

(1981) 08 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 592 of 1981

Sri. Pachan Khataniar and Others

APPELLANT

Vs

Morigaon Mahakuma Parishad

RESPONDENT

Date of Decision : 07-08-1981

Acts Referred:

Assam Panchayati Raj Act, 1972 — Section 138, 138(1), 138(2)
Constitution of India, 1950 — Article 226

Citation : (1981) 1 GLR 209

Hon'ble Judges : K. Lahiri, J

Bench : Single Bench

Advocate : S. Ali and S.A. Laskar, for the Appellant;

Final Decision : Dismissed

Judgement

K. Lahiri, J.—This is an application under Article 226 of the Constitution of India projected against an order dated 22.9.81 whereby the Executive Committee, Mahkuma Parishad, Morigaon in exercise of its power under the Assam Panchayati Raj Act, 1972 (as amended) and the Rules framed thereunder, has settled Jaluguti Bazar in favour of Respondent No. 4, Sri Nepali Deka Raja.

2. The preliminary question which has come up for consideration is whether a Single Bench can side step a firm decision of the Division Bench and entertain such writ application. A Division Bench judgment is binding on the Single Bench, unless the ratio decidendi of the larger Bench is not applicable in the subsequent case.

3. It is conceded by the learned Counsel for the Petitioner, Mr. S.A. Laskar, that a revision u/s 138 of the Panchayati Raj Act is the statutory remedy provided against the impugned order passed by the Executive Committee of the Mahkuma Parishad. A Division Bench of this Court in Pithu Ram Deka v. State of Assam, Civil Rule 471 of 1975 disposed of on 5.9.1975 has held that an order of the Executive Committee recommending for settlement of the Bazar is an order

revisable by the State Government u/s 138 of the Act, and application under Article 226 is not entertainable without exhausting the remedy provided in Section 138 of "the Act". The rule enunciated by the Division Bench was confirmed in Civil Rule No. 92 of 1978, Lachhi Ram Choudhury v. Chief Executive Councillor, Kukrajhar Mahkuma Parishad, on 9.11.78. True it is that the decisions have not been reported in any journal, but the ratio decidendi of the decisions of a larger Bench has been referred by this Court in Abdul Samad Vs. The Executive Committee of the Marigaon Mahkuma Parishad and Others, In view of the decisions of the larger Bench I am constrained to hold that I cannot skip over the "binding decisions"" of the larger Benches and hold that a direct writ application under Article 226 of the Constitution can be entertained, I reiterate that ordinarily no such writ application should be entertained for the simple reason that Sections 138(1) and (2) of the Act clearly lay down an efficacious remedy in the statute itself. A remedy under Article 226 of the Constitution is undoubtedly discretionary and only in extraordinary cases the court may entertain a direct application under Article 226 of the Constitution. However, in the run of the mill grievances (sic.) the Petitioner cannot be allowed to skip over the remedies provided and come before this Court under Article 226 of the Constitution. It is the legislative will that the parties aggrieved by an order should go to the State Government u/s 138 of Act. If a Court entertains application under Article 226, it violates the mandate or the will of the legislature. Secondly, when a statutory authority is constituted and recognised by the Act it means that the parties should ask for relief before the Authority if the grievance is alleged violation of any statutory obligation. No party should be permitted to by-pass the authority, to come to this Court unless special circumstance exists. The State Government is the authority to hear and dispose of such matters. Their powers and jurisdictions are wide whereas in an application under Article 226 for a writ in the nature of certiorari and or mandamus this Court has very limited power. It is fitting to show due respects to the statutory authority constituted by the Act. Thirdly, in view of binding decisions of larger Benches, this Court ought not to entertain such, application.

4. It has been urged that a Rule has been issued in the similar matter, viz., Civil Rule 574/81. The learned Counsel for the Petitioner submits that it was not issued by a Division Bench. I am not sure whether the decision of this Court in Abdul Samad (supra) or the binding decisions of Lachhiram (supra) and Pithu Ram (supra) were placed before the learned Judge. Be that as it may, I am of the firm opinion that in the instant case there is no extraordinary circumstances or reasons to entertain the writ application. The Petitioner's remedy is somewhere u/s 138 of the Act, and he is at liberty to ask for the remedy before the appropriate authority.

5. Under the circumstances, I hold that the application is not maintainable and the same if dismissed in limine.