

CWP-420-2015

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

CWP-420-2015 (O & M)

Date of Decision: 13.10.2015

Tek Chand

... Petitioner(s)

Versus

State of Haryana and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers may be allowed to see the judgment ?.
- 2) To be referred to the Reporters or not ?.
- 3) Whether the judgment should be reported in the Digest ?

Present: Mr. V.K.Vashishta, Advocate,
for the petitioner.

Mr. Rajneesh Chadwal, DAG, Haryana.

Mr. J.P.Sharma, Advocate,
for respondent No.4.

Paramjeet Singh, J. (Oral)

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Allowed, as prayed for. Reply, filed on behalf of respondent
No.4 is taken on record.

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Instant writ petition has been filed under Articles 226/227 of
the Constitution of India for setting aside the order dated 28.05.2014
(Annexure P-8) passed by respondent No.1-Financial Commissioner,
Revenue, Haryana, dated 23.12.2011 (Annexure P-6) passed by

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respondent No.2-Divisional Commissioner, Gurgaon Division, Gurgaon and dated 11.12.2008 (Annexure P-3) passed by respondent No.3-Collector, Mahendergarh.

Brief facts of the case are to the effect that the petitioner was appointed as Lambardar of village Khairana, District Mahendergarh. Upon a complaint filed by respondent No.4, a report was received that the petitioner had encroached upon khasra no.84 which is a gair mumkin Phirni. Thereafter, eviction proceedings were initiated against the petitioner under the provisions of the Punjab Village Common Lands (Regulation) Act, 1961 and the petitioner being encroacher was ordered to be removed from the post of Lambardar vide impugned order dated 11.12.2008 (Annexure P-3) passed by respondent No.3-Collector. Being dissatisfied, the petitioner preferred appeal before respondent No.2-Divisional Commissioner, Gurgaon which was dismissed vide impugned order dated 23.12.2011. Against the orders of the Collector and the Commissioner, the petitioner preferred revision before respondent No.1-Financial Commissioner which has also been dismissed vide impugned order dated 28.05.2014 (Annexure P-1). Hence, this writ petition.

In pursuance of notice of motion, reply has been filed by respondent Nos.1 to 3 with the averments that the petitioner was not performing his duties with due diligence, has encroached upon the land of Gram Panchayat and has also not followed the rules and regulations as prescribed by the Government. The petitioner has rightly been removed

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from the post of Lambardar by the authorities.

Respondent No.4 has also filed reply on the same lines.

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

Rule 16 of the Punjab Land Revenue Rules (as applicable to Haryana) reads as under:

“16. Dismissal of headman: - (i) A headman shall be dismissed when

(a) he is sentenced to imprisonment for one year or upwards or to any heavier sentence; or

(b) in an estate owned altogether or chiefly by Government he ceases to possess the interest which led to his appointment; or

(c) in any other estate he ceases to be a landowner in the estate or sub-division of the estate in respect of which he holds office; or

(d) he has mortgaged his holding and has delivered possession to mortgagee; but in special cases the Collector may with the Commissioner's sanction retain him in his office under such circumstances, if he can furnish adequate security for the payment of the revenue he has to collect and for the due discharge of his duties; or

(e) his holding has been transferred under Section 7 of the Land Revenue Act, or the assessment thereof has been annulled under Section 73 of the same Act.

(f) he is convicted in a case involving moral turpitude.

(ii) A headman may be dismissed when-

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- (a) criminal proceedings which have been taken against him show that he is unfit to be entrusted any longer with the duties of his office; or*
- (b) he is seriously embarrassed by debt, or if his unencumbered holding is so small as to disqualify him in the Collector's opinion for the responsibility attached to the office of headman; or*
- (c) owing to age or physical or mental incapacity, or absence from the estate, he is unable to discharge the duties of his office; or*
- (d) there is reason to believe that he has taken part in, or concealed illicit distillation, or the smuggling of cocaine, opium or charas;*
- (e) he takes part in any unconstitutional agitation against the Government or fails to give his active support to the Government in the maintenance of law and order;*
- (f) he neglects to discharge his duties, or is otherwise shown to be incompetent; or*
- (g) the estate or sub-division thereof, in respect of which he holds office, or his own holding is attached either for an arrears of land revenue or by order of any court.”*

The petitioner has been removed from the post only on the imaginary ground that he has no faith in the rules and regulations framed by the Government and has encroached upon the part of *Phirni* (circular passage). The petitioner has not violated any of the clauses as mentioned in Rule 16 of the Punjab Land Revenue Rules (as applicable to Haryana). The order of dismissal can be passed only according to Rule

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16 of the Punjab Land Revenue Rules (as applicable to Haryana). The revenue authorities can only dismiss/remove a person from the post of Lambardar, if he is found to have violated Rule 16 of the Punjab Land Revenue Rules (as applicable to Haryana). Learned State counsel and learned counsel for respondent No.4 failed to point out that case of the petitioner is covered under Rule 16 of the Punjab Land Revenue Rules (as applicable to Haryana).

In view of above, instant petition is allowed and the impugned orders dated 28.05.2014 (Annexure P-8), 23.12.2011 (Annexure P-6) and 11.12.2008 (Annexure P-3) are set aside.

However, this will not prevent the authorities from proceeding against the petitioner for alleged encroachment made by him in accordance with law, if he has encroached upon any part of *Phirni*.

13.10.2015
parveen kumar

(Paramjeet Singh)
Judge