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**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
JUSTICE SUJOY PAUL
&
JUSTICE VIVEK JAIN**

WRIT PETITION No. 13917 of 2023

BETWEEN:-

1. **AKHILESH KUMAR S/O MATHURA PRASAD TIWARI, AGED ABOUT 39 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOR NOA-01 R/O GRAM PANCHAYAT BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
2. **RAJRANI W/O DASHRATH PANDEY, AGED ABOUT 30 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. A 02 GRAM PANCHAYAT BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
3. **RAJKUMAR S/O POORAN LAL SAHU, AGED ABOUT 53 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. A 03 GRAM PANCHAYAT BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
4. **RONINI S/O PACHCHI RAM SAHU, AGED ABOUT 33 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. A 04 GRAM PANCHAYAT BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
5. **LAXMI GUPTA W/O MANOJ KUMAR PATKAR, AGED ABOUT 38 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. A 05 GRAM P A N C H A Y A T BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
6. **KRISHNA KUMAR S/O SANTOSH KUMAR, AGED ABOUT 31 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. A 06 GRAM PANCHAYAT BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**

7. **ANIL TAMRAKAR S/O SHRI PURUSHOTTAM, AGED ABOUT 43 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. A 07 GRAM P A N C H A Y A T BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
8. **NAVAL KISHORE S/O RAJKUMAR BARMAN, AGED ABOUT 41 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. A 08 GRAM P A N C H A Y A T BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
9. **VINAY KUMAR S/O ROHINI PRASAD GUPTA, AGED ABOUT 45 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. A 09 GRAM P A N C H A Y A T BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
10. **ASHOK S/O CHANDRIKA PRASAD DUBEY, AGED ABOUT 52 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. A10 GRAM PANCHAYAT BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
11. **VIPENDRA KUMAR S/O KUWARLAL DWIVEDI, AGED ABOUT 30 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. A11 GRAM P A N C H A Y A T BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
12. **AJAYKUMAR S/O SHRI RAJENDRA PRASAD SONI, AGED ABOUT 36 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. A12 GRAM P A N C H A Y A T BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
13. **SANDEEP S/O RAMLAL SONI, AGED ABOUT 38 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. A13 GRAM PANCHAYAT BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
14. **SATISH S/O RAMRATAN DUBEY, AGED ABOUT 30 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. A14 GRAM PANCHAYAT BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**

15. **MANOJ KUMAR S/O RAMESH PRASAD, AGED ABOUT 45 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. A15 GRAM PANCHAYAT BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
16. **LALIT KUMAR S/O SHIV PRASAD TIWARI, AGED ABOUT 33 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. A16 GRAM PANCHAYAT BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
17. **ANJANA GARG W/O SHYAMSUNDAR, AGED ABOUT 41 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. A17 GRAM PANCHAYAT BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
18. **SURESH SINGH S/O BRAJMOHAN SINGH, AGED ABOUT 64 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. A18 GRAM PANCHAYAT BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
19. **RAJESH S/O SHYAMLAL SHARMA, AGED ABOUT 48 YEARS, SHOP NO. A-19 GRAM PANCHAYAT BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
20. **SAVITA W/O VIKAS DUBEY, AGED ABOUT 30 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. A-20 GRAM PANCHAYAT BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
21. **FIROZ KHAN S/O GAFFAR KHAN, AGED ABOUT 42 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. B-1 GRAM PANCHAYAT BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
22. **AMBE GARG S/O RAKESH GARG, AGED ABOUT 41 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. B-2 GRAM PANCHAYAT BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
23. **JAIVEER S/O NATTHURAM RATHORE, AGED ABOUT 44 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. B-3 GRAM PANCHAYAT BAHORIBAND MARKET BAHORIBAND DISTRICT**

KATNI (MADHYA PRADESH)

