
(2004) 04 P&H CK 0066
In the Punjab And Haryana At Chandigarh
Case No : R.O.R. No. 8 of 2002

Gurdev Singh

APPELLANT

Vs

Dilbagh Singh

RESPONDENT

Date of Decision : 05-04-2004

Acts Referred:

Citation : (2005) 2 LJR 237 : (2005) 1 RCR(Civil) 301

Hon'ble Judges : J.S.Kesar, F.C.

Advocate : Shri R.S. Chauhan, Advocate., Advocates for appearing Parties

Judgement

J.S. Kesar, F.C.

1. This appeal has been filed under Section 13 of the Punjab Land Revenue Act, 1887, against the order of the Commissioner, Jalandhar Division, Jalandhar dated 28.11.2001 vide which he set aside the order dated 16.8.2000 passed by the District Collector, Kapurthala.

2. During the last hearing on 29.3.2004, this case was fixed for arguments today. The counsel for the respondent had pointed out that the record of the lower court is not coming, thus unnecessarily, delaying hearing in this case. Accordingly, the District Collector was requested to send the record through special messenger. The District Collector vide his fax message received in the control room on 2.4.2004 has intimated that the record in this case has already been sent to the Financial Commissioner, Rural Development & Panchayat and hence, the same be obtained from them. The learned counsel for the parties have agreed to argue the case without the lower Court record, since copies of the relevant record are already available on this file.

3. The facts of the case are that Swarn Singh, lambardar of village Desal, Tehsil & District Kapurthala diled, thereby causing vacancy of the lambardar. In response to the proclamation, four candidates namely; Gurdev Singh, Dilbagh Singh, Narinder Singh and Mohinder Singh gave their applications. After verifying their antecedents, the Tehsildar and the SubDivisional Magistrate, Kapurthala

recommended the name of Gurdev Singh to the District Collector for his appointment as lambardar. The District Collector, accordingly, appointed Gurdev Singh as lambardar of the village vide order dated 16.8.2000. Dilbagh Singh challenged this order in appeal before the Commissioner, Jalandhar Division, Jalandhar on the ground that he is the son of the deceased lambardar and is younger in age than Gurdev Singh. Another plea taken in the appeal was that the appellant/respondent was not residing in the village but he is living in Kapurthala. The Commissioner accepted the appeal of Dilbagh Singh and appointed him as lambardar of village vide impugned order, necessitating the present appeal.

4. I have heard the learned counsel for the parties. The learned counsel for the appellant has argued that on the basis of order dated 16.8.2000 of District Collector, the appellant Gurdev Singh has been issued 'Sanad Lambardari' and identity card and he is working as such since then. According to the learned counsel, the only ground which has weighed with the learned Commissioner for setting aside the appointment made by the Collector is the fact that the appellant is having residence at Kapurthala also. The appellant is found to have been in possession of two Ration Cards and his name figures in two voters' lists, one of the village Desal and another of Kapurthala. The learned counsel has argued that the appellant is living in the village, but during the period of terrorism in the State of Punjab, he had bought a house in Kapurthala and had temporarily shifted there because of security reasons, otherwise, he is the exSarpanch of the village and his wife is presently Sarpanch of the village gram panchayat, which make it amply clear that he and his family permanently reside in the village. His permanent residence in the village has also been verified by the revenue authorities. The counsel has further pointed out that the ration card at Kapurthala was made by him in the year 1992, but subsequently, he made his ration card in village Desal in the year 1997 after the terrorism was under control. The counsel has also stated that he is not making use of the ration card at Kapurthala and he even cast his vote at village Desal. According to the learned counsel, there is no bar in having a house at a place other than the village, if he and his family ordinarily reside in village Desal.

5. The counsel has further pointed out that the choice of the Collector does not suffer from any perversity. As held in 2002(2) RCR (Civil) 520, the choice of the Collector in the appointment of lambardar is to be final unless the order of the Collector is found to be perverse. Similar view is held in 2000(2) PLJ 569 and 2004(1) RCR (Civil) 520. The counsel has produced in the court copies of the ration card where his address is given as Village Dessal. Similarly, the identity cards issued by the Election Commission to him and his family members have also been produced. The counsel has, therefore, pleaded that by virtue of his house at Kapurthala, the appellant should not be debarred from appoint as lambardar and hence, argued for acceptance of the appeal.

6. On the other hand, the learned counsel for the respondent has pointed out

that one person cannot have two ration cards when he is living at one place. According to him, the learned Commissioner has given detailed reasons for appointing the respondent as lambardar. According to him, a person who does not reside in the village cannot be preferred to a person who is permanently living there and is available to the village people. The respondent is son of the deceased lambardar and according to the learned counsel, he deserves consideration on this account also. He has, therefore, pleaded for dismissal of the appeal.

7. I have considered the arguments advanced by the counsels and have gone through the relevant record. It is true that the factum of residence of the appellant being at Kapurthala has primarily weighed with the learned Commissioner while deciding the appeal. There is no dispute about the fact that in case a person does not reside in the village, he has no claim to be appointed as lambardar, because of his nonavailability to the village people for daytoday functioning. However, in the present case, as argued by the counsel for the appellant, the appellant had temporarily shifted to Kapurthala on account of threats during militancy in the State, but otherwise, he is living in the village, since he was himself Sarpanch of the village and his wife is presently Sarpanch of the Gram Panchayat. The fact has not been controverted by the respondent. The verification by the revenue authorities and the Police clearly indicates that the appellant is permanent resident of village Desal. The ration card and the identity card issued by the Election Commission testify this fact. In the absence of any evidence to the contrary, there is no reason to disbelieve the statement of the appellant that he has got ration card cancelled at Kapurthala. Putting all the things together, this Court is of the view that it is wrong to conclude that the appellant is not residing at village Desal. All relevant documentary evidence indicates that he is permanent resident of village Desal. The Collector has rightly appointed him as lambardar of the village. Even on merits, Gurdev Singh is graduate. He is exteacher and exSarpanch of the village. On comparative merits, Gurdev Singh is certainly better placed as compared to Dilbagh Singh and hence, the respondent cannot be given preference on the basis hereditary claim. Accordingly, the appeal is accepted and the impugned order is set aside and the appointment made by the Collector is upheld.

Announced.