

(1982) 09 GAU CK 0007
In the Gauhati High Court
Case No : Civil Rule No. 765 of 1982

Pakhi Mia

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 14-09-1982

Acts Referred:

Assam Panchayati Raj (Administrative) Rules, 1973 — Rule 28
Constitution of India, 1950 — Article 226
Panchayati Raj Act, 1973 — Section 138, 138(2)

Citation : (1983) 1 GLR 142

Hon'ble Judges : D. Pathak, Acting C.J.; T.C. Das, J

Bench : Division Bench

Advocate : A.B. Choudbury and K. Basar, for the Appellant; S.N. Bhuyan and A.A. Mir, for the Respondent

Final Decision : Dismissed

Judgement

D. Pathak, A.C.J.

1. This is an application under Article 226 of the Constitution of India arising out of the settlement of Devasthan Bazar which was settled by the Executive Committee of the Mahakuma Parshad with Respondent No. 4, Shri Sahabuddin, The Petitioner was one of the tenderers for the settlement of the Bazar and he being unsuccessful has challenged the settlement of the Bazar with Respondent No. 4.

2. The settlement of the Bazar is made under the provision of Rule 28 of the Assam Panchayati Raj (Administration) Rules, 1973 (hereinafter called the "Rules"). In the Panchayati Raj Act of 1973 there is a provision u/s 138 for approaching the State Government for any grievance suffered under the provisions of the Act. On a perusal of the scheme of the Panchayati Raj Act, 1973 and after going through the scheme of the provision of the Act as well as the Rules we find that the Petitioner had adequate and efficacious remedy to approach the State Government under the provisions of Section 138, Subsection

(2). Instead of resorting to the provision of Section 138(2) the Petitioner has rushed to this Court with a writ petition. The remedy available under the writ jurisdiction is only discretionary, but under the provision of Section 138 of the Act the Petitioner could have availed of the statutory remedy which has been held to be adequate and efficacious in a number of decisions of this Court. In *Pithu Ram Deka v. The State of Assam* (Civil Rule No. 471 of 1975) a Division Bench of this Court had to consider the scope, contents and amplitude of Section 138. It has been held that the remedy provided u/s 138(2) is adequate and efficacious and these if not availed of; by a person aggrieved then the discretion exercisable in writ jurisdiction may not be exercised in favour of such a person. The principle laid down in *Pithu Ram* (supra) has also been followed in another Division Bench decision in *Lachi Ram Choudhury v. Chief Executive Councillor*, in Civil Rule No. 92 of 1978, judgment delivered on 9.11.78. We find that the aforesaid two decisions have also been reiterated in another decision of this Court in Civil Rule No. 257 of 1979, *Shri Abdul Samad. v. The Executive Committer of the Mahakuma Parishad*, judgment Perisad, judgment delivered on 9.1.80.

3. In view of the aforesaid legal position enunciated by. this Court we are constrained to hold that the Petitioner having not the remedy provided u/s 138(2) of the not be justified In interfering with the order of settlement made in favour of Respondent No. 4. Accordingly we not find any merit in this application.

4. In the result, the petition fails and the rule is discharged. The stay order granted by this Court stands vacated. There is no order as to costs.

5. Before parting with the records of the case, we may observe that it will be, however, open to the Petitioner, if he is advised, to approach the authority u/s 138(2) of the Act.