24. **DURGA PRASAD S/O SEETARAM, AGED ABOUT 32 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. B-4 GRAM PANCHAYAT BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
25. **VIKAS KUMAR S/O RATANCHAND, AGED ABOUT 35 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. B-5 GRAM PANCHAYAT BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
26. **FIROZ KHAN S/O RAFIQ KHAN, AGED ABOUT 45 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. B-6 GRAM PANCHAYAT BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
27. **FIRDOUS BEE W/O HAFIZ KHAN, AGED ABOUT 46 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. B-45 GRAM PANCHAYAT BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
28. **AZAM KHAN S/O AZAM KHAN, AGED ABOUT 39 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. B-8 GRAM PANCHAYAT BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
29. **SHRADDHA W/O SHARAD GARG, AGED ABOUT 26 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. C-1 GRAM PANCHAYAT BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
30. **SHYAM SUNDAR S/O RAMDAS SAINI, AGED ABOUT 45 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. C-2 GRAM PANCHAYAT BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
31. **SUJEET KUMAR S/O NAND KISHOR, AGED ABOUT 45 YEARS, OCCUPATION: PROFESSION SHOPKEEPER SHOP NO. C-3 GRAM PANCHAYAT BAHORIBAND MARKET BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)**
32. **DEEPAK KUMAR S/O KRISHNAKANT SHUKLA,**

AGED ABOUT 37 YEARS, OCCUPATION:
PROFESSION SHOPKEEPER SHOP NO. C-4 GRAM
P A N C H A Y A T BAHORIBAND MARKET
BAHORIBAND DISTRICT KATNI (MADHYA
PRADESH)

33. VIRENDRA KUMAR S/O OM PRAKASH SHRIVAS,
AGED ABOUT 35 YEARS, OCCUPATION:
PROFESSION SHOPKEEPER SHOP NO. C-5 GRAM
P A N C H A Y A T BAHORIBAND MARKET
BAHORIBAND DISTRICT KATNI (MADHYA
PRADESH)
34. VIKAS BARMAN S/O AJAY KUMAR BARMAN,
AGED ABOUT 23 YEARS, OCCUPATION:
PROFESSION SHOPKEEPER SHOP NO. C-6 GRAM
P A N C H A Y A T BAHORIBAND MARKET
BAHORIBAND DISTRICT KATNI (MADHYA
PRADESH)
35. VIMAL KUSHWAHA S/O JOKHULAL, AGED ABOUT
39 YEARS, OCCUPATION: PROFESSION
SHOPKEEPER SHOP NO. C-7 GRAM PANCHAYAT
BAHORIBAND MARKET BAHORIBAND DISTRICT
KATNI (MADHYA PRADESH)
36. MUKESH SONI S/O KAILASH SONI, AGED ABOUT
36 YEARS, OCCUPATION: PROFESSION
SHOPKEEPER SHOP NO. C-8 GRAM PANCHAYAT
BAHORIBAND MARKET BAHORIBAND DISTRICT
KATNI (MADHYA PRADESH)
37. NARENDRA RAJAK S/O RAMKUMAR, AGED
ABOUT 30 YEARS, OCCUPATION: PROFESSION
SHOPKEEPER SHOP NO. C-9 GRAM PANCHAYAT
BAHORIBAND MARKET BAHORIBAND DISTRICT
KATNI (MADHYA PRADESH)
38. GEETA BARMAN W/O CHHOTELAL, AGED ABOUT
40 YEARS, OCCUPATION: PROFESSION
SHOPKEEPER SHOP NO. C-10 GRAM PANCHAYAT
BAHORIBAND MARKET BAHORIBAND DISTRICT
KATNI (MADHYA PRADESH)
39. KRISHNESHWAR GUPTA S/O RADHARAMAN,
AGED ABOUT 37 YEARS, OCCUPATION:
PROFESSION SHOPKEEPER SHOP NO. C-11 GRAM
P A N C H A Y A T BAHORIBAND MARKET
BAHORIBAND DISTRICT KATNI (MADHYA
PRADESH)
40. MANJU PATEL S/O RAMESH PATEL, AGED ABOUT

31 YEARS, OCCUPATION: PROFESSION
SHOPKEEPER SHOP NO. C-12 GRAM PANCHAYAT
BAHORIBAND MARKET BAHORIBAND DISTRICT
KATNI (MADHYA PRADESH)

.....PETITIONERS

(BY SHRI PARESH PAREEK - ADVOCATE)

