

(2022) 01 MP CK 0196

In the Madhya Pradesh High Court

Case No : Writ Appeal No. 949, 951 Of 2021

State Of M.P. And Others

APPELLANT

Vs

Preeti Patidar And Others &

RESPONDENT

Date of Decision : 12-01-2022

Acts Referred:

Madhya Pradesh Uchha Nayaylalya (Khand Nyaypith Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 — Section 40, 89, 89(2), 92, 92(2)(1)

Citation : (2022) 01 MP CK 0196

Hon'ble Judges : Subodh Abhyankar, J; Anil Verma, J

Bench : Division Bench

Advocate : Aditya Garg, Jitendra Verma

Final Decision : Dismissed

Judgement

Subodh Abhyankar, J

1] This order shall govern the disposal of writ appeal No.949/2021 and writ appeal No.951/2021 as both the appeals have arisen out of the common order dated 23.06.2021 passed by the learned single judge in W.P. No.17964/2020 and W.P. No.6332/2021 respectively. For the convenience, the facts as narrated in W.A. No.949/2021 (W.P. No.17964/2020) are being taken into consideration.

2] This appeal under Section 2(1) of the M.P. Uchha Nayaylalya (Khand Nyaypith Ko Appeal) Adhiniyam, 2005 has been filed by the appellants/State against the order dated 23/06/2021 passed by the learned Single Judge in WP No.17964/2020 by which the petition filed by the petitioner/respondent No.1 (hereinafter referred to as 'the petitioner') has been allowed with cost of Rs.15,000/-, quashing the order dated 05.10.2020 passed by the appellate authority- Commissioner, Ujjain, Division Ujjain which affirmed the order dated 28/11/2020 passed by the Collector, Ujjain whereby the respondent No.1/ petitioner was removed from the post of Pradhan. and consequently the recovery

effected from the petitioner/respondent was also quashed being not sustainable. The review petition No.553/2021 filed by the State has also been dismissed by the learned Single Judge by order dated 21/09/2021 W.P. No.17964/2020 was preferred by the petitioner against the order dated 04/10/2019 passed by the Specified Officer and Chief Executive Officer, Jila Panchayat, Ujjain under Section 92(2)(1) of M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as 'the Panchayat Act') and order dated 05/10/2020 passed by the appellate authority-Commissioner, Ujjain Division, Ujjain. Whereas, WP No.6332/2021 was preferred against the order dated 04/03/2021 passed by the Commissioner, Ujjain, Division Ujjain whereby the application for stay of her removal from the post of Pradhan of the Administrative Committee has been rejected. As pursuant to the order dated 05.10.2020, the Specified Officer and Collector, Ujjain vide its order dated 28.11.2020, has also removed the petitioner from the post of Pradhan of the Administrative Committee.

3] The case of the appellants is that the respondent/petitioner, who was elected on the post of Surpanch of Gram Panchayat Kharsodkhurd, Badnagar was found guilty of irregularities committed by her in construction of RRC road which was of substandard quality and hence, an amount of Rs.83,175/- was sought to be recovered from her.

4] The facts of the case as have been noted by the learned Single Judge are as under:-

2. The petitioner was elected as Surpanch of Gram Panchayat Kharsodkhurd in an election held on 9.2.2015. According to the petitioner, she is highly qualified having a degree of M.Sc. From Vikram University, Ujjain. She has donated her entire salary and allowances in "Swachha Bharat Mission" for construction of toilets in the Gram Panchayat area.

3. According to the petitioner, one Mangilal - Up-Surpanch of Gram Panchayat Kharsodkhurd who is having previous enmity with her father, made a complaint on 1.2.2017 in respect of quality of construction of Cement Concrete (CC) road from the house of Rajaram to the house of Suresh Rathore in Gram Panchayat Kharsodkhurd (in short "Certified Copy Road")(sic). On the basis of the aforesaid complaint, vide order dated 5.12.2017 the petitioner was removed from the post of Sarpanch without conducting any inquiry as contemplated under section 40 of 'the Panchayat Act'. She challenged the aforesaid removal order by way of W.P. No.22373/2017 before this Court. Vide order dated 19.12.2017, this Court stayed the removal order and thereafter vide order dated 19.6.2018 set aside the order of removal. During above precoding after removal of the petitioner from the post of Surpanch, the Chief Executive Officer (CEO), Janpad Panchayatgave the charge of the post of Surpanch to Mangilal on 13.12.2017.

