IN THE HIGH COURT OF MADHYA PRADESH AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VINAY SARAF

ON THE 22nd OF SEPTEMBER, 2026

SECOND APPEAL No. 31 of 2004

VISHNU

Versus

SARPANCH GRAM PANCHAYAT AND OTHERS

Appearance:

Shri Harish Joshi - Advocate for appellant.

Shri Anshul Rajpurohit - Govt. Advocate for the respondent No. 3 / State.

RESERVED ON : 20/08/2026

PRONOUNCED ON : 22/09/2026

ORDER

1. This Second Appeal is preferred by the plaintiff u/S.100 of the Code of Civil Procedure being aggrieved by the judgment and decree dated 7.10.2003 passed by V Addl. District Judge, Ujjain in Civil First Appeal No.26A/03, by which the judgment and decree dated 7.5.2003 passed by the Civil Judge, Class-II, Badnagar, Distt. Ujjain in Civil Suit No.114A/97 has been reversed and the suit filed by the plaintiff was dismissed.

2. Brief facts of the case are that the appellant - plaintiff (hereinafter referred to as "plaintiff") has filed a suit for declaration and perpetual injunction against the respondents-defendants(hereinafter referred to as "defendant") seeking decree of declaration and perpetual injunction by restraining the respondents from dispossessing the plaintiff illegally and interfering in the possession of the plaintiff over the suit land admeasuring 20 x 30 feet situated in village Gram Kharsodkala, Tehsil Badnagar, District Ujjain and the house

Signature Not Verified
Signed by: VARGHESE MATHEW
Signing time: 9/22/2026 6:09:27 PM

constructed there upon.

3. The plaintiff pleaded in the suit that in village Kharsodkala, Tehsil Badnagar, District Ujjain House Admeasuring 20 x 30 feet is owned and possessed by the plaintiff, wherein the plaintiff is doing the business of lath machine, welding machine and compressor. The house was constructed by the plaintiff upon the land provided by the Administrator of Gram Panchayat of Kharsodkala to the plaintiff for installing a temporary *gumti* and thereafter the land was provided on perpetual lease to the plaintiff and the plaintiff after obtaining permission from the Gram Panchayat constructed the RCC shop and started welding shop.

4. From 1985-86 to 1991-92 the lease rent was Rs.1385/- and thereafter on 25.12.1993 the land was provided to the plaintiff on perpetual lease upon the application submitted by the plaintiff, however, the defendant No.2 Sarpanch of Gram Panchayat and defendant No.3 Secretary, Gram Panchayat are trying to dispossess the plaintiff from the suit land and house illegally and visited the spot on 28.2.1997 with labourers for the purpose of demolishing the shop, and informed to the plaintiff that the Collector has issued direction for demolition on the ground that the plaintiff has encroached on the land and constructed the house, therefore, the plaintiff filed the subject suit seeking decree of declaration and perpetual injunction.

5. The defendant No.1 remained *ex-parte*. Defendant No.2 and 3 filed the written statement and denied the plaint allegations and stated that the land was provided to the plaintiff by gram panchayat on temporary lease for the purpose of installing the temporary *gumti* on 24.10.1986 with a condition that whenever the gram panchayat will ask to vacate the land, the plaintiff will handover the vacant

Signature Not Verified
Signed by: VARGHESE MATHEW
Signing time: 3/22/2026 6:09:27 PM

possession of the land to the gram panchayat and the land was not provided on perpetual lease to the plaintiff. It is further pleaded in the written statement that the Administrator had no authority to provide the land on lease.

6. Defendants No.2 and 3 further pleaded that the plaintiff has illegally constructed RCC house on the land, which amounts to encroachment. The notice was issued to the plaintiff on 26.4.1997, by which the plaintiff was intimated to remove the structure from the land and handover the possession of the land, however, plaintiff did not comply with the notice. The gram panchayat passed a Resolution on 28.10.1997 and cancelled the lease of the plaintiff and passed a Resolution to remove the structure of the plaintiff. At the same time Resolution was passed to cancel the certificate issued by the Administrator in favour of the plaintiff on 5.1.1994. It is pleaded that after passing the Resolution and issuance of notice the plaintiff had no right to continue on the suit land. It is stated in the written statement that no amount was deposited by the plaintiff in the gram panchayat and the receipt produced by the plaintiff is a bogus receipt. The plaintiff and administrator in collusion prepared the forged document and plaintiff has not received any right on the basis of these documents. The permission dated 25.12.1993 and certificate dated 5.1.1994 are void and forged and not available in the record of the authority of the panchayat. It is denied that the plaintiff has deposited premium @ Rs.15 paisa per Sq. Ft with the village panchayat for perpetual lease. The defendant Nos 2 and 3 prayed for dismissal of the suit.

