

Rajvendra Singh Vs. Hakim Singh and Others

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Court : Allahabad

Decided On : Feb-18-1999

Reported in : 1999(2)AWC1174

Judge : N.K. Mitra, C.J. and;D.K. Seth, J.

Acts : Uttar Pradesh Panchayat Raj Act, 1947 - Sections 12J and 95(1)

Appeal No. : Special Appeal No. 124 of 1999

Appellant : Rajvendra Singh

Respondent : Hakim Singh and Others

Advocate for Def. : R.K. Gupta, Adv.

Advocate for Pet/Ap. : K.D. Tripathi, Adv.

Judgement :

N.K. Mitra, C.J. and D. K. Seth, J.

1. Heard learned Advocates for the parties.

2. The appeal is devoid of any merit as it appears on the face of the order passed by the learned single Judge on 4th February. 1999 in Writ Petition No. 3657 of 1999. Mr. K. D. Tripathi, learned counsel for the appellant contended that since there are charges of embezzlement against the Up-Pradhan and the other

members objected to the discharge of function of the Pradhan by the Up-Pradhan, Section 12J cannot be applied. In support of his contention, he relied on the decision in the case of Dhani Ram v. Zila Panchayat, 1998 (89) RD 701.

3. We have gone through the judgment and we do not find any infirmity in the same. Section 12J of the U. P. Panchayat Raj Act, 1947 provides in case of death or otherwise incapacity of the Pradhan, the Up-Pradhan shall exercise all powers and discharge all duties of a Pradhan. It does not require even any order to be passed by any officer, namely, the District Panchayat Raj Officer or any other authority. The devolution of the function is automatic in view of the expression used in Section 12J. The decision in the case of Dhani Ram (supra), is wholly misplaced. It deals completely with a different proposition as to whether there is any conflict between Section 12J and Section 95 (1) (g) and in such cases where Section 95 (1) (g) has been resorted to or any enquiry is pending against the Up-Pradhan. Section 12J is inapplicable.

4. In the present case, there is no doubt that no order under Section 95 (1) (g) of the Act has since been passed and no enquiry is also pending against the Up-Pradhan. Application of Section 12J cannot, therefore, be excluded. In the order appealed against, it has not been provided that the petitioner cannot be removed. On the other hand, it was provided that Up-Pradhan shall cease to function if he is ousted from the office of Up-Pradhan.

5. The appeal is accordingly dismissed. No costs.