4. The petitioner was served with the show-cause notice on 8.1.2019 under section 92 of the Adhiniyam issued by respondent No.3 directing her to deposit amount of Rs.83,175/-. The petitioner submitted the reply objecting the

aforesaid recovery. The Chief Executive Officer without framing any issue and recording the evidence has passed the impugned order on the grounds that in the year 2017-2018 the petitioner got constructed the CC Road with inferior quality, therefore, amount of Rs.83,175/- is liable to be recovered. The petitioner was given 7 days' time to deposit the aforesaid amount, failing which the proceedings shall be initiated for sending her to civil prison.

5. Being aggrieved by impugned order dated 4.10.2019, the petitioner preferred an appeal before the Commissioner, who has dismissed the appeal by a non-speaking order dated 5.10.2020, hence the present petition (W.P. No.17964/2020) before this Court.

6. Inter alia, the petitioner has assailed the impugned orders on the ground that the aforesaid recovery has been ordered without conducting any inquiry as contemplated under section 89 of 'the Panchayat Act'. The proceedings u/s. 92 are like execution proceedings, but before initiating any recovery, there must be an adjudication in respect of the recovery. There can be composite proceedings under section 89 and 92 of 'the Panchayat Act', but before initiating the recovery, issues are liable to be framed; amount is liable to be quantified by way of evidence, etc. but the said recovery has been ordered behind the back of the petitioner on the basis of the report obtained from Sub Engineer - Kundan Mukati. who was not called upon to prove his report before the prescribed authority. The appellate authority has also failed to appraise the aforesaid violation of law by the Chief Executive Officer and mechanically given a seal of approval to the impugned order. Hence both the impugned orders are liable to be set aside."

5] Learned Single Judge after appreciating the documents filed by the parties on record, relying upon a decision rendered by the coordinate Bench of this Court in the case of Rosan Nargave Vs. State of M.P. and others reported as 2017(3) MPLJ 73 that the recovery cannot be made directly under Section 92 of the Adhiniyam without there being any adjudication under Section 89 of the Panchayat Act, has quashed the impugned orders vide the impugned order dated 23.06.2021.

6] The aforesaid order is under challenge in this appeal by the State on the ground that the learned Single Judge has lost sight of the fact that Section 89 as also Section 92 of the Adhiniyam are two distinct sections, operate within two separate compartments and cannot be interlinked. It is submitted that Section 89 is in respect of the liability of Panch etc. for loss, misappropriation etc, whereas Section 92 is about the power to recover records, articles and money. It is further submitted that proceedings under Section 89 is in respect of quantification of loss by the prescribed authority after giving an opportunity of hearing to the petitioner, whereas under Section 92, such quantification is already there and merely recovery of article, record or money is required to be done.

7] The attention of this Court is also drawn to Sub-Section 2 of Section 89 which

provides that the amount recoverable can be recovered as land revenue and in such circumstances, it is submitted that no separate proceedings under Section 92 were required to be taken up by the authorities for recovery of amount which has been established under Section 89. Thus, it is submitted that both the sections are independent to each other and cannot be linked with each other. It is further submitted that although the show cause notice was issued u/s.92 of the Act but for all the practical purposes it was a notice u/s.89 of the Act as the quantification of the final amount still remained to be made.

8] It is further submitted that so far as quashing of the order dated 28/11/2020 is concerned, it was not even challenged by the petitioner before this Court in WP No.6443/2021 which was merely filed against the order of rejection of interim relief.