AND

1. THE STATE OF MADHYA PRADESH THROUGH THE SECRETARY PANCHAYAT AND RURAL DEVELOPMENT R/O MANTRALAYA VALLABH BHAWAN BHOPAL (MADHYA PRADESH)
2. THE COLLECTOR/APPELLATE AUTHORITY M.P LOK PARISAR (BEDAKHALI) ADHINIYAM DISTRICT KATNI (MADHYA PRADESH)
3. THE SUB DIVISIONAL OFFICER (REVENUE)/COMPETENT AUTHORITY M.P. LOK PARISAR (BEDAKHALI) ADHINIYAM BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)
4. THE CHIEF EXECUTIVE OFFICER ZILA PANCHAYAT DISTRICT KATNI (MADHYA PRADESH)
5. THE CHIEF EXECUTIVE OFFICER JANPAD PANCHAYAT BAHORIBAND DISTRICT KATNI (MADHYA PRADESH)
6. THE GRAM PANCHAYAT BAHORIBAND THROUGH ITS SECRETARY DISTRICT KATNI (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI AYUSH DEV BAJPAI - GOVERNMENT ADVOCATE FOR THE STATE AND SHRI AMRIT LAL GUPTA - ADVOCATE FOR THE RESPONDENT NOS.4 AND 5)

Reserved on : 29/02/2024

Pronounced on : 01/03/2024

This petition coming on for orders this day, Justice Vivek Jain passed

the following:

ORDER

The present petition has been filed by the petitioners, who are allottees of shops, which were allotted to them by Gram Panchayat, Bahoriband, District Katni. The present petition seeks to challenge the order dated 07.09.2022 (Annexure P-1) and order dated 26.05.2023 (Annexure P-2). By the order Annexure P-1, the competent authority under M.P. Lok Parisar Bedakhali Adhiniyam, 1974 (for short referred to as 'Adhiniyam 1974) has ordered eviction the petitioners from the shops by exercising powers under Section 5 of the said Adhiniyam, while by the order Annexure P-2, the appellate authority under the said Adhiniyam has rejected the appeal of the petitioners.

2. Learned counsel for the petitioners while assailing the orders Annexure P-1 and P-2 has stated that certain shops were constructed by Gram Panchayat, Bahoriband (respondent No.6) and after such construction, the shops were allotted to the present petitioners by the Gram Panchayat and the allotment was on lease with monthly rent. The lease was of 35 months and contained a renewal clause after expiry of 35 months period with 10% increase of monthly rent. Learned counsel for the petitioners has submitted that the eviction order Annexure P-1 has been passed on the ground that the shops were constructed by Janpad Panchayat, Bahoriband and after construction the shops were required to be handed over to the Janpad Panchayat, because Gram Panchayat was only construction agency. However, the Gram Panchayat has allotted the shops by passing resolution in Gram Sabha. The competent authority found the act of allotment by the Gram Panchayat on strength of resolution of Gram Sabha to be unauthorized act, and also carried out without auction, even if it were authorised. These reasons are attacked by the petitioners. Learned counsel

for the petitioners has also submitted that in terms of Section 5A and Section 65 of M.P. Panchayat Raj Evam Gram Swaraj Adhiniyam, 1993, the Gram Panchayat is duly competent to acquire, hold and dispose of any property, movable and immovable.

3. It is also argued by learned counsel for the petitioners that in view of Section 65(1) the sanction of the State Government or Officer authorized by the State Government is required before disposal or transfer of the property by Panchayat only if the lease for a period exceeding three years. It is further argued that in terms of Rule 4 of M.P. Panchayat (Transfer of Immovable Property) Rules, 1994 (for short referred to as 'Rule 1994'), Rule 4 provides for sanction of competent authority of the State only in case the property is being leased out for a period exceeding three years. Thus, it is argued that since the lease was granted to the petitioners for a period of 35 months, there was no requirement of any sanction of the State Government.

4. Learned counsel for the petitioners has also argued that the competent authority while ordering eviction has held that no public auction was carried out by the Gram Panchayat before allotment of the shops to the petitioners. Learned counsel for the petitioners submits that in terms of Rule 4 of Rules of 1994, the procedure of public auction is laid down under Rule 5 and said Rule 5 is dependent upon compliance of Rule 4. Thus, it is argued that only if the case falls within Rule 4 and transfer is sale, exchange or lease for a period exceeding three years, only then the compliance of Rule 5 is required to be done by conducting public auction.

5. Learned counsel for the petitioners also submitted that the petitioners have been given the shops on rent, which does not amount to any transfer of property and therefore, even the Rules, 1994 are not applicable for the allotment

made to the petitioners. It is argued that giving a shop on rent, it is not transferred in any manner whatsoever; hence, Gram Panchayat was competent to give the shops on rent to the petitioners in whatever manner it liked.

