

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

LPA No. 403 of 2015 (O&M)
Date of Decision : 03.11.2015

Ashok Kumar

.....Appellant

versus

Financial Commissioner (Revenue), Punjab and others

.....Respondents

**CORAM : HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE MAHAVIR S. CHAUHAN**

Present: Mr. R.D. Bawa, Advocate
for the appellant.

Mr. Gurinder Pal Singh, Addl. A.G. Punjab
for respondents No. 1 to 4.

Mr. S.K. Arora, Advocate
for respondent No. 5.

MAHAVIR S. CHAUHAN, J.

This intra court appeal under Clause X of the Letters Patent is directed against order/judgment dated 11.02.2015 whereby the learned Single Judge has dismissed Civil Writ Petition No. 717 of 2014 which was brought by the appellant to seek issuance of a writ of certiorari for quashing the orders dated 07.06.2010 and 03.09.2013 passed by Deputy Commissioner, Ferozepur and Financial Commissioner (Revenue), Punjab,

Chandigarh, Annexures-P4 & P6, respectively.

It emerges from the record that consequent upon demise of the incumbent Lambardar Baga Ram of village Salem Shah, process for appointment of a new Lambardar was initiated. Appellant Ashok Kumar could not apply before the date prescribed for the purpose and alongwith others, made an application before the Deputy Commissioner, Ferozepur with a request to issue a fresh proclamation. The application was transmitted by the Deputy Commissioner to Sub-Divisional Magistrate, Fazilka for holding an enquiry in the matter. Sub-Divisional Magistrate, Fazilka, instead of conducting an enquiry into the matter, sent the application for enquiry to the Tehsildar who, in turn sent it to the Halqa Patwari. The Halqa Patwari instead of making an enquiry issued a fresh proclamation on 23.05.2009 without there being any order from the District Collector, in this regard.

Consequent upon submission of applications by the intending candidates, the District Collector Ferozepur, afforded an opportunity to the parties and vide order dated 07.06.2010 (Annexure-P4) disposed of the matter in the following terms:-

“It was informed about the candidate Jagdish Rai that his father Baga Ram was a defaulter of Rs.1.00 lac of the Agricultural Development Bank Limited and after his death this candidate is responsible for the payment of the said amount. It has also been informed that this candidate is also defaulter of Rs. 26,000/- of Salemsah C.A.S.S. Limited. It is necessary to conduct enquiry regarding the

allegations leveled against Jagdish Rai candidate. By remanding this case to the SDM, Fazilka, it is directed that after making enquiry about Jagdish Rai whether he is a defaulter or not, the case be sent to this court with his detailed report. Candidate Jagdish Rai has been directed to be present before the Sub Divisional Magistrate, Fazilka on 07.07.2010. The order is announced.”

The present appellant - Ashok Kumar, assailed order dated 07.06.2010 before Commissioner, Ferozepur Division, Ferozepur, who, vide order dated 20.01.2011 set aside order dated 07.06.2010 and remitted the case back to the District Collector for fresh decision. Order dated 20.01.2011 was challenged by Jagdish Rai, respondent No. 5 herein, before the Financial Commissioner (Revenue), Punjab, who, vide order dated 03.09.2013 (Annexure-P6) accepted the appeal, set aside the order of Commissioner, Ferozepur and restored order dated 07.06.2010 (Annexure-P4) of the District Collector.

The present appellant filed Civil Writ Petition No. 717 of 2014 to seek quashing of orders dated 03.09.2013 and 07.06.2010 passed by the Financial Commissioner and District Collector, respectively, and for restoration of order dated 20.01.2011 passed by Commissioner, Ferozepur Division, Ferozepur, which, as aforesaid, has been dismissed by the learned Single Judge.

We have heard learned counsel for the parties.

It is argued on behalf of the appellant that the order of the learned Single Judge cannot be sustained and the order dated 20.01.2011 passed by the Commissioner, Ferozepur Division, is liable to be restored because the appellant could not be attributed any motive as regards issuance of second proclamation by the Halqa Patwari and, even otherwise, in view of the fact that respondent No. 5 happens to be a defaulter to the extent of Rs.1 lac in respect of a loan received by his father from Agricultural Development Bank Limited and, as such, the appellant is the only candidate for appointment as Lambardar of the village.

On the contrary, on behalf of the contesting respondent No. 5, it is argued that he has cleared loan of the aforesaid bank and, as such, cannot be said to be a defaulter and, therefore, his candidature is also required to be considered for appointment as Lambardar.

After going through the orders passed by the Revenue authorities, it transpires that the District Collector had ordered an enquiry into the application made by the appellant enumerating the circumstances which prevented him from making an application within the prescribed time but instead of holding an enquiry to find out the veracity of allegations in the application, the same was continued to be sent to junior officers upto the Halqa Patwari. The Halqa Patwari, instead of responding to the directions of his superior officers, issued a fresh proclamation without obtaining orders from the District Collector, in this respect. The District Collector, while disposing of the matter vide order dated 07.06.2010, did

not state even a word as regards the enquiry ordered on the application of the appellant and instead, proceeded to have the matter with regard to loan-transaction of father of respondent No. 5 inquired into. Commissioner, Ferozepur Division, Ferozepur, also failed to go into the circumstances on which the enquiry was ordered by the Deputy Commissioner and did not say anything as regards consequences of non-holding of such an enquiry. Same is true of the order dated 03.09.2013 passed by Financial Commissioner (Revenue), Punjab. It comes out that the proceedings for appointment of Lambardar of the village are pending since the year 2009 and the village continues to be without a Lambardar. Orders passed by the Revenue authorities also indicate that these authorities are not clear about the course to be adopted in the matter. If the orders impugned in the instant proceedings are allowed to sustain, the matter is likely to be held up further unreasonably, which will benefit none. As regards, the contention put up on behalf of respondent No. 5 that he has cleared the loan suffice it to say that this aspect of the matter cannot be gone into in the instant proceedings and it has not been brought on record what happened to the enquiry ordered by the District Collector in this regard.

We are of the considered view that ends of justice would be well served if a fresh process for appointment of Lambardar of village Salem Shah is directed to be undertaken and thereby an opportunity is allowed to all eligible candidates including the appellant and respondent

No. 5, to participate in the process and such an exercise shall afford an opportunity to the District Collector to weigh the merits of the candidates and come to a conclusion independently of what has transpired till now.

In the consequence, we accept the appeal, set aside order dated 11.02.2015 passed by the learned Single Judge, as also order dated 03.09.2013 passed by Financial Commissioner (Revenue), Punjab and dispose of the appeal with a direction to District Collector concerned to initiate fresh proceedings for appointment of a Lambardar of village Salem Shah. As the matter has already been delayed unreasonably, it is hoped and expected that the District Collector shall finalise the process as expeditiously as possible.

In view of disposal of the Letters Patent Appeal, miscellaneous applications, pending if any, are rendered infructuous and are disposed of as such.

In the facts and circumstances of the case, parties are left to bear their own costs.

(SATISH KUMAR MITTAL)
JUDGE

(MAHAVIR S. CHAUHAN)
JUDGE

03.11.2015
Neha