



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

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

ON THE 25th OF SEPTEMBER, 2024

WRIT PETITION No. 7043 of 2009

GRAM PANCHAYAT KELUKHEDA AND OTHERS

Versus

THE SUB DIVISION OFFICER & ORS. AND OTHERS

Appearance:

Shri Arpit Kumar Oswal, counsel for the petitioner.
Shri Ajay Jain, counsel for the respondent No.7.
Shri Ramkrishna Shastri, counsel for the intervener.
Shri Ashish Choubey, counsel for the respondent No.6.
Shri Shrey Raj Saxena, Dy. AG for the State.

ORDER

1] This petition has been filed by the petitioner under Article 226 of the Constitution of India assailing the order passed by the Additional Commissioner, dated 09/09/2009, whereby the appeal preferred by the petitioner has been rejected treated it to be second revision against the order passed by the Additional Collector.

2] Initially the order was passed by the Sub Divisional Officer on 31/12/2007, against the resolution passed by the Gram Panchayat, Kalukheda, Tehsil Alot, District Ratlam (M.P.) dated 17/06/2007. The aforesaid order was challenged by the petitioner in an appeal before



the writ Court in WP No.395/2008, which was decided on 22/01/2009, directing the petitioner to avail the remedy of appeal before the appellate authority. Thus, an appeal was filed by the petitioner before the Additional Collector, which was decided on 29/08/2009, whereby the appeal was dismissed, and when the aforesaid order was challenged before the Additional Commissioner in second appeal, and the Additional Commissioner vide its order dated 09/09/2009, has held as aforesaid, that the appeal before the Collector itself was not maintainable as only a revision could have been filed against the order of SDO as the second appeal is not maintainable before the Additional Collector. The Additional Commissioner has also held that the appeal before him was in the form of second revision, which is also not maintainable. Thus, the Additional Commissioner has not reflected upon the merits of the matter.

3] Counsel for the petitioner has submitted that the appeal before the Additional Collector was also maintainable, and has referred to a decision rendered by this Court in the case of *Ajay Pandey vs. State of M.P. and others passed in WP No.9858/2012 dated 12/04/2017*, wherein this Court has held that such appeals would be maintainable as there is no bar in the M.P. Panchayat Raj Adhiniyam to file the second appeal.

4] Counsel for the State, on the other hand has opposed the prayer and it is submitted that no case for interference is made out.

5] Heard. On due consideration of submissions and on perusal of



the documents filed on record, this Court finds that the finding recorded by the Additional Commissioner that the appeal before the Additional Collector was not maintainable, cannot be sustained as apparently this Court has already held in the case of *Ajay Pandey* (supra) that such an appeal would be maintainable. Hence, the appeal arising out of the order of the Additional Collector shall also be maintainable before the Additional Commissioner.

6] Thus, in such circumstances, the order passed by the Additional Commissioner cannot be sustained in the eyes of law, and is hereby set aside. The matter is remanded back to the Additional Collector to decide the appeal preferred by the petitioner, in accordance with law, also taking into account the order passed by this Court in the case of *State of Madhya Pradesh vs. Rajesh Kumar Gupta reported as 2013(2) MPLJ 130* as expeditiously as possible, preferably within a period of one month from the date of receipt of certified copy of this order. Parties are directed to appear before the Additional Commissioner on 06/11/2024. Since the matter pending before this Court since 2009 and the original matter is of 2007, it is directed that till the Additional Commissioner decides the matter, the interim relief earlier granted by this Court shall continue to remain in operation.

7] With the aforesaid directions, petition stands *disposed of*.

Sd/-

(SUBODH ABHYANKAR)
JUDGE

krjoshi