

(2019) 09 MP CK 0071

In the Madhya Pradesh High Court

Case No : Writ Petition No. 19982 Of 2019

Rajendra Singh Gurjar And Anr.

APPELLANT

Vs

State Of Madhya Pradesh And Ors.

RESPONDENT

Date of Decision : 26-09-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Madhya Pradesh Panchayat Raj Awam Gram Swaraj, Adhiniyam, 1993 — Section 89, 92, 92(1), 92(2), 92(3)

Citation : (2019) 09 MP CK 0071

Hon'ble Judges : G.S. Ahluwalia, J

Bench : Single Bench

Advocate : Arun Dudawat, RK Soni

Final Decision : Allowed

Judgement

1. This petition under Article 226 of the Constitution of India has been filed against the order dated 30/8/2019 passed under Section 92 of the M.P. Panchayat Raj Awam Gram Swaraj, Adhiniyam, 1993 (in short "Adhiniyam").

It is submitted by the counsel for the petitioners that a show-cause notice dated 29/8/2018 was issued to the petitioners under Section 92 of the Adhiniyam for recovery of Rs.1,40,000/-. The show-cause notice was duly replied by the petitioners, however, without conducting any enquiry, the impugned order has been passed. Challenging the order dated 30/8/2019, it is submitted by the Counsel for the petitioners, that the respondents have already taken a final decision, which is bad because the provision of Section 92 of Adhiniyam, is merely an execution provision, and unless and until, an enquiry is conducted under Section 89 of Adhiniyam, no action can be taken against the petitioners. To buttress his contentions, the Counsel for the petitioners has relied upon the judgments passed by this Court in the case of Sumitra Dhurve Vs. State of M.P. reported in 2016(3) MPWN 83 and Kadam Singh Vs. CEO & others reported in 2019(1) MPLJ 420.

Per contra, it is submitted by the Counsel for the State that the letter dated 30/8/2019 is not a final order, but it is merely a show cause notice and no action under Section 92 of Adhiniyam would be taken unless and until, an enquiry is conducted under Section 89 of Adhiniyam.

Considered the submissions made by the Counsel for the parties.

This Court in the case of Kadam Singh (Supra) has held as under :

"9. That the respondents have issued notice under section 92 of the Panchayat Act. The proceeding of section 92 is like an execution proceeding. Before initiating the execution proceeding there has to be an adjudication by the competent authority. Section 89 provides for adjudication. Sections 89 & 92 of the Panchayat Act are reproduced herein below:

89. Liability of Panch etc. for loss, misappropriation.- (1) Every Panch, member, officebearer, officer or servant of Panchayat (or Gram Nirman Samiti and Gram Vikas Samiti) (or committee of Gram Sabha) shall be personally liable for loss, waste or misapplication of any money or other property of the Panchayat (or Gram Nirman Samiti and Gram Vikas Samiti) (or committee of Gram Sabha) to which he has been a party or which has been caused by him by misconduct or gross neglect of his duties. The amount required for reimbursing such loss, waste, or misapplication shall be recovered by the prescribed authority.

Provided that no recovery shall be made under this section unless the person concerned has been given a reasonable opportunity of being heard.

(2) If the person concerned fails to pay the amount, such amount shall be recovered as arrears of land revenue and credited to the funds of the Panchayat (or Gram Nirman Samiti and Gram Vikas Samiti) (or committee of Gram Sabha) concerned.

92. Power to recover records articles and money.-(1)Where the prescribed authority is of the opinion that any person has un-authorisedly in his custody any record or article or money belonging to the Panchayat (or Gram Nirman Samiti and Gram Vikas Samiti) (or committee of Gram Sabha), he may, by a written order, require that the record or article or money be delivered or paid forthwith to the Panchayat (or Gram Nirman Samiti and Gram Vikas Samiti) (or committee of Gram Sabha), in the presence of such officer as may be appointed by the prescribed authority in this behalf.

(2) If any person fails or refuses to deliver the record or article or pay the money as directed under sub-section (1) the prescribed authority may cause him to be apprehended any may send him with a warrant in such form as may be prescribed, to be confined in a Civil Jail for a period not longer than thirty days.

(3) The prescribed authority may- (a) for recovering any such money direct that such money be recovered as an arrear of land revenue; and

(b) for recovering any such record or articles issue a search warrant and exercise

all such powers with respect thereto as may lawfully be exercised by a Magistrate under the provisions of Chapter VII of the Code of Criminal Procedure, 1973 (No.2 of 1974).

(4) No action under sub-section (1) or (2) or (3) shall be taken unless a reasonable opportunity has been given to the person concerned to show cause why such action should not be taken against him.

(4-A) The case pertaining to recovery of any record or article or money initiated by the prescribed authority shall be disposed of within six months from the date of initiation.

(5) A person against whom an action is taken under this section shall be disqualified to be member of any Panchayat (or Gram Nirman Samiti and Gram Vikas Samiti) (or committee of Gram Sabha) for a period of (six) years commencing from the initiation of such action.

10. From bare perusal of section 89 it is clear that every Panch, member, office-bearer, officer or servant of Panchayat shall be personally liable for the loss, waste or misappropriation of any money or other property of the Panchayat to which he has been a party or which has been caused by him by misconduct or gross neglect of his duties. The said amount is liable to be recovered by the prescribed authority. As per the proviso to this section no recovery shall be made under this section unless the person concerned has been given a reasonable opportunity of being heard. That every Panch, member, office-bearer, officer or servant of Panchayat may be existing or ex or removed who has caused loss to the Panchayat by misconduct or gross neglect of his duties and required for reimbursing such loss, waste or misapplication and same can be recovered even after demitting office by them, as the case may be. The section 89 specifically provides that an adjudication must be done and as per the proviso reasonable opportunity of hearing ought to have been given to those persons. In the present case there is no such adjudication under section 89 of the Act.

11. After adjudication under section 89, Section 92 gives power to prescribed authority to recover the records, articles and money belonging to the Panchayat from the custody of any person. Under subsection(2) of section 92 if any person fails or refuses to deliver the record or article or pay the money then the prescribed authority may apprehend him with a warrant for sending him to civil jail and under subsection (3) may recover such money as arrears of land revenue. As such under section 92 powers are given to the prescribed authority for execution of the order passed under section 89. In the present case there is no adjudication under section 89, therefore, there cannot be any execution proceeding or order order passed therein under section 92 of the Act. The prescribed authority has straight away on the basis of ex-parte enquiry report initiated recovery under section 92. In view of the above, the impugned show cause notice as well as the final order dated 8.10.2015 are hereby set aside. Needless to say that still respondents/authority shall be at liberty to take prompt

action against the petitioner under section 89 & 92 of the Panchayat Act."

Thus, the facts of this case are fully covered by the judgment passed by this Court in the case of Kadam Singh(Supra).

Accordingly, it is directed that the respondents shall not effect any recovery or shall not take any coercive step against the petitioners, unless and until an enquiry is conducted under Section 89 of Adhiniyam.

As the letter dated 30/8/2019 is merely show cause notice, therefore, the respondents are directed not to take any coercive steps against the petitioners on the basis of said show cause notice.

The respondents are directed to initiate an enquiry under Section 89 of Adhiniyam and decide the same within a period of six months from today and thereafter, they may proceed further in accordance with law.

With aforesaid observations, the petition succeeds and is hereby Allowed.