6. It is also stated by learned counsel for the petitioners that the eviction order was passed on 07.09.2022 and on the same date, notices were issued to the petitioners to vacate the shops and to hand over possession vide Annexure P-3 and by drawing proceedings in illegal manner, two different Panchnamas of 08.09.2022 were prepared by the respondents. By one Panchnama of 08.09.2022, which is available at page 532 of the present petition, it is mentioned that the locks on the shops placed by the allottees were broken down and new locks were placed by the authorities. In the other proceedings of the same date, which are at page 534 of the present petition, it is mentioned that the shopkeepers have vacated the shops and thereafter, the shops have been sealed. Thus, it is argued that the goods of the petitioners are still lying in the shops. An application (I.A. No.2548/2024) has been filed stating that the respondents are going to open the shops and clear the goods lying therein without following the procedure as per Section 6 of Adhinyam, 1974. Learned counsel for the petitioners submits that as per Section 6 aforesaid, the disposal of property left on public premises by alleged unauthorized occupant has to be made by issuing fresh notice after taking possession and giving opportunity to the erstwhile occupant to remove his goods and belongings. If the erstwhile occupant fails to remove his goods and belongings even after notice, only then the authorities can take out the goods left by such erstwhile occupant.

7. Another ground has been taken that the eviction order does not mention the shop numbers and survey number of the land and thus, the eviction

order is ambiguous in nature. Learned counsel for the petitioners further argued that the petitioners were regularly paying rent to the Gram Panchayat and for this reason also the eviction order cannot be sustained.

8. Per contra, learned counsel for the respondent Nos.4 and 5, which are Jila Panchayat and Janpat Panchayat has filed reply on behalf of respondent Nos.4 and 5. By referring to the administrative sanction order dated 08.11.2021, it is pointed out that the shops were decided to be constructed by the Janpad Panchayat from the funds received under 15th Finance Commission and the Gram Panchayat was appointed as construction agency only. It is submitted that the shops were constructed on behalf of Janpad Panchayat and the Gram Panchayat has no authority to allot the shops, because it was only the construction agency appointed on behalf of the respondent No.5 - Janpad Panchayat. It is further contended by respondent Nos.4 and 5 that the public auction was not conducted, which was mandatory as per Rule 5 of Rules of 1994 and even the allotment made by the Gram Panchayat was without following due process and therefore, the mere fact that the petitioners have been paying rent to the Gram Panchayat does not create any right in favour of the petitioners.

9. Learned Government Advocate for the State has also opposed the petition and supported the orders Annexures P-1 and P-2 and submitted that the Gram Panchayat had illegally allotted the shops without any authority and even the procedure was not followed. By referring to the document dated 12.01.2023 (Annexure R/4), it is submitted that even the illegal allotment, which was made in favour of the petitioners by the Gram Sabha has been set aside in appeal, which was filed against the said illegal resolution.

10. Heard learned counsel for the parties and perused the record.

11. The eviction order against the petitioner has been passed mainly on two grounds. The first ground is that the allotment has been made by the Gram Panchayat on the strength of resolution of Gram Sabha while the shop was got constructed by the Janpad Panchayat and the Gram Panchayat is only the construction agency. The first illegality found in the allotment is that the Gram Panchayat could not have allotted the shops when it is only the construction agency. The second illegality is that no public auction and public bids were invited while allotting the shops to the petitioners and the allotment was made in a manner which is violation of rules of 1994.

12. Upon perusal of the document dated 08.11.2021 filed along with reply of respondents No. 4 and 5 it is clear that the sanction for construction of shop has been made by Janpad Panchayat from funds received under 15th finance commission. The copy of the said administrative sanction order has been endorsed to Gram Panchayat vide endorsement note No. 3 mentioned in the said letter mentioning that it is being forwarded to the Gram Panchayat for intimation and necessary action as the Gram Panchayat is only the construction agency. No rejoinder on the aforesaid aspect has been filed by the petitioner. This it is evident that the shops were got constructed by the Janpad Panchayat and the Gram Panchayat is only the construction agency.

13. The petitioners relied on Section 5-A and Section 65 of the M.P. Panchayat Raj and Gram Swaraj Adhiniyam 1993 (for short referred to as Adhiniyam 1993) to contend that the Gram Sabha is having power to hold and dispose of any property in terms of Section 5-A . By referring to Section 65, it has been argued that the Gram Panchayat which is one of the Panchayats in the three tier Panchayat system has the competence and authority to transfer the

immovable property by lease for less than 3 years without sanction of the State Government. Thus it is contended that the Gram Sabha and Gram Panchayat did not require any sanction.