9] In support of his contention, Shri Aditya Garg, learned counsel has also relied upon a decision of the Division Bench of this Court in the case of Narendra Pandey Vs. State of M.P. and others passed in WA No.294/2016 dated 20/02/2017. A decision rendered by another Division Bench of this Court in WA No.653/2021 in the case of M.P. Bus Operator Association Vs. State of M.P. dated 09/08/2021 has also been relied upon to buttress his contention that even if the show cause notice has been issued under Section 92 of the Act, it should have been treated under Section 89 only as the quantification of the amount was required to be made, which cannot be done only under Section 92 of the Adhiniyam.

10] Shri Jitendra Verma, learned counsel for the petitioner/respondent has opposed the prayer and has submitted that no illegality or error has been committed by the learned Single Judge in passing the impugned orders. It is further submitted that the contentions raised by the appellant have already been considered by this Court in RP No.553/2021 and thus, no interference is called for.

11] Heard counsel for the parties and perused the record.

12] In sum and substance, the contentions of the learned counsel for the State are that although the show cause notice dated 08/01/2019 has been issued under Section 92 of the Adhiniyam, however, the same was under Section 89 only and the reliance placed by the learned judge on the provisions of Section 92 was erroneous.

13] This court is of the opinion that on a perusal of the aforesaid notice dated 08/01/2019, it is apparent that it has been issued under Section 92 of the Adhiniyam, however, even assuming the same to be under Section 89, it is apparent that apart from the aforesaid notice, there is no other document available on record to demonstrate that how the amount of Rs.83,175/- has been arrived at by the Chief Executive Officer. It is also found that the learned Judge has found that the CEO has accepted the report submitted by the Sub Engineer regarding the aforesaid amount of Rs.83,175/- but the copy of the aforesaid

report has not been furnished to the petitioner, it was also not filed in the Review petition file by the State nor in the present appeal. In such circumstances, even assuming the proceeding was initiated by the appellant under Section 89 of the Adhiniyam, it cannot be said that it was conducted in accordance with law and after due adherence to the principles of natural justice. In view of the same, this Court does not find any error in the order passed by the learned Single Judge.

14] So far as the contentions of learned counsel for the appellants that Section 89 and 92 operate in two distinct compartment, it is found that it is true that Section 89 and 92 are pre-dominantly in respect of recovery from a Panchayat members or any other person of the money due to the Panchayat. Whereas, Section 89 is only in respect of liability in respect of the amount suffered by Panchayat for losses, misappropriation etc., caused by every Panch, member, office-bearer, officer or servant of Panchayat etc., Section 92 provides for power to recover, record, articles and money belonging to the Panchayat from any person.

15] On perusal of the various decisions cited by the counsel for the parties, it is found that this Court has taken a consistent view that an amount cannot be directly recovered under Section 92 of the Adhiniyam unless the same is determined under Section 89 of the same. This is for the reason that without determining the amount, if the notice under Section 92 is served on a person, the amount cannot be said to be due on the date of its recovery because it has not been quantified, and unless it is quantified, it cannot be said that it belongs to the Panchayat and thus, cannot be recovered under s.92 of Adhiniyam. Indeed it is true that under both the sections, viz., Section 89 and Section 92 of Adhiniyam, the amount due can be recovered as land revenue but in such circumstances, when the amount is determined by the State, it has the discretion to recover it either under Section 89 or Section 92 of the Adhiniyam. Apparently, both the sections are overlapping and if the State seeks any clarification that both of them are distinct and different than the only course available to it is to amend the provisions and bring some uniformity and clarity in the enactment, i.e., the Adhiniyam.

16] So far as the contentions of learned counsel for the respondent that the order dated 28/11/2020 passed by the Collector, Ujjain was not even challenged by the petitioner, is concerned, this Court finds that since the original order dated 04.10.2019 itself has been quashed by this Court, in such circumstances, no illegality has been committed by the learned Single Judge in quashing the order dated 28/11/2020 as well which was a consequential order based on the order dated 04.10.2019 only.

17] With the aforesaid observations, this Court finds that no interference is called for in the impugned orders. Resultantly, the appeals are hereby dismissed.

18] Original copy of the order be placed in W.A. No.949/2021 and copy whereof be placed in connected writ appeal.