
(1958) 12 MP CK 0027
In the Madhya Pradesh High Court
Case No : Rev. A. No. 75/57

Bholaram

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 24-12-1958

Acts Referred:

Madhya Bharat Land Revenue and Tenancy Act, 1950 — Section 138

Citation : (1959) MPLJ 563

Hon'ble Judges : R.D. Shukla, Member

Bench : Single Bench

Advocate : J.P. Shrivastava, for the Appellant;

Final Decision : Allowed

Judgement

R.S. Shukla, Member

This is a second appeal against the appellate order of the Commissioner, Gwalior Division, upholding the dismissal of the Applicant from the office of Patel of village Roori, district Bhind, on the ground that he was not recorded as a holder of occupied land in the village papers of the village and also did not reside there permanently as required by the rules on the subject.

The Appellant produced a certified copy of the order dated 27-9-51 which shows that in addition to village Roori he was also appointed patel of the neighbouring village Karepura. A copy of Jamabandi on record in the Collector's File shows that he does hold land in village Karepura. The Appellant's written statement filed before the Collector shows that he is residing in the neighbouring village of Badokhari (Collector's record page 7).

On the basis of the above undisputed facts it was argued by the learned Counsel for the Appellant that although the Appellant is not a recorded holder of occupied land in village Roori, the fact that he does hold such land in village Karepura, of which he was also a patel, should be considered enough to save him from disqualification mentioned in Rule 3(2) of the Rules framed u/s 133 of the M.B.

Land Revenue and Tenancy Act, Samvat 2007. A similar argument was advanced in regard to the disqualification of residence as the Appellant was also a patel of village Karepura.

These contentions have no force whatsoever because Rule 3(2) is not similarly worded as Rule 3(3). In the latter rule an option has been given to the patel to reside in one of the villages if he is a patel of more than one village. A similar option is, however, not given in Rule 3(3) with regard to the possession of recorded holdings. In other words, it seems that rule-makers intended that in case the appointment of patel is made for a number of villages he must be a recorded holder of land in all the villages but in regard to residence it would be enough if he resides in any one of the villages of which he is appointed patel. In the instant case, the Appellant, admittedly, resides in a village Badokhari of which he is not a patel and does not hold recorded land in village Roori of which he has been appointed patel. He is, therefore, disqualified both under Rule 3(2) and (3) and is not entitled to the advantage sought for by the learned Counsel.

The second contention raised before me is that Rule 3 lays down the conditions of eligibility for appointment as patel but once a patel has been appointed, Section 138 of the M.B. Land Revenue and Tenancy Act would come into play and the grounds of eligibility under Rule 3 *ibid* cannot be invoked with a view to dismissing a serving patel. u/s 138 *ibid* a patel can be suspended or removed from office if he (i) is unwilling to work as such; (ii) is disqualified for the post owing to any physical or mental incapacity; (3) is guilty of gross misconduct, or of continued and glaring neglect of his duties. Since one of these charges has been levelled against the Appellant his dismissal is bad in law.

This contention seems unassailable. Considerations that are relevant only at the time of a patel's appointment cannot be reopened with a view to making out a case of dismissal of a serving patel u/s 138 *ibid*. A serving patel can be removed only when he incurs any of the disqualifications mentioned in Section 138. The orders of the Courts below do not show that any such disqualification has been earned by the Appellant. Section 138 cannot, therefore, apply.

It might be said that the impugned order of the Collector may be treated as an order reviewing the appointment order of the patel. Or, in view of the facts shown above, this Court might exercise its *suo motu* revisional powers and rectify the mistake originally made. In this connection it is to be noted that the Appellant was appointed patel in September 1951. To review or revise an order after seven years would, in my opinion, be unjust and improper. I, therefore decline to approve any such course of action.

For reasons stated above the appeal is allowed. The orders of the Courts below are set aside as contrary to law.