In the High Court of Punjab and Haryana at Chandigarh.

CWP No. 7278 of 2015
Decided on 01.10.2015

Subhash Chander

--Petitioner

Vs.

Financial Commissioner, Haryana and others,

--Respondents

CORAM: HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr. S.K.Jain, Advocate, for the petitioner

Mr. P.P. Chahar, D.A.G, Haryana, for respondent Nos. 1to 3

Mr.Prateek Gupta,Advocate, for respondent No.4.

Rakesh Kumar Jain,J: (Oral)

The petitioner is aggrieved against the appointment of respondent No.4. to the post of Lambardar of village Mithi Sureran, Tehsil Ellenabad, District Sirsa.

In short, the post of Nambardar became available after the death of Mani Ram. There were 8 candidates in fray, but ultimately the contest was between the petitioner and respondent No.4. Respondent No.4.

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was recommend by the Tehsildar, whereas the petitioner was recommended by the S.D.O (Civil) , Ellanabad to the Collector, Sirsa, for consideration, who discussed the merits of both the candidates, which are as under:

	Ajay Singh	Subhash Chander
Education	**10+2**	**10+2**
Land	33 acres	24 acres
Age	48 years	43 years
Experience/ additional qualification	Tehsildar Ellanabad has recommended his case.	Having experience of Sarbrah Lambardar, Sub Divisional Officer (C)Ellanabad has recommended his case.

The candidature of the petitioner was ignored as his merit was not discussed, in comparison to the merit of respondent No.4, only on the ground that the petitioner is alleged to have been found in unauthorised possession over the land of the bus stand. The order of the Collector dated 11.4.2012 has been upheld in appeal by both the authorities i.e. the Divisional Commissioner and the Financial Commissioner, respectively.

Learned counsel for the petitioner has referred to the concluding para of report dated 13.3.2012 which is as under:-

> "After hearing both the parties and on spot inspection it has bee found that the land falling in Khasra No.285 Gair Mumkin Bus Stand is lying vacant at the spot,wherein the standing wheat crop has been ploughed by Tractor. The land of the Bus Stand and that of Subhash son of Ladhu Ram are adjoinig to each other and there exists no Kachi Daul of any sort between them. The wheat crop standing on Gair Mumkin land of Bus Stand seems to have been destroyed by ploughing one day prior to the spot inspection. Therefore, from these facts and also from the statement of various persons, it seems that Subhash

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> son of Ladhu Ram is in illegal possession of land comprised in Khasra No.285 by ploughing. The Report is submitted for necessary action".

It is argued by the learned counsel for the petitioner that there is no evidence against the petitioner to show that he has been found in unauthorised possession over the land of the Bus Stand falling in Khasra No.285. The officer who had made the enquiry has only doubted that the petitioner is in illegal possession as he has used the word "*seems to have been"* which does not mean that the enquiry officer was sure about the illegal possession of the petitioner. It is submitted that respondent No.4 has also not uttered a word against the petitioner about his illegal and unauthorised possession over the land of the Bus Stand.

It is argued by learned counsel for the petitioner that had the petitioner been in unauthorised possession over the land of the Bus Stand, the panchayat would have filed an application under Section 7 of the Punjab Village Common Lands (Regulation) Act,1961 to take possession from him but no such action has been taken.

On the other hand, learned counsel for respondent No.4 has argued that choice of the Collector has to be maintained unless there is perversity in his order and since the name of respondent No.4 for the post of Lambardar was recommended after taking into consideration his merit in accordance with Rule 15 of the Punjab Land Revenue, Rules as applicable to his category, the appointment of respondent No.4 has to be maintained. It is argued by him that the Enquiry Officer has found, in the presence of Patwari, that the petitioner is in unauthorised possession over the land of the Bus Stand and, therefore, he has rightly been ignored by the concerned authority.

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I have heard learned counsel for the parties and perused the available record with their assistance.

There is no doubt that the petitioner and respondent No.4 were both recommended by the authorities subordinate to the Collector for appointment to the post of Lambardar. The petitioner deserved to be considered but kept out of consideration by the Collector only on the ground that he was alleged to have been found in possession over the land of the Bus Stand on the basis of report dated 13.3.2012.

Learned counsel for the petitioner has submitted that concluding para of the report, reproduced here-in-above, would show that the authority who had prepared the report was not sure about the illegal possession of the petitioner, rather had a doubt about the role of the petitioner in taking the possession over the land of the Bus Stand. This kind of uncertain finding recorded by the Enquiry Officer cannot be used against the interest of the petitioner.

Thus, in these facts and circumstances of this case, I am of the considered opinion that the order passed by the Collector, ignoring the merits of the petitioner, only on the ground of aforesaid report dated 13.3.2012, is patently erroneous.

Accordingly, the order of the Collector is held to be perverse as it has taken into consideration the evidence which is not made out from the record and hence the same cannot be used against the interest of the petitioner. Thus, the order of the Collector and also the subsequent orders of the Divisional Commissioner as well as the Financial Commissioner are found to be illegal and are hereby quashed and the case is remanded back to the Collector, Sirsa, to reconsider the matter, ignoring the alleged report

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dated 13.3.2012 and to decide the case by taking into consideration the merits of both the parties.

The parties are directed to appear before the Collector, Sirsa on 19.10.2015.

01.10.2015 **(Rakesh Kumar Jain)**
rr **Judge**

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