7. The trial court framed the issues and put the parties to trial. The plaintiff examined himself as PW.1 and the defendant examined Secretary of the gram panchayat Gajendra Singh as DW.1. The trial court after considering the pleadings, oral and documentary evidence and arguments of the parties, by judgment and decree dated 7.5.2003 partly allowed the suit and passed the decree

Signature Not Verified
Signed by: VARGHESE MATHEW
Signing time: 3/22/2026 6:09:27 PM

of permanent injunction in favour of the plaintiff and the respondents have been restrained from interfering in the possession of the plaintiff and illegally dispossessing the plaintiff from the suit land. The trial court held that the plaintiff is in legal possession of the suit land and legally cannot be dispossessed from the suit land without following the due process of law. The trial court further held that the plaintiff has constructed the house after obtaining the valid permission and passed the decree in favour of the plaintiff.

8. The defendants No.2 and 3 preferred the First Appeal No.26A-2003 in the Court of V Addl. District Judge, Ujjain, who decided the appeal by judgment and decree dated 7.10.2003, whereby the first appellate court allowed the appeal preferred by the defendants No.2 and 3 and set aside the judgment and decree passed by the trial court by reversing the findings and dismissed the suit filed by the plaintiff. The first appellate court recorded the finding that the plaintiff failed to prove that he was provided the suit land on perpetual lease and no rights accrued to the plaintiff on the suit land. The appellate court held that once the village panchayat passed the Resolution cancelling the temporary lease of the plaintiff, the plaintiff has no right to continue on the possession of the land and the Administrator had no right to provide the land to the plaintiff on lease. After recording the findings that the government has taken action against the Administrator, the appeal was allowed by the appellate court. Hence, this Second Appeal has been preferred by the plaintiff.

9. This Second Appeal has been admitted for final hearing on the following substantial questions of law:-

> *"[1] Whether in absence of any provisions under the M.P.Panchayat Raj Adhiniyam, 1993 for dispossession of the Plaintiff/appellant can be dispossessed from the disputed premises without following the*

Signature Not Verified
Signed by: VARGHESE MATHEW
Signing time: 3/22/2026 6:09:27 PM

course of law i.e. without filing a civil suit for possession ?

[2] Whether because of the construction raised by the appellant in the year 1994 of the shop and house on the basis of the permanent lease and Map sanctioned, an equitable right has been created in favour of the appellant and whether such construction can be said to be illegal or unauthorised ?

10. Heard Shri Harish Joshi - Advocate on behalf of the appellant and Shri Ansul Raj Purohit - GA on behalf of respondent No.3. No one appeared on behalf of respondents No.1 and 2.

11. Shri Harish Joshi - Advocate submits that the plaintiff was provided the suit land for the purpose of doing the business and the plaintiff was paying the lease rent to the gram panchayat, thereafter he was granted permission to construct the *pucca* house and he constructed the *pucca* house in furtherance of the permission. The plaintiff is doing business at the subject place since 1986. The plaintiff has proved the case by his oral evidence and produced the relevant documents on record and the trial court after considering the evidence of the parties, correctly held that the plaintiff is in settled possession of the subject land and has constructed the shop as per the permission obtained by the plaintiff and, therefore, he cannot be dispossessed without following the due process of law.

12. Shri Joshi submits that the first appellate court has committed an error in reversing the findings recorded by the trial court without considering and meeting out the reasonings recorded by the trial court. He submits that first appellate court was under the influence of the fact that the State has taken action against the Administrator for illegally providing the land to the plaintiff and the first appellate court reversed the findings of the trial court under the said

