

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

Civil Writ Petition No. 7611 of 2001

Date of Decision: 26.9.2016

Kishan Singh

.....Petitioner

Vs.

State of Haryana and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. R.S. Sihota, Sr. Advocate with
Mr. B.R. Rana, Advocate
for the petitioner.

Mr. Sandeep S. Mann, Sr. DAG, Haryana.

RAMESHWAR SINGH MALIK J. (ORAL)

Present writ petition is directed against the order dated 7.6.1999 (Annexure P-15), passed by the Financial Commissioner (Revenue), Haryana-respondent No. 1, whereby he set aside the order dated 6.6.1997 (Annexure P-14) passed by Commissioner, Gurgaon Division, restoring the removal order of the petitioner from the post of Lambardar, passed by the District Collector on 15.2.1996 (Annexure P-13).

Notice of motion was issued by a Division Bench of this Court vide order dated 25.5.2001, however, no stay was granted. Written statement was filed. Thereafter, writ petition was admitted for regular hearing by the Division Bench, vide order dated 28.11.2002. That is how, this Court is seized of the matter.

Heard learned counsel for the parties.

In compliance of the order dated 24.5.2016 passed by this Court, original official record was made available, which has been perused by this Court with the able assistance of learned counsel for the parties.

Perusal of the official record would show that petitioner was appointed as Additional Lambardar (Backward Class), by the Assistant Collector 1st Grade, Palwal, vide order dated 11.3.1988, which is available at reverse side of page 15 of the official file, made available to this Court. Thereafter, in compliance of the dated 11.3.1988, passed by the Assistant Collector 1st Grade, Palwal, certificate of Lambardari was prepared and sent to the office of District Collector, Faridabad, for his signatures.

Learned senior counsel for the petitioner submits that certificate of Lambardari seems to have been signed by somebody on behalf of the District Collector, Faridabad. However, from bare perusal of Hindi version of the certificate of Lambardari (Annexure P-5), it seems that somebody has just put initials, however, it cannot be made out, as to whether it was the District Collector who has signed it or somebody else has put his initials on behalf of the District Collector. Thus, from a careful perusal of the original record, it becomes crystal clear that petitioner was never appointed as Lambardar by the District Collector, who admittedly was the only appointing authority. It is also not in dispute that Assistant Collector 1st Grade, was not competent to appoint any candidate as Lambardar, including the petitioner.

Once it has gone undisputed before this Court that petitioner was never appointed as Lambardar (Backward Class), by the competent authority, i.e. District Collector, his certificate of Lambardari would be of no

consequence. It is so said, because this certificate