

(2013) 09 MP CK 0070
In the Madhya Pradesh High Court
Case No : WP. 7012/13

Roshanlal Vashishtha

APPELLANT

Vs

The State of Madhya Pradesh

RESPONDENT

Date of Decision : 26-09-2013

Acts Referred:

Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 92

Citation : (2013) 09 MP CK 0070

Hon'ble Judges : Sujoy Paul, J

Bench : Single Bench

Advocate : S.K. Sharma, for the Appellant; B. Raj Pandey, Deputy Government Advocate, for the Respondent

Judgement

Sujoy Paul, J.—Heard. This petition is filed against the order dated 10.9.2013, Annexure P-1. By said order, the Prescribed Authority invoked section 92 of Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993, and directed to send the petitioner to civil jail.

2. Shri S.K. Sharma, learned counsel for the petitioner submits that it cannot be disputed that the petitioner was a party in Writ Petition No. 8977/2012. This Court on 3.9.2013 in Writ Petition No. 8977/2012 (Annexure P-7) allowed the petition of Smt. Aysha Naz and set aside the orders, Annexures P-6 and P-7 challenged therein. Shri Sharma further fairly submits that a writ appeal against this order, Annexure P-7, has already been dismissed by the Division Bench.

3. Learned counsel assailed the order, Annexure P-1, on the ground that although a show cause notice issued u/s 92 aforesaid, Annexure P-6, was served on the petitioner, he has not been given reasonable opportunity. His reply dated 30.8.2013 was not accepted by the Prescribed Authority.

4. Shri B. Raj Pandey, learned Government Advocate, submits that the petitioner has an alternative remedy.

5. I have heard learned counsel for the parties and perused the record.

6. This is not in dispute that the order, Annexure P-1, can be assailed by filing appropriate statutory proceedings before the competent authority. The Act and the Rules made thereunder provide that every order of Specified Authority can be called in question before appropriate forum. The petitioner, in the opinion of this Court, has given a wrong declaration that he has no other efficacious remedy. However, during argument Shri S.K. Sharma submits that principles of natural justice are violated and reasonable opportunity of hearing is not provided to the petitioner as mandated in section 92 of the Panchayat Raj Adhiniyam and, therefore, this petition may be entertained.

7. The petitioner in the present case has not challenged the competency of Sub-Divisional Officer in issuing Annexure P-1. It is contended that he has not been given reasonable opportunity. In the opinion of this Court, the petitioner can raise this point in appropriate proceedings before a forum prescribed in Panchayat Raj Adhiniyam. The petitioner can avail the said remedy, which is statutory and efficacious in nature. The authority under the said Act is best suited to decide the disputed questions of fact whether the petitioner actually handed over the charge and whether reasonable opportunity was also granted to him or not. If the petitioner avails that remedy, no palpable injustice would be caused to him. The Apex Court in U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Another, opined that when the order is not shown to be without jurisdiction, it is proper to avail the remedy under the relevant statute. The Apex Court opined as under:-

Where under a statute there is an allegation of infringement of fundamental rights or when on the undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess can be the grounds on which the writ petitions can be entertained. But normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute.

(Emphasis added)

In the light of aforesaid, in my opinion, the petitioner has an efficacious alternative remedy under the Adhiniyam. Thus, this petition is not entertained and liberty is reserved to the petitioner to avail the said remedy in accordance with law.