
(2009) 01 P&H CK 0155
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 289 of 2009

Phool Kumar

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 19-01-2009

Acts Referred:

Punjab Land Revenue (Lambardari) Rules, 1908 — Rule 14

Citation : (2010) 4 PLR 4102 : (2010) 3 RCR(Civil) 497

Hon'ble Judges : Ranjit Singh, J

Judgement

Ranjit Singh, J.

1 The petitioner has filed this petition to challenge the order passed by the Financial Commissioner as well as by the Commissioner to set aside his appointment as Lambardar as ordered by the Collector, Sonapat.

2 The facts in brief are that office of village Lambardar of village Mauza Chatia Aulia, Tehsil and District Sonapat fell vacant on the death of the then Lambardar, Amar Dass. Applications were accordingly invited from all eligible and interested persons for the appointment of Lambardar. 8 persons gave the application but except the petitioner and respondent No. 4 remaining candidates withdrew their applications. The Collector, Sonapat after discussing the inter se merit of the petitioner and respondent No. 4 appointed the petitioner as Lambardar of the village on 22.3.2007. Respondent No. 4 filed an appeal against the said order before the Commissioner, Ludhiana Division, Ludhiana. He set aside the order passed by the Collector and appointed respondent No. 4 as Lambardar. This order was challenged by the petitioner before the Financial Commissioner, Haryana, who dismissed the said revision petition on 2.1.2009. The petitioner has thus impugned the order passed by the Commissioner as well by the Financial Commissioner through the present writ petition.

3 The petitioner has separately filed an application for placing on record number of documents, which has been allowed. The primary grievance of the petitioner is that the Commissioner could not have validly interfered in the order passed by

the Collector unless the same was perverse as it is the choice of Collector which is to prevail and required to be given preference.

4 In support of his submission, the counsel for the petitioner has referred to Jog Dhian v. Financial Commissioner, Haryana and others 2005(1)R.C.R.(Civil) 658": 2005 (2) PLR 306 to say that the choice of the Collector is final and that the Financial Commissioner while partially touching the merits of the case has violated the settled law that inter se merits of the candidates cannot be reconsidered by the Appellate or the Revisional Authorities. The counsel would also refer to the case of Sarwan Singh v. The Financial Commissioner Ap pealsI, Punjab, 2002 (2) RCR (Civil) 520. In this case also it is observed that choice of the Collector for appointment of Lambardar cannot be substituted by the Commissioner merely observing that other candidates was better candidate. While observing about the scope of interference by writ Court it is held in this case that if the order of the competent authority does not suffer from any jurisdictional infirmity or patent legal error warranting issuance of a writ, the writ Court cannot interfere.

5 The proposition of law that the choice of the Collector is not to be interfered with is fairly well settled. Reference here may be made to the case of Ujagar Singh v. State of Punjab 2008 (3) RCR (Civil) 28 and Gurlal Singh v. Financial Commissioner (Revenue) Punjab and others 2008 (4) RCR (Civil) 792 that the choice of the Collector is final except where the order discloses a lack of jurisdiction or an error of fact so palpable, as to render his order arbitrary, capricious or unreasonable. Now the Commissioner in this case has interfered in the choice exercised by the Collector, it would thus be appropriate to see the reasons for which the Commissioner has exercised his jurisdiction. It appears that from the relevant fact and escaped notice of the Collector the petitioner was unauthorized occupant of Gram Panchayat land. It is noticed by the Commissioner that as per the Jamabandi of 19992000, the land comprised in killa No. 28/24/2 is in the ownership of Gram Panchayat and in the column of cultivation, names of Harkishan, Sukhbir (father of Phool Kumar, petitioner) are shown. There was a report from the Patwari which was counter signed by the Tehsildar where it is observed that said killa No. is under the cultivation of one Rajbir, who has given an affidavit before the Assistant Collector Grade I, Sonapat in the ejectment proceeding under Section 7 of the Village Common Land Act that this land in dispute was given to him by the petitioner at the rate of Rs. 5,000 per annum for cultivation. He has further deposed in the affidavit that this land has now given to Kishan son of Khem Chand. Thus the petitioner was found in illegal and unauthorized possession of the land belonging to Panchayat. It was on this ground that the petitioner was found unfit for being appointed as Lambardar.

6 Counsel for the petitioner in turn made an attempt to show that respondent No. 4 was in illegal possession of the government land and in this regard referred to the document now placed on record. It is not clear whether these documents

were produced before the Commissioner or the Financial Commissioner but the document showing illegal occupation of the government land by the petitioner were there before the Commissioner that this would make the petitioner unfit for being appointed as a Lambardar cannot be faulted. It is not on comparative merits or assessment thereof that the Commissioner has intervened in the order passed by the Collector perhaps the Collector did not consider this vital aspect while directing appointment of the petitioner as Lambardar. I do not find any justification to interfere in the impugned order passed by the Commissioner and the Financial Commissioner while exercising writ jurisdiction and would, therefore, dismissed this writ petition. Petition dismissed.