

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

CWP-25727-2013

Date of decision : 03.03.2015

BALWAN SINGH

...Petitioner

V/S

STATE OF HARYANA AND ORS.

...Respondents

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Ravinder Malik, Advocate
for the petitioner.

Mr. Ashok Chaudhary, Addl. A. G., Haryana

Mr. P. S. Sikand, Advocate
for the respondent No.4

JITENDRA CHAUHAN, J. (Oral)

This Civil Writ Petition filed under Articles 226/227 of the Constitution of India for issuance of an appropriate writ, order or direction in the nature of certiorari for quashing the order dated 18.09.2013 (Annexure P-13) and order dated 08.07.2008 (Annexure P-8) passed by respondent No.1, order dated 12.12.2007 passed by respondent No.2 (Annexure P-7) and order dated 28.11.2006 passed by

respondent No.3 (Annexure P-6) and to issue a writ in the nature of mandamus directing the respondents to uphold the order dated 20.11.2002 passed by respondent No.3 (Annexure P-1).

On the death of Lambardar of Village Golampur, Tehsil Jagadhri, District Yamuna Nagar, the post of Lambardar (general category) fell vacant. Out of five candidates only two candidates i.e. respondent No.-4 Ram Kumar and the petitioner are interested in occupying the said post. Vide order dated 20.11.2002 (Annexure P-1), the respondent No.3-Collector, Yamuna Nagar appointed the petitioner as Lambardar. It is the case of the petitioner, that vide order dated 07.05.2003, order dated 20.11.2002 was set aside by the respondent No.2-Commissioner, Ambala Division by holding that the order passed by the Collector, Yamuna Nagar is based on the recommendations of the Lower Revenue Officers whereas the Collector ought to have consider the case on merits and henceforth the matter was remanded back to the respondent No.3 for re-consideration on merits.

Aggrieved against the order of remand dated 07.05.2003, the petitioner filed ROA No.263/02-03 before the Court of the Financial Commissioner, Haryana and the same was accepted with a direction to the respondent No.3 to inquire into the allegations against the petitioner regarding encroachment on public/panchayat land.

Thereafter, in pursuance of the order passed dated 07.05.2003, Naib

Tehsildar, Jagadhri carried out the spot inspection and submitted his spot inspection report of village Golanpur dated 14.02.2006 (Annexure P-4) and the relevant para of the same, reads as under:

After seeing the site of house, it was found that the house is made adjacent to Phirni within the lal dora. The Khasra number of Phirni is 37, having 6 Karam width as per record. Petitioner-Balwan Singh made his house 2½ feet ahead of the house of his neighbour Jai Kumar, Pawan Kumar sons of Barma Nand. Here the width of Phirni is also less than 6 Karam, which proves that petitioner-Balwan Singh made his house measuring 60' x 2½' within Phirni.

Keeping in view the fact that the report (Annexure P-4) does not reflect the details with regard to the illegal possession of the petitioner, the respondent No.3 discarded the report. Accordingly, the demarcation report dated 24.08.2006 (Annexure P-5) was again submitted. According to this report, Khasra No.37, Gair Mumkin Phirni was found to be correct and there was no illegality and no unauthorised possession was found by the petitioner over Khasra No.37 Gair Mumkin Phirni nor there was any unauthorised possession over the aforesaid Phirni by respondent No.4.

Thereafter, vide order dated 28.11.2006 (Annexure P-6) respondent No.3 appointed the respondent No.4 on the post of Lambardar. Against the same, he approached the Financial

Commissioner, Haryana but vide order dated 08.07.2008 (Annexure P-8) his plea was dismissed.

Feeling aggrieved, the petitioner approached this Court vide CWP No.12389 of 2009 and the same was allowed vide order dated 14.07.2010 with a direction to the Financial Commissioner, Haryana to decide the matter afresh and in accordance with law, within three months.

On the other hand, learned counsel for the respondent states that as per the order dated 18.09.2013 passed by the Financial Commissioner, Haryana the revision filed by the petitioner-Balwan Singh was disposed of on the ground that encroachment was removed by the petitioner in the intervening period from 14.02.2006 (1st report) and 24.08.2006 (2nd report) and upheld the order of respondent No.3 regarding appointment of respondent No.4 as Lambardar.

Learned counsel for the petitioner further submits that under the Small Saving Scheme, respondent No.4 deposited only Rs.25,000/- in Small Saving Scheme and there is no proof of having deposited Rs.1,10,000/- in the Small Saving Scheme. So far as the petitioner is concerned, he has produced the proof Ex.P2 to Ex.P7 on file regarding investment in these schemes.

Heard.

The demarcation report dated 24.08.2006 (Annexure P-5)

reads as under:-

“On the spot, Khasra No.37 Gair Mumkin Phirni was found to be correct, and there was no illegality and no unauthorised possession was found by Balwan Singh son of Zile Singh over Khasra No.37 Gair Mumkin Phirni nor there as any unauthorised possession over the aforesaid Phirni by Ram Kumar son of Singh Ram.

Both parties present on the spot were satisfied with the demaraction ad both parties, Sarpanch and other prominent persons present on the spot found it to be correct.

Thereafter, the objections of both the parties were heard, in which Ram Kumar son of Singh Ram informed that there was unauthorised possession of Balwan Singh son of Zile Singh over this Khasra No.37 Phirni, which has been removed by him from the spot.”

From the perusal of report, it is clear that there is no encroachment by the petitioner on the Panchayat land as alleged by the respondent No.4. In view of the demarcation report dated 24.08.2006 (Annexure P-5), which was carried out in the presence of both the parties and large number of respectable of the village, the oral assertion of respondent No.4 with regard to encroachment is of no consequence.

Accordingly, this petition is allowed and the order dated

18.09.2013 (Annexure P-13), order dated 08.07.2008 (Annexure P-8)

passed by respondent No.1, order dated 12.12.2007 passed by respondent No.2 (Annexure P-7) and order dated 28.11.2006 passed by respondent No.3 (Annexure P-6) are, hereby set aside, and the order dated 20.11.2002 passed by respondent No.3 (Annexure P-1), appointing the petitioner as Lambardar is restored.

This writ petition is allowed.

(JITENDRA CHAUHAN)
JUDGE

03.03.2015

ashok