14. The issue involved in the present case is not sanction of the State Government. The issue involved is that the shops were got constructed by the Janpad Panchayat and the Gram Panchayat was only the constructing agency. Once the construction of the shop was got done by the Janpad Panchayat, then it is only the Janpad Panchayat which is having competence and authority to allot the shops. The aspect of sanction of State Government would be the matter between the Janpad Panchayat and State Government, the Gram Panchayat or Gram Sabha clearly did not have any authority to allot the shops to the petitioners.

15. Thus the finding recorded in the orders Annexure P/1 and P/2 that the Gram Panchayat has no authority to lease the shops on rent, seems to be justified and proper.

16. Learned counsel for the petitioner has also argued that the allotment of shops on rent does not amount to transfer of property in terms of section 5-A and 65 of Adhinyam 1993, hence, the rules 1994 would not apply. This argument is inconsistent with the argument of the petitioners which has been considered in preceding paras. However, even considering this argument, giving the shop on monthly rent for 35 months is certainly a “lease” and lease is one of the mode of the transfer of property as per Transfer of Property Act, 1881. Even Section 65(1) of Adhinyam 1993 while dealing with the transfer of immovable property mentions “lease” as one of the modes. Thus, the argument of the petitioner that allotment of shop on rent is not a mode of “transfer of property”, is utterly misconceived and is discarded. The relevant provisions are

as under:-

“[5A. Constitution and incorporation of Gram Sabha. - There shall be a Gram Sabha for every village. The Gram Sabha shall be a body corporate by the name specified therefore, having perpetual succession and a common seal and shall by the said name sue and be sued and shall subject to the provisions of this Act and the rules made thereunder have power to acquire, hold and dispose of any property movable or immovable, to enter into contract and to do all other things necessary for the purpose of this Act.]”

“65. Transfer of immovable property.- (1) No immovable property vested in or belonging to a Panchayat shall be transferred by sale, gift, mortgage or exchange or by lease for a period exceeding three years, or otherwise except with the sanction of the State Government or any officer authorised by it in this behalf.

(2) The procedure of transfer of immovable property shall be such as may be prescribed.”

17. Learned counsel for the petitioners has also argued that there was no requirement of public auction or public bids before allotment of shops to the petitioners because the aspect of public auction and public bids would arise only if lease had been for allotment for the period of 3 years or more in terms of Rule 4 of Rules 1994 and therefore, there would be no applicability of Rs. 5 which requires auction.

18. The relevant Rules 4 and 5 are as under:-

"4. Sanction of competent authority. - If the said property is to be transferred by sale, gift mortgage, exchange or by lease for a period exceeding three years or otherwise the Panchayat shall send a copy of the resolution alongwith full justification for such transfer, to the State Government or the officer authorised by it, as the case may be, for obtaining its/his sanction. On receipt of the sanction of the State Government or the authorised officer the said property shall be transferred according to procedure, hereinafter laid down.

[5. Transfer by public auction. - (1) No transfer of immovable property by sale or lease shall be made except by public auction:

Provided that if the Panchayat is of the opinion that it is not desirable to transfer such property by public auction, it may with the previous sanction of the State Government or the officer authorised by it under Section 65, effect such transfer without public auction for a consideration which shall not be less than the prevalent market value of such property.]"

19. Upon perusal of the Rule 4, it is clear that if the property is to be transferred by sale, gift, mortgage, exchange or by lease for a period exceeding three years, then sanction of the competent authority of the State is required and after receipt of sanction the property shall be transferred by the Janpad Panchayat in accordance with the procedure laid down in Rule 4. Rule 5 contains the provision of transfer of immovable property by Panchayat by public auction. It has been argued before this Court that the requirement of Rule 5 of public auction is to be fulfilled only if the allotment of immovable property is on lease exceeding a period of three years or if it is by sale, gift, mortgage, exchange etc. It has been argued that once the property is allotted on lease/tenancy for a period less than three years (35 months in this case) then there is no requirement of public auction. In order words it is argued by learned counsel for the petitioners that Rule 5 is dependent provision of Rule 4.

20. Upon consideration of the bare language of Rule 5 (1) it is clear that no transfer of immovable property by sale or lease shall be made except by public auction and the proviso of that rule independently lays down that if the Panchayat is of the opinion that it is not desirable to transfer such property by public auction then it may with the previous sanction of the State Government or its competent authority by it under Section 65 effect such transfer without public auction for a consideration which shall not be less than the prevalent market value of such property.

