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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-5828-2018 (O&M)
Date of Decision: 03.09.2024

KULWINDER SINGH
...Petitioner

Versus

FINANCIAL COMMISSIONER, REVENUE, PUNJAB,
CHANDIGARH AND OTHERS
...Respondents

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Umesh Kumar Kanwar, Advocate
for the petitioner.

Mr. Navneet Singh, Sr. D.A.G., Punjab.

Mr. Baljinder Singh, Advocate
for respondent No.3.

HARSH BUNGER, J.

Petitioner (Kulwinder Singh) has filed the instant writ petition under Articles 226/227 of the Constitution of India, *inter alia*, seeking a writ in the nature of *certiorari*, for setting aside the order dated 17.03.2016 (Annexure P-1) passed by the learned Collector, Amritsar and also the order dated 08.11.2017 (Annexure P-3) passed by learned Financial Commissioner (Revenue), Punjab.

2. Briefly, on demise of Sh. Kabal Singh, previous *lambardar* of Village Bachiwind, Tehsil Ajnala, District Amritsar, proceedings were initiated for filling up the vacancy. In pursuance to the proclamation (*munadi*), only one candidate namely, Angrej Singh (respondent No.4)

applied for the post. The learned Sub-Divisional Magistrate, Ajnala, recommended the name of respondent No.4 for filling up the afore-said vacancy and forwarded the case to the learned Collector, Amritsar.

2.1 The learned Collector, Amritsar, vide its order dated 17.03.2016 (Annexure P-1), appointed respondent No.4-Angrej Singh as the *lambardar* of Village Bachiwind.

2.2 It transpires that the afore-said order dated 17.03.2016 (Annexure P-1) came to be challenged by the present petitioner by way of filing an appeal before the learned Commissioner, Jalandhar Division, Jalandhar, on the plea that no proclamation was effected in the village for filling up the vacancy, which had arisen on the death of his father (Kabal Singh). It was further stated that the proper procedure, as prescribed under law, was not followed. It was also stated that the petitioner was a better candidate than respondent No.4.

2.3 Learned Commissioner, vide its order dated 31.01.2017 (Annexure P-2) allowed the appeal filed by the petitioner, whereby the order dated 17.03.2016 (Annexure P-1) was set aside and the matter was remanded to the learned Collector, for fresh proclamation for the post of *lambardar*.

2.4 Feeling aggrieved against the afore-said order dated 31.01.2017 (Annexure P-2), respondent No.4 preferred an appeal (ROA-13-2017) before the learned Financial Commissioner, which came to be allowed vide order dated 08.11.2017 (Annexure P-3); whereby the Commissioner's order was set aside and the Collector's order was upheld.

2.5 In the afore-mentioned facts and circumstances, the petitioner has filed the present writ petition before this Court, for the relief/s, as noticed here-in-above.

3. Learned counsel for the petitioner submits that the learned Financial Commissioner has erred in law and fact in setting aside the Commissioner's order without appreciating that no proper proclamation (*munadi*) was conducted in the village for filling up the vacant post of *lambardar*, which is evident from the fact that there was only one candidate for the afore-said vacancy. It is further submitted that respondent No.4, in connivance with the revenue authorities, had manipulated the proclamation and also the proclamation report. It is further submitted that the petitioner is more meritorious than respondent No.4 as he is the son of previous *lambardar* namely, Kabal Singh and prior to said Kabal Singh, his grandfather was also the *lambardar* of the village, therefore, he has a hereditary claim. It is next submitted that the petitioner has about 5 killas of land and has also a good reputation in the village, whereas, the land holding of respondent No.4 is less than the petitioner. It is also submitted that the ancestors of the petitioner had participated in the freedom of the country and was honoured with "*Tamra Patra*". It is still further submitted that the learned Commissioner had duly appreciated the matter and had rightly set aside the Collector's order and had further directed fresh proclamation to the vacancy, however, the said order was wrongly set aside by the learned Financial Commissioner.

3.1 With the afore-said submissions, learned counsel for the petitioner prays that the impugned order may be set aside and the Commissioner's order be maintained.

4. Per contra, learned counsel appearing for respondent No.4 has opposed the submissions made on behalf of the petitioner, by submitting that due and proper procedure was followed for filling up the vacancy to the post

of *lambardar*, which had arisen on account of death of previous *lambardar* namely, Kabal Singh. It is submitted that the factum of effecting proclamation (*munadi*) within the village is fortified by the statement of the village Chowkidar and also the entry made in the *rapat roznamcha*. It is further submitted that the appointment of respondent No.4 cannot be questioned only on the ground that he was the only applicant. It is submitted that if the petitioner had not applied for the post within the stipulated time, therefore, he has no right to seek setting aside of respondent No.4's appointment on a concocted ground that no *munadi* was effected. It is further submitted that as per the settled law, the choice of the Collector is not to be lightly interfered with, unless there is patent illegality or perversity therein, which the petitioner has failed to show. Accordingly, prayer for dismissal of the writ petition has been made.