Signature Not Verified
Signed by: VARGHESE MATHEW
Signing time: 3/22/2026 6:09:27 PM

influence. It is further submitted that even without filing any cross objection as per the provisions u/O.41 Rule 22 CPC, the appellant was entitled to support the decree and to challenge the adverse findings recorded by the trial court, however, the first appellate court has refused to consider the arguments of the plaintiff challenging the adverse findings recorded by the trial court in the absence of any cross appeal or cross objection. The plaintiff was provided the land for installing the *gumti* and thereafter granted the permanent lease and permission to raise the construction. The appellate court has not considered that the gram panchayat had no authority to cancel the permission granted by the Administrator and the certificate issued by the Administrator. The first appellate court has not considered the fact that the house and shop have been constructed by the plaintiff on the strength of the sanction map and permanent lease and the plaintiff cannot be dispossessed without following the due process of law. It is also not considered that there is no provision under M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter referred as "Adhiniyam 1993") to dispossess the plaintiff without following the due process of law. The counsel prays for setting aside the judgment and decree passed by the first appellate court and restoring the judgment and decree passed by the trial court.

13. Learned G.A appearing on behalf of the respondent State supported the judgment delivered by the first appellate court and submits that the first appellate court examined the material available on record. The trial court in paragraphs 18, 19 and 22 of its judgment recorded the findings that the then Administrator had no authority to provide the land on perpetual lease and that findings were not challenged by the plaintiff either by filing cross appeal or cross objection, and, therefore, the findings had attained finality. The Secretary of the Panchayat DW.1 Gajendra Singh has specifically stated in his statement that the Resolution for

Signature Not Verified
Signed by: VARGHESE MATHEW
Signing time: 3/22/2026 6:09:27 PM

providing the land on temporary lease was passed on 24.10.1986 and agreement was also executed, and as per the Resolution dated 24.10.1986 the plaintiff was under the obligation to restore the possession of the gram panchayat upon asking and, thereafter the gram panchayat issued the notice to the plaintiff, but the plaintiff did not comply the notice and raised the permanent structure. The Secretary further clarified that as per the Resolution 10 x 15 sq. feet was provided to the plaintiff for installing the temporary *gumti* but the plaintiff has constructed the shop and house on 20 x 30 sq. feet and, therefore, the plaintiff was intimated to remove his structure from the suit land and when the plaintiff continued in possession and has not removed his encroachment, the action was taken against him as per the direction of the Collector.

14. The Government Advocate further submits that Section 56 of the Adhiniyam, 1993 authorizes the gram panchayat to remove the hindrances, obstructions and encroachment upon the public streets and open sites of the gram panchayats, those were raised without written permission of the gram panchayat or contrary to the conditions mentioned in such terms. He further submits that the action of the gram panchayat was not without jurisdiction and was in consonance with the powers enumerated in Section 56 of the Adhiniyam, 1993. He prays for dismissal of the appeal.

15. The arguments advanced by learned counsel for parties are considered and perused the record.

16. Some facts of the case are not in dispute inter-alia that the plaintiff is in possession of a piece of land admeasuring 20 x 30 sq.feet, whereupon he has constructed a permanent structure by constructing a shop and house and he is using the same on the strength of the certificate of permanent lease issued by the then Administrator and the building permission granted by the Administrator, the

Signature Not Verified
Signed by: VARGHESE MATHEW
Signing time: 3/22/2026 6:09:27 PM

structure was raised. At the same time, it is also not in dispute that initially the permission to use the land was granted by the gram panchayat by passing a Resolution on 24.10.1986, whereby the plaintiff was permitted to use the land under the temporary lease and upon a payment of monthly rent of 15 paisa per sq.ft per year with a condition that upon the intimation given by the gram panchayat, the plaintiff will remove his temporary structure within 3 days.

17. From perusal of the record, it appears that the plaintiff started his business after obtaining the temporary lease from the gram panchayat and later on applied for permanent lease and permission to raise permanent structure, however the defendants brought an enquiry report on record Ex.D/5 which reflects that an enquiry was conducted against the then Administrator Shri B.L. Makvana and it was found in the enquiry that he exceeded his authority and misappropriated the funds of the gram panchayat. On the basis of the said enquiry report some actions were started and the gram panchayat issued a notice to the plaintiff on 26.4.1997 seeking removal of the structure and seeking possession of the lease land on the ground that the land is required for the purposes of construction of the shops by the gram panchayat. The gram panchayat passed a Resolution on 28.10.1997, whereby cancelling the lease and decided to take action u/S.56 of the Adhiniyam, 1993 for removal of the plaintiff.

