



**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

**HON'BLE SHRI JUSTICE SUBODH ABHYANKAR
ON THE 21st OF JANUARY, 2025**

WRIT PETITION No. 9702 of 2019

KISHAN SINGH

Versus

***PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT AND
OTHERS***

Appearance:

Shri Prasanna R. Bhatnagar- Advocate for the petitioner.

Shri Vishal Singh Panwar- G.A. for the State.

ORDER

Heard.

2] This petition has been filed by the petitioner under Article 226 of the Constitution of India, seeking the following reliefs:-

“It is, therefore, prayed that this writ petition may kindly be allowed and by issuing appropriate writ, directions or orders –

(a) The impugned order Annexure P/1, Annexure P/2 and Annexure P/3 dated 01.10.2018 may kindly be quashed.

(b) The impugned order Annexure P/14 dated 05.04.2018 by which the recovery has been ordered against the petitioner may kindly be quashed and the respondents may kindly be directed to restrain from taking any coercive action against the petitioner.

(c) Any other relief which this Hon'ble Court may deem fit may kindly be granted in favour of the petitioner and allow this petition with cost.”

3] The petitioner's grievance is that the aforesaid order of recovery dated 01.10.2018 has been passed without properly complying with the provisions of Section 89 of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred to as 'the Adhiniyam of 1993'). It is



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also the grievance of the petitioner that prior to that, a notice was issued to him on 05.04.2018, whereby, the amount has already been determined and has sought to be recovered from the petitioner.

4] Shri P.R. Bhatnagar, learned counsel for the petitioner has also relied upon the decision rendered by the Division Bench of this Court in the case of *State of M.P. and others Vs. Preeti Patidar (Ku.) and others*, reported as (2022) 2 MPLJ 347, wherein, this Court has also held that recovery of money due to a *Panchayat karmi* cannot be effected directly under Section 92, unless the same is determined under Section 89 of the Adhiniyam of 1993. It is submitted that apparently, no procedure as provided under Section 89 of the Adhiniyam of 1993 has been followed by the respondents.

5] A reply to the petition has also been filed, and it is submitted that the due procedure has been followed.

6] Heard. On due consideration of submissions and on perusal of the record, as also the decision rendered by this Court in case of *Preeti Patidar (Ku.) (Supra)*, paras 14 and 15 of the same read as under:-

“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 section 92 of Adhinyam. Indeed it is true that under both the sections, viz., section 89 and section 92 of Adhinyam, 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 Adhinyam. 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 Adhinyam.”

(Emphasis Supplied)

7] When the facts of the present case are tested on the anvil of the aforesaid decision, it is apparent that the respondents have not followed the procedure as envisaged under Section 89 of the Adhinyam, and recovery has been directly initiated under Section 92 of the Adhinyam. In view of the same, the impugned order dated 01.10.2018 cannot be sustained in the eyes of law, and is hereby quashed.

8] Accordingly, the petition stands *allowed*.

9] However, with liberty reserved to the respondents to initiate enquiry against the petitioner, if so advised, in accordance with law.

(SUBODH ABHYANKAR)
JUDGE