5. I have heard learned counsel for the respective parties and have gone through the paper-book with their able assistance.

6. Concededly, the respondent No.4 was appointed as *lambardar* of village Bachiwind by the learned Collector, Amritsar, vide its order dated 17.03.2016 (Annexure P-1). It is borne out from the record that respondent No.4 was the only applicant for the post of *lambardar* and his name was recommended by the Sub-Divisional Magistrate, Ajnala. The Collector's order, appointing respondent No.4 as *lambardar*, was set aside by the learned Commissioner, by observing as under :-

“5. I have heard the arguments of learned counsel for the parties and have gone through the record received in the case and papers on the file. There is merit in the arguments of the appellant that only one candidate was examined by the District Collector and no proper proclamation was made in the village. Finding merit the

arguments of the appellant, I therefore, set aside the impugned order dated 17.3.2016 and remand the case for fresh proclamation of Lambardar. The parties are directed to appear before the District Collector, Amritsar on 27.02.2017.”

7. However, on appeal, the learned Financial Commissioner, has set aside the Commissioner’s order and has upheld the Collector’s order, by observing as under :-

“9. I have considered carefully the arguments advanced by both the sides and documents on record. The appellant has been appointed as lambardar by the District Collector on the basis of recommendations of Tehsildar and SDM concerned and after considering the suitability of the candidate. The only ground taken by the Ld. Commissioner for setting aside the orders of the District Collector and remanding the matter is his view that no proper proclamation was made in the village. However, it is not clear as to what is the basis for this conclusion. There are copies on the record of the directions issued by the Tehsildar Ajnala to the Patwari concerned for carrying out the proclamation in the village, statement of Chowkidar of the village regarding the proclamation in the village, the Rapat in this regard and the entry in the proceeding book of the Panchayat. On the other hand, no evidence and reason has been given for coming to the conclusion that Munadi has not been done. In view of above, I am unable to agree with the orders of Ld. Commissioner which are accordingly set aside and orders of the District Collector Amritsar are upheld.”

8. A perusal of the above extracted factual findings returned by the learned Financial Commissioner, would show that the proclamation (*munadi*) was carried out in the village and in that regard, the copies of the

directions issued by the Tehsildar, Ajnala to the Patwari concerned, for carrying out the proclamation in the village, is available on record. That apart, the statement of Chowkidar of the village regarding the proclamation in the village and also the *rapat* and an entry in the proceedings book of the panchayat is also available on record. Placing reliance upon the afore-said documents, the learned Financial Commissioner has held that it was not clear as to what was the basis for the conclusion of the learned Commissioner that no proclamation was effected in the village. Accordingly, the Commissioner's order was set aside and the Collector's order was upheld.

9. Before this Court, learned counsel for the petitioner has failed to controvert the afore-said factual findings returned by the learned Financial Commissioner.

10. The only document, on which the petitioner has placed reliance, is Annexure P-4, which is the statement made by one Surjit Singh, who claims himself to be the Chowkidar of Village Bachiwind and states that he never conducted *munadi* in the village. The said statement is shown to have been made on dated 21.10.2016. A perusal of *vernacular* of the said statement (Annexure P-4) would reflect that although, the said statement is written in Gurmukhi script, however, there are no signatures of Surjit Singh thereupon rather only a thumb impression is there. Even the placement of thumb impression on the said document (Annexure P-4) raises a suspicion as regards the due execution of the said statement and even the signatures of a witness namely, Jaimal Singh appear above the thumb impression of Surjit Singh. That apart, even the parentage and details of the said witnesses are not forthcoming from the said document. It *prima facie* appears that the

said statement is a procured document. It was also noticed that although the petitioner had challenged the Collector’s order dated 17.03.2016 by filing an appeal before the learned Commissioner on 30.06.2016. Apparently, the so-called statement dated 21.10.2016 (annexure P-4) was procured during the pendency of the appeal before the learned Commissioner.

11. In my considered view, once the learned Financial Commissioner, has recorded a finding of fact that there is sufficient evidence available on record as regards the conduct of proclamation (*munadi*), no interference is required to be made in the said factual findings.

12. In view of the above discussion, I do not find any merit in the present writ petition and the same is, accordingly, dismissed.

13. All pending application/s, if any, shall also stand closed.

September 03, 2024
gurpreet

(HARSH BUNGER)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No