18. The plaintiff has admitted in his cross examination that the perpetual lease was not executed and registered in his favour and only a certificate of perpetual lease was granted by the Administrator, which was produced as Ex.P/2. Similarly, a receipt was produced by the plaintiff Ex.P/3, whereby the lease premium was deposited by the plaintiff. The building permission was also granted to the plaintiff upon a land admeasuring 20 x 30 feet and the same was produced

Signature Not Verified
Signed by: VARGHESE MATHEW
Signing time: 3/22/2026 6:09:27 PM

by the plaintiff as Ex.P/4.

19. The Secretary of the gram panchayat DW.1 Gajendrasingh admitted in his cross examination that the plaintiff is in settled possession of the subject land and doing business there. There is an electric connection in the name of the plaintiff in the suit shop and the form of the grant of building permission was similar to the building permission Ex.P/4. He accepted that the letter pad of certificate Ex.P/2 is the letter pad of the gram panchayat and only on the basis of the non-availability of the record for the period, when the Administrator Makvana was managing the gram panchayat, they are stating that no perpetual lease was granted to the plaintiff and building permission was also not granted to the plaintiff.

20. From the record, it is evident that the gram panchayat passed the Resolution and reached to the spot with the labourers for removal of the structure of the plaintiff. Learned Government Advocate submits that the gram panchayat was having the powers u/S.56 of the Adhiniyam, 1993 to take action against the encroacher, which reads as under:-

> *"56. Hindrances, obstructions and encroachment upon public streets and pen sites.*
>
> *(1) Whoever within the Gram Panchayat area causes any hindrance, obstruction or encroachment over any public street or open site or upon any drain in such street,-*
>
> *(a) by building or setting up any wall, fence, rail, post, stall, verandah, platform, plinth, step or any other structure; or*
>
> *(b) without written permission of the Gram Panchayat or contrary to the conditions mentioned in such permission by putting up any verandah, balcony, room or other structure so as to project over any*

Signature Not Verified
Signed by: VARGHESE MATHEW
Signing time: 3/22/2026 6:09:27 PM

public street or upon any drain in such street; or

(c) by unauthorizedly removing earth, sand or other material from any site; or

(d) by unauthorizedly cultivating any grazing or other land, may be punished with fine, which may extend to one thousand, rupees and in case of continuing offense with further fine which may extend to twenty rupees for every day during which such encroachment, obstructions or projection continues after the date of first conviction for such offense.

(2) Notwithstanding anything contained in sub-section (1), the Gram Panchayat shall have power to remove any such obstruction or encroachment and to remove any crop unauthorizedly cultivated on grazing or any other land not being private property and shall have the like power to remove any unauthorised obstruction or encroachment or projection of the like nature in any open site not being private properly, whether such site is vested in Gram Panchayat or not and the expenses of such removal shall be paid by the person who has caused the said encroachment and on failure to pay such expenses the same may be recovered from such person as an arrear of land revenue :

Provided that notwithstanding anything contained in sub-section (1) and this sub-section if the Gram Panchayat resolves to remove any hindrances, obstruction or encroachment on any land vested in the State Government it may refer to the Tehsildar to remove such hindrances, obstruction or encroachment from such land and the Tehsildar shall proceed to do so under the provisions of the Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959).

Signature Not Verified
Signed by: VARGHESE MATHEW
Signing time: 3/22/2026 6:09:27 PM

(3) Notwithstanding anything contained in this section the Gram Panchayat may allow any temporary occupation or erection in or putting projection over any public place for not exceeding ten days in such manner so as not to cause inconvenience to the public or any individual, on occasions of festivals and ceremonies in accordance with the bye-laws made under this Act.

(4) The Gram Panchayat shall not pass any order in the exercise of powers under this section until the person concerned has been given a reasonable opportunity of being heard."

21. From plain reading of Sec.56 of the Adhiniyam, 1993, it appears that gram panchayat may remove the unauthorised hindrances, obstruction and encroachment upon public streets and open sites but for the purposes of taking any action, Resolution will be passed by the gram panchayat and the matter will be referred to Tehsildar to remove such hindrances, obstructions and encroachment from State land and the Tehsildar shall proceed to act under the provisions of MPLR Code, 1959. The gram panchayat cannot straight away take action to remove the alleged encroachment and it is essential for the gram panchayat to take action in accordance with the provisions of Section 56 of the Adhiniyam, 1993.

