%, 20% and 10% amongst the petitioner and opposite parties 1 to 3 respectively. The balance 25% of the annual income was set apart for improvement of the market and its management. It is this order which is attacked in this writ application under Articles 226 and 227 of the Constitution.

2. The short point raised by Mr. Ram is that the State Government have not taken any decision that the residents of the four Grama Panchayats (petitioner

and opposite parties 1 to 3) used the Kundali Hat and in the absence of such a decision the Collector exercised his jurisdiction illegally in making apportionment of the income amongst the four Grama Panchayats. Time was allowed to the learned Standing Counsel to inform us whether there is any decision of the State Government to that effect. He stated that there is no such decision. The question for consideration therefore is whether in the absence of such a decision the Collector had jurisdiction to make the apportionment as under Annexure B/4.

3. Section 72 of the Orissa Grama Panchayat Act, 1964, so far as material, runs thus:--

"72. Apportionment of income of ferries and markets:--

(1) Whenever the State Government are of the opinion that-

(a) any ferry vested in Grama Panchayat connects public streets under the management of more than one local authority; or

(b) the residents within the jurisdiction of more than one local authority used any market or fair, the right of management, regulation and control whereof is vested in the Grama Panchayat; the State Government or the prescribed authority may, from time to time, apportion the income of such ferry or, as the case may be, of the market or fair among the aforesaid local authorities in such manner and proportion as the State Government or the prescribed authority may decide.

xx xx x"

It would thus appear from Section 72 (1) (b) that the State Government itself must be of opinion that the residents of petitioner and opposite parties 1 to 3 used the Kundali Hat, the right of management, regulation and control whereof vests in the petitioner.

It is only after such a decision is taken by the State Government that either the State Government or the prescribed authority may from time to time apportion the income. The Collector in this case is a prescribed authority, but the Collector would get jurisdiction only after the State Government takes a decision u/s 72 (1) (b). In the absence of such a decision the Collector has no jurisdiction to apportion the income. The contention of Mr. Ram is well founded.

4. In the result, the order of the Collector Annexure B/4 dated 8-7-1972 is hereby quashed and a writ of certiorari be accordingly issued. The writ application is allowed with costs against opposite party No. 5. Hearing fee of Rupees 100/- (one hundred).

S.K. Ray, J.

5. I agree.