

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

**LPA No.1578 of 2015 (O&M)
Date of Decision: 06.11.2015**

Ajay SinghAppellant

Versus

Financial Commissioner, Haryana & others
....Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIVE BHALLA
HON'BLE MRS. JUSTICE REKHA MITTAL**

Present: Mr. Avnish Mittal, Advocate
for the appellant.

RAJIVE BHALLA, J (ORAL)

The appellant challenges order dated 01.10.2015, whereby the writ petition filed by respondent No.4-Subhash Chander, has been allowed and the matter regarding appointment to the post of Lumberdar has been remitted to the Collector for adjudication afresh.

Counsel for the appellant submits that a perusal of the report prepared by the Tehsildar reveals that while preparing the report, the statements of a large number of residents of the village, who clearly deposed that the land earmarked for a bus stand is under unauthorised occupation of respondent No.4, were recorded. The mere fact that in the concluding paragraph, the Tehsildar has recorded that Subhash Chander “seems to be in unauthorised occupation” is irrelevant as it has to be read in the context of the preceding facts.

Counsel for the appellant further submits that even

if the impugned order has to be affirmed, it may be clarified that the appellant is not prohibited from proving by way of any other evidence that respondent No.4 is in unauthorised occupation of public property.

We have heard counsel for the appellant, perused the impugned order but are not inclined to differ with the opinion recorded by the learned Single Judge, while allowing the writ petition and remitting it for afresh adjudication. A perusal of the report prepared by the Tehsildar, which is the foundation of the rejection of Subhash Chander's claim for appointment to the post of Lumberdar, reveals that a finding was recorded that Subhash Chander "seems to be in unauthorised occupation". The learned Single Judge has rightly concluded that in the absence of a conclusive finding to prove the unauthorised occupation of Subhash Chander, his claim for appointment to the post of Lumberdar, could not have been rejected. Consequently, finding no merit, the appeal is dismissed but with a clarification that the appellant shall be free to adduce any other evidence that he possesses to prove that respondent No.4 is in unauthorised occupation of public property.

[RAJIVE BHALLA]
JUDGE

06.11.2015
Vinay

[REKHA MITTAL]
JUDGE