

(1960) 11 MP CK 0003

In the Madhya Pradesh High Court

Case No : Rev. R. No. 753/60 (with R. No's. 754/60 and 755/60)

Sukhdev Prasad

APPELLANT

Vs

Sadashiv Rao

RESPONDENT

Date of Decision : 15-11-1960

Acts Referred:

Madhya Bharat Land Revenue and Tenancy Act, 1950 — Section 35

Citation : (1961) MPLJ 237

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

Bench : Single Bench

Advocate : R.K. Dikshit, for the Appellant; G.R. Garde, for the Respondent

Final Decision : Allowed

Judgement

R.S. Shukla, Member

This order will govern the disposal of Revision Nos. 753/60, 754/60 and 755/60 as they involve the consideration of a common point of law.

The facts are briefly, as follows:- The Collector, Dewas, by his order dated 3-7-59 transferred 22 Patwaris to various Circles, some within the same Division and others outside their sub-divisions. Six of the Patwaris, viz., (1) Pannalal, (2) Baboolal, (3) Sadashiv Rao, (4) Daulataingh, (5) Moolchand and (6) Hazarilal, went up in appeal before the Additional Commissioner, Ujjain Division, on the grounds, firstly, that the Collector's order violated the provisions of rule 6 of the Land Records Manual (Patwari Manual) and, secondly, that no satisfactory reasons were given for the transfer, outside their Sub-divisions, of 5 of the appellants. As no stay order was passed by the Additional Commissioner, while the appeals were pending before him, the order of the Collector was carried out by the Patwaris in due course and, in result, the present applicants, viz., (1) Ramchand, (2) Sukhdeo, (3) Hazarilal son of Mangalji changed places respectively with (1) Hazarilal son of Kanhaiyalal, (2) Sadashiv Rao and (3) Baboolal. This interchange took place before the learned Additional

Commissioner passed his order of 25-3-60 by which he set aside Collector's order. The Additional Commissioner's order was, however, stayed by this Court on 16-8-60.

The order of the Additional Commissioner has now been challenged by the applicants on the grounds, firstly, that the Additional Commissioner has no jurisdiction to interfere with the order of the Collector and, secondly, that the impugned order is not justified on merits.

In regard to the first ground it was argued that the order of the Collector is purely an administrative order and does not fall within the ambit of M.B. Land Revenue and Tenancy Act. An appeal u/s 35 of the said Act is tenable only if the impugned order is passed under the M.B. Land Revenue and Tenancy Act or the rules made thereunder and not otherwise. In this connection reference was made to rule 6 of the Land Records Manual Volume I (Patwari Manual) framed, as Rules, under the M.B. Land Revenue and Tenancy Act and which reads as follows:

The acquisition, otherwise than by inheritance, of any right in land within his circle by a Patwari is prohibited. Whenever a Patwari inherits rights in land within his circle, he shall at once report the fact to the Sub-Divisional Officer who will consider whether the transfer of the Patwari to another circle is desirable. Failure to report such acquisition shall render the Patwari liable to dismissal. The Sub-Divisional Officer is competent to transfer the Patwari to another circle in his own sub-division. If his transfer to another circle in the same sub-division is not possible and he has to be transferred to a circle in another sub-division, the Sub-Divisional Officer will submit the case to the Collector for his orders.

It was pointed out that in the above provision the power of the Collector to transfer a Patwari from one sub-division to another is restricted only to a case where a Patwari fails to report the acquisition, otherwise than by inheritance, of any right in land within his circle. Since in the instant cases the Collector did not transfer the Patwaris on account of their acquisition of any rights in land in their circles, the order of the Collector cannot be said to have been passed under rule 6 of the Land Records Manual as was incorrectly assumed by the learned Additional Commissioner. As such Collector's order was not appealable and the Additional Commissioner in disturbing it acted without jurisdiction.

In my opinion, this contention has considerable force. The side-head of rule 6 reads "Holding of land by Patwaris" and the Rule, read as a whole along with its sub-paras, (a) to (e), would show that it deals exclusively with the acquisition, directly or indirectly, of rights in land by a Patwari, either in his circle or outside his circle, without reporting or without previous sanction, as the case may be. The infringement of this rule has been made punishable even with dismissal. It is in this connection that the Sub-Divisional Officer, to whom a Patwari may report acquisition of rights in land, is to consider the desirability of transferring such a Patwari to another circle. If transfer to any other circle in the sub-division is not possible, the Sub-Divisional Officer has to approach the Collector for the

Patwari's transfer to some other subdivision. Rule 6 does not in terms, deal with the general power of superintendence and control exercisable by the Collector over the Patwaris. The main theme of rule 6 is to prohibit acquisition of right in land by a Patwari in his circle and the Rules lay down the various steps that should be taken, either by the Sub-Divisional Officer or by the Collector, if an acquisition is brought to their notice. One of the steps is to transfer the Patwari from his circle. Obviously, therefore, rule 6 does not confer power upon a Collector to transfer a Patwari on grounds other than those mentioned in the Rule itself. If, therefore, a Collector transfers a Patwari outside a circle or a subdivision, on grounds other than the acquisition of land, his action would be purely executive or administrative in nature. It will be outside the ambit of the Land Records Manual and consequently outside the M.B. Land Revenue and Tenancy Act. In this view the Collector's order would not be appealable u/s 35 of the M.B. Land Revenue and Tenancy Act. I, therefore, hold that the learned Additional Commissioner in setting aside Collector's order in the instant cases acted without jurisdiction.

Having held the view that the Additional Commissioner's order is ultra-vires of his powers, it is not necessary to go into the merits of his order. The Collector's order clearly states that the Patwaris were transferred on account of administrative convenience. There was no evidence before the Additional Commissioner to take a contrary view and he has stated that the Collector had no legitimate grounds for transferring the Patwaris. As a matter of fact, it is not necessary to define "administrative convenience" in the order of transfer itself. Some times it may not even be desirable to express all that may be in the mind of the Collector in deciding the question of administrative convenience. Further, a transfer is not "punishment" although, in a given case, it may cause certain amount of hardship and inconvenience to the parties affected thereby; but surely, this cannot always be helped and one cannot question such an order in appeal unless it is shown that the impugned action falls within one of the departmental punishments.

In result the applications succeed and the order of the Additional Commissioner dated 25-3-60 is set aside.