

CWP No. 22408 of 2013

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**CWP No. 22408 of 2013.
Date of Decision : 23.09.2015.**

Sunderesh Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

Present: Mr. Ashwani Talwar, Advocate for the petitioner.

Mr. Rajneesh Chadwal, Deputy Advocate General,
Haryana.

Mr. Sanjiv Sharma, Senior Advocate with
Mr. P.R. Yadav, Advocate for respondent No. 6.

Paramjeet Singh, J.(Oral)

The instant writ petition has been filed under Articles 226/227 of the Constitution of India for quashing the order dated 04.09.2013 (Annexure P-5) passed by the Financial Commissioner, Haryana, Chandigarh.

Brief facts of the case are that on account of death of one Hira Singh, Lambardar of village Kheh Patti Bhairam, District Gurgaon, the post of Lambardar fell vacant and proceedings for appointment of Lambardar were initiated. Seven candidates applied. Three of them did

not plead their cases and two withdrew their applications. Finally, two candidates i.e. the present petitioner and respondent No. 6 remained in the contest. After considering their comparative merit, the Collector vide order dated 22.07.2003 appointed respondent No. 6 as a Lambardar. Thereafter, an appeal was preferred before the Commissioner, Gurgaon. The Commissioner, Gurgaon vide its order dated 12.05.2004 remanded back the case to the Collector, Gurgaon. The Collector, Gurgaon vide its order dated 19.11.2010 appointed the petitioner as Lambardar. Feeling aggrieved respondent No. 6 preferred appeal before the Commissioner, Gurgaon Divn., Gurgaon, which was dismissed vide order dated 05.10.2011 (Annexure P-4). Respondent No. 6 then preferred revision before the Financial Commissioner, which has been allowed vide impugned order dated 04.09.2013 (Annexure P-5). Hence, this writ petition.

I have heard learned counsel for the parties and perused the record.

The only ground raised by the learned counsel for the petitioner is that respondent No. 6 has illegally encroached upon the Chaupal of the Village. Since he is encroacher upon the land of Panchayat without any authority, therefore, he cannot be appointed as Lambardar.

On the other hand, learned senior counsel for respondent No. 6, vehemently, contended that respondent No. 6 is not an encroacher.

Actually, he had purchased the Chaupal in an open auction on 06.01.1988 and has paid Rs. 40,000/- before the BDPO, therefore, he has come into possession of the Chaupal in a legal manner. The said matter is already pending before this Court in CWP No. 2631 of 2015 titled as '*Jagmal Singh Vs. State of Haryana and others*', whereby dispossession of the respondent No. 6 has been stayed.

I have considered the contentions of learned counsel for the parties.

So far as the question with regard to encroachment is concerned, the Financial Commission has not recorded specific findings. He has only given his findings with regard to the capacity in which petitioner has come in possession of the Chaupal. Otherwise also, if after considering the comparative merit, the Financial Commissioner found that respondent No. 6 was suitable as compared to the petitioner for appointment as Lambardar, the Financial Commissioner should have remanded the case to the Collector for appointment as the Collector is the appointing authority.

In view of the above, this Court deems it fit that the matter be remanded to the Collector to consider the issue whether respondent No. 6 has come in possession of the property in question in due process of law or can he be termed as an encroacher. Besides that another aspect that he had been working as a Sarbrah Lambardar, shall also be considered and appreciated by the Collector.

In view of the above, the orders of all the authorities i.e. Collector, Commissioner and Financial Commissioner are set-aside. The case is remanded back to the Collector to decide the matter expeditiously, in accordance with law, from the date of receipt of certified copy of this order.

Till passing of the order by the Collector, respondent No. 6 shall continue to perform the duties of Lambardar.

Disposed of.

September 23, 2015.
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(PARAMJEET SINGH)
JUDGE