21. In our opinion Rule 5 by prohibiting any transfer of immovable

property by sale or lease except by public auction seems to be an independent provision not dependent on Rule 4. It is clear in no uncertain terms that no transfer of immovable property by sale or lease shall be made except by public auction. It does not make any distinction between the lease for period of more than 3 years and less than three years. A specific sanction to avoid public auction in every case has to be taken from State Government in terms of proviso to rule-5, which is different from general sanction for disposal of property for period exceeding 3 years, which is provided under Rule-4.

22. So far as last lines of Rule 4 which were forcefully relied by the petitioner are concerned, in our opinion the said provision mandating to follow the procedure under succeeding rules after receipt of sanction of the State Government only bolsters the position that even after receipt of the sanction of the State Government under Rule 4 to make allotment by lease for a period exceeding 3 years, the requirement of public auction is mandatory. We have already held above that public auction can be dispensed with only under proviso to Rule 5(1) in terms of a specific and separate sanction by the State Government to that effect. That is irrespective of tenure of lease.

23. Therefore, in our considered opinion even though lease in favour of the petitioners is for 35 months which is less than 3 years, still the requirement of auction was mandatory and allotment in favour of the petitioners without any public auction seems to be bad in law.

24. It has been brought on record by respondents No. 4 and 5 that the allotment order has also been set-aside in appeal which has not been disputed by the learned counsel for the petitioners.

25. The petitioners further canvassed before this Court that since they are regularly paying the rent, their allotment could not be set-aside or cancelled. In

our considered opinion, this argument is misconceived because once the allotment made by the Gram Panchayat has been found to be unauthorized and also without following due process, the factum of regularly paying rent to the Gram Panchayat is of no consequence and nothing turns in favour of the petitioners by such facts.

26. It has been argued by the learned counsel for the petitioners that impugned orders did not mention land Khasra and shop numbers. These submissions seems to be a submission out of desperation because agreements with the Gram Panchayat which are brought on record by the petitioners collectively as Annexure P/4 did not mention any land survey number and shop number. There is no dispute as to identify the shops and the factum of allotment of shops to the petitioners, thus the arguments holds no force.

27. The last issue which has been canvassed by the petitioners is that the possession was formally taken by putting new locks in the shops which were being run by petitioners after the same were allotted by the Gram Panchayat in two different proceedings on 08-09-2022. It has been argued that one of the proceedings mentions that the petitioners are evicted from the shops while second proceedings of the same date mentions that merely the locks were changed, thus it is argued that goods of the petitioners are lying in the shops and despite this position, the respondents No. 4 and 5 are acting to remove the goods without following the mandatory provisions of Section 6 of the Adhiniyam 1974.

28. The respondents No. 4 and 5 as well as learned counsel for the State have argued that vacant possession has been taken from the petitioners and also notices were issued to the petitioners which are on record as Annexure P/3

collectively.

29. Upon perusal of the notice placed on record as Annexure P/3, it is clear that these notices were issued after passing of eviction order but before taking possession. Possession has been taken on 08.09.2022 and two different proceedings are on record. In one it is mentioned that vacant possession has been taken and the other mentions that possession has been taken without getting shops vacated.

30. It appears that there is some controversy that the goods of the petitioners are lying in the shops. Admittedly, no notice for vacating the shops of which possession has been taken, has been issued under Section 6 of Adhinyam 1974 after taking possession. Section 6 mandates that if any property or belongings of evictees is lying on the premises, then after giving 14 days notice to the persons from which possession has been taken, such property may be removed. The apprehension of the petitioners their goods may be destroyed by the respondents No. 4 and 5 does not appear to be utterly misplaced.

31. Therefore, we are only inclined to direct the respondents No. 3 to 5 that they shall grant one opportunity to the petitioners to take out their goods and belongings from the shops, if any, lying in the said shops by issuing a notice in one newspaper having wide circulation in the locality and grant 14 days time to the petitioners to remove the goods. After giving such an opportunity, if the petitioners fail to avail such opportunity, the respondents No. 3 to 5 shall be at liberty to proceed in accordance with Section 6(2) of the Act of 1974.

32. For a period of 14 days from the date of publication of notice in newspaper the proceedings for fresh auction of the shops shall be not finalized.

33. In the result, by upholding the eviction order and orders Annexures

P/1 and P/2, the petition is **disposed of** with the above observation/directions.

(SUJOY PAUL)
JUDGE

rj/mishra

(VIVEK JAIN)
JUDGE