22. From the evidence available on record, it is not in dispute that the plaintiff is in settled possession of the subject land and has constructed the permanent structure, wherein he is doing his business and residing there. If a person is under settled possession and if an authority wants to take action against the person for removing him from the said place, straight away with the help of the labourers the structure cannot be demolished and the person, who is in

Signature Not Verified
Signed by: VARGHESE MATHEW
Signing time: 3/22/2026 6:09:27 PM

possession cannot be dispossessed. In the case in hand, the gram panchayat after passing the resolution straight away tried to remove the structure of the plaintiff and dispossess the plaintiff by alleging that the plaintiff has encroached upon the land owned by the gram panchayat. The plaintiff was put in possession by the gram panchayat validly and if the certificate of perpetual lease and the permission to construction was not within the authority of the Administrator, the respondents could take appropriate action in accordance with law and cannot dispossess the plaintiff straight away.

23. The Supreme Court in the matter of **Rame Gowda Vs. M. Varadappa Naidu (2004) 1 SCC 769** has held that a person in a settled possession cannot be dispossessed without following the due process of law. The relevant paragraphs are as under:-

> *"8. It is thus clear that so far as the Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking the law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use*

Signature Not Verified
Signed by: VARGHESE MATHEW
Signing time: 3/22/2026 6:09:27 PM

of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner.

9. It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to Munshi Ram v. Delhi Admn. [AIR 1968 SC 702 : (1968) 2 SCR 455 : 1968 Cri LJ 806] , Puran Singh v. State of Punjab [(1975) 4 SCC 518 : 1975 SCC (Cri) 608] and Ram Rattan v. State of U.P. [(1977) 1 SCC 188 : 1977 SCC (Cri) 85] The authorities need not be multiplied. In Munshi Ram case [AIR 1968 SC 702 : (1968) 2 SCR 455 : 1968 Cri LJ 806] it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass

Signature Not Verified
Signed by: VARGHESE MATHEW
Signing time: 3/22/2026 6:09:27 PM

do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and reinstate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In Puran Singh case [(1975) 4 SCC 518 : 1975 SCC (Cri) 608] the Court clarified that it is difficult to lay down any hardand-fast rule as to when the possession of a trespasser can mature into settled possession. The "settled possession" must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase "settled possession" does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a straitjacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession. The Court laid down the following tests which may be adopted as a working rule for determining the attributes of "settled possession" (SCC p. 527, para 12):

(i) that the trespasser must be in actual physical possession of the property over a sufficiently long period;

Signature Not Verified
Signed by: VARGHESE MATHEW
Signing time: 3/22/2026 6:09:27 PM

(ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;

(iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

(iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner, has no right to destroy the crop grown by the trespasser and take forcible possession."

24. The Supreme Court has held that settled possession or effective possession of a person even without title entitles him to protect his possession even against as a true owner and no person including true owner has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and unless he is evicted in due process of law he is entitled to defend his possession even against the rightful owner.

25. Considering the same, in the case in hand, the plaintiff was put in possession by the gram panchayat itself and he is in settled possession, therefore, the gram panchayat cannot take action straight away without following the due process of law as per the provisions of MPLR Code. In the case in hand, the gram panchayat has straight away tried to remove the structure raised by the plaintiff and dispossess him. The plaintiff has proved his case and in view of this Court,

Signature Not Verified
Signed by: VARGHESE MATHEW
Signing time: 3/22/2026 6:09:27 PM

the first appellate court has erroneously interfered in the findings recorded by the trial court, which are based on due appreciation of the evidence and without meeting out the reasoning recorded by the trial court up-sided the findings and reversed the judgment and decree passed by the trial court. Thus the judgment and decree passed by the first appellate court are not sustainable.

26. Under the provisions of Adhiniyam, 1993, the plaintiff cannot be dispossessed from the disputed premises without following the due course of law and the substantial questions of law are answered accordingly.

27. The appeal succeeds and the judgment and decree passed by the first appellate court in Civil First Appeal No.26-A/2003 on 7.10.2003 are hereby set aside and the judgment and decree passed by the Civil Judge Class II, Badnagar, District Ujjain in Civil Suit No.114/1997 on 7.5.2003 are restored.

28. No order as to costs. Decree be drawn up. Record of the trial court and first appellate court be returned along with the copy of this order.

(VINAY SARAF)
JUDGE

VM

Signature Not Verified
Signed by: VARGHESE MATHEW
Signing time: 3/22/2026 6:09:27 PM