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HIGH COURT OF CHHATTISGARH, BILASPUR

W.P.(C) No. 4689 of 2019

Aadarsh Machhua Sahkari Samiti Maryadit Jamgahan Post Mukta, Tahsil - Malkharoda, Civil And Revenue District - Janjgir-Champa Chhattisgarh, Through The President - Ramprasad Tamboli S/o Shri Bahoranlal Tamboli, Aged About 60 Years, R/o Village And Post Malkharoda, Civil And Revenue District - Janjgir Champa Chhattisgarh, District : Janjgir-Champa, Chhattisgarh

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Panchayat And Rural Development Department, Government Of Chhattisgarh, Mahanadi Bhawan, Atal Nagar, Naya Raipur, Civil And Revenue District - Raipur Chhattisgarh, District : Raipur, Chhattisgarh
2. Additional Commissioner Bilaspur, Bilaspur Division, Bilaspur Chhattisgarh, District : Bilaspur, Chhattisgarh
3. Collector Janjgir Civil And Revenue District Janjgir-Champa Chhattisgarh, District : Janjgir-Champa, Chhattisgarh
4. Chief Executive Officer Jila Panchayat Janjgir, Civil And Revenue District Janjgir Champa Chhattisgarh, District : Janjgir-Champa, Chhattisgarh
5. Shri Samar Singh Kanwar Director Fisheries, Kulipota Janjgir, Civil And Revenue District- Janjgir Champa Chhattisgarh, District : Janjgir-Champa, Chhattisgarh
6. Shri Nakul Prasad Ogre The Then Fishery Inspector Malkharoda, Presently Posted In The Office Of Assistant Director, Kulipota Janjgir, Civil And Revenue District Janjgir Champa Chhattisgarh, District : Janjgir-Champa, Chhattisgarh
7. Shri Vijay Kumar Nirala The Then Fishery Inspector Malkharoda, Presently Posted In The Office Of Assistant Director, Kulipota Janjgir, Civil And Revenue District- Janjgir Champa Chhattisgarh, District : Janjgir-Champa, Chhattisgarh

8. Shri Bhupendra Kumar Banjare S/o Bheshram Banjare Sarpanch Gram Panchayat Singhra, Village And Post Singhra, Police Station And Tahsil Malkharoda, Civil And Revenue District - Janjgir Champa Chhattisgarh, District : Janjgir-Champa, Chhattisgarh
9. Shri Khileshwar Prasad Chandra S/o Natthulal Chandra, Secretary, Gram Panchayat Singhra, R/o Village Sarasdol, Post Officer - Pihrid, Police Station And Tahsil Malkharoda, Civil And Revenue District Janjgir Champa Chhattisgarh, District : Janjgir-Champa, Chhattisgarh
10. Jai Maa Chandi Machhua Sahkari Samiti Maryadit Singhra Through The President Shri Moharsai Katkawar S/o Shri Dalganjan Katkawar, Village And Post Singhra, Police Station And Tahsil - Malkharoda, Civil And Revenue District - Janjgir Champa Chhattisgarh, District : Janjgir-Champa, Chhattisgarh

---- Respondents

For Petitioner	: Mr. K.A. Ansari, Sr. Advocate with Mr. Ramesh Nayak, Advocate
For State/respondents No.1 to 3	: Mr. Rahul Jha, Advocate
For Respondent No.4.	: Mr. Samarth Pandey, Advocate
For Respondent No.9.	: Mr. S.P. Sannat, Advocates
For respondent No.10.	: Mr. Surfaraj Khan, Advocate

Hon'ble Shri Justice Rajendra Chandra Singh Samant

Order On Board

20/10/2021

1. This petition has been brought being aggrieved by the impugned order dated 23.11.2019, passed by the Additional Commissioner, Bilaspur Division, by which, the agreement regarding allotment of ponds to the petitioner by the order of the Collector (Fisheries Department), Janjgir-Champa dated 05.10.2015 was dismissed.
2. It is submitted by the learned counsel for the petitioner that on advertisement dated 20.07.2018, published by the Gram Panchayat

Singhra, Janpad Panchayat - Malkharoda, the petitioner filed application for allotment of four ponds namely Bade Gadiyahi, School Khaiya, Dongiya & Dau Khaiya for grant of lease for the period of 10 years. Gram Panchayat Singhra passed resolution No.4 dated 28.04.2018 and accepted the proposal for grant on lease of the ponds mentioned herein-above to the petitioner society. By orders of respondent No.4, the petitioner society deposited the dues amount as demanded, subsequent to which, the registered agreement was executed between the parties on 27.10.2018. Respondent No.10 filed an appeal under Section 91 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (hereinafter referred to as "the Act, 1993") against the allotment of ponds and agreement in favour of the petitioner, on which the impugned order has been passed.

3. It is submitted by the learned counsel for the petitioner that the impugned order is erroneous, arbitrary and illegal, hence, not sustainable. The appeal was entertained by the respondent No.2 without any jurisdiction as the respondent No.2 did not have any authority for hearing such appeal. It is submitted that resolution of the Gram Panchayat can not be challenged. It is submitted that Section 85 (2) of the Act, 1993, that no order passed on resolution of Gram Panchayat by the prescribed authority shall be set-aside, revised or modified by the State Government or the officer nominated by it without giving the Panchayat concerned a reasonable opportunity of being heard against the proposed order.
4. Placing reliance on the judgment of the Madhya Pradesh High Court in case of **Sagar Machhua Sahakari Samiti; President, Sarvodaya Sewa Sahakari Samiti, Mandla, Goutam Sigh Vs. Chief Executive Officer, Janpad Panchyat Collector, State of M.P.**, reported in **(2008) (1) MPHT 254**, it is submitted that it has been clearly held that under the scheme of Section 85 of the Act, 1993, it is the State Government or

prescribed authority which has the power to make review on the resolution of a Gram Panchayat and therefore, no appeal or revision can be filed against such resolution of Gram Panchayat. Hence, the impugned order is unsustainable, which is liable to be quashed.

5. Learned State counsel appearing for the respondents No.1, 2 & 3 opposes the petition and the submissions made in this respect. It is submitted that no error has been committed by the respondent No.2 in passing the impugned order, therefore, the present writ petition be dismissed.
6. Learned counsel for the respondents opposes the petition and the submissions made by the counsel for the petitioner and submits that the impugned order has been correctly passed by the respondent No.2. Relying on the judgment of Madhya Pradesh High Court in case of **Gopal Singh Chauhan Vs. State of M.P.**, reported in **2004 (4) MPHT 413**, it is submitted that the Madhya Pradesh High Court had directed the petitioner to file appeal or revision under the provisions of Madhya Pradesh Panchayats (Appeal & Revision) Rules, 1995 (Hereinafter referred to as "the Rules, 1995") with respect to the action taken by the Gram Panchayat against the petitioner. It is submitted that Rule -3 of the Rules, 1995 clearly provides for filing of an appeal against the order passed by the Panchayat authorities, therefore, there is no infirmity committed in the impugned order, which is maintainable.
7. I have heard the learned counsel for the parties and perused the documents placed on record.
8. The provision under Section 85 (2) of the Act, 1953 is relevant, which reads as follows.

"85. Power to suspend execution of orders, etc. –

(1) x x x x x

(2) Whenever an order is made by the prescribed authority under sub-section (1), it shall forthwith and in no case later than then days from the date of order, forward to the State Government or the Officer nominated by the State Government for this purpose, copy of the order with the statement of reasons for making it, and the State Government or the officer nominated by it [may confirm, set aside, revise or modify the order] or direct that it shall continue to be in force with or without modification permanently or fo such period as may be deemed fit:

Provided that no order of the prescribed authority passed under sub-section (1) shall be confirmed, [set aside], revised or modified by the State Government or the officer nominated by it without giving the Panchayat concerned a reasonable opportunity of being heard against the proposed order]"

9. The Madhya Pradesh High Court has in the case of of **Sagar Machhua Sahkari Samiti (supra)** has observed in para 25 & 26 of its judgment, which as under :-

“25. On a keener scrutiny of section 85 it is evincible that the power has been conferred on the State Government or the prescribed Authority can suspend the resolution, order, etc. on the conditions precedent or such action being satisfied. That apart, the said order is subject to further scrutiny for the purpose of confirmation by the State Government.

The language employed under section 91 provides an appeal or revision against an order or proceeding of the Panchayat or other authorities under the Act. It also stipulates that said appeal shall lie to such authority and in such manner as may be prescribed.

26. If the language of section 85 is understood properly it is evincible that power has been conferred on the State Government or the prescribed authority. The power is of the wide amplitude. The State Government has the

authority to suspend the execution of any resolution. It also prohibits to perform any act by panchayat. Many a ground has been enumerated empowering the State government for interference. The term used is resolution as well as order, etc. Though the language employed under section 85 does not use the term suo motu but it is virtually the suo motu exercise of power because the State Government can take up the issue by itself. Suo motu power can also be invoked by a person aggrieved. In the absence of the rules it will be difficult to hold that the power of appeal or revision can be exercised by the said authorities but Court cannot be oblivious of the fact that an appeal or revision is provided in the substantive provision of the Act. The State Government has not framed rules by providing a forum. Under these circumstances it would be apposite and seemly to hold that the person aggrieved can bring his grievance to the notice of the State government and the State Government should take a decision under section 85 of the Act. While taking the said decision the State Government shall be guided by the concept of promptitude which is an intrinsic and insegregable facet of suo motu exercise of jurisdiction. Be it noted, while exercising suo motu power under section 85 of the Act the State Government shall be guided by the parameters provided therein and the nomenclature given to a proceeding under section 85 of the Act.”

10. In view of the law laid down by the Madhya Pradesh High in case of **Sagar Machhua Sahkari Samiti (supra)** and the other factors that are present in this case that the resolution passed by the Gram Panchayat was further approved by the prescribed authority i.e. respondent No.4. Regarding the order of the prescribed authority, there is specific mention in the sub-section 2 of Section 85 of the Act, 1993 that it shall be only the State Government who may confirm, set-aside, revise or modify the order etc. Hence, under these circumstances I am of this view that the appeal preferred by the respondent No.10, before the respondent No.2 was clearly not maintainable.

11. In view of the forgoing discussions made herein-above, this petition deserves to be allowed and it is hereby allowed. The impugned order dated 23.11.2009 passed by the respondent No.2 is hereby quashed and the order of the prescribed authority respondent No.4 dated 05.10.2018, consequent to which the agreement was executed is restored.

Sd/-
(Rajendra Chandra Singh Samant)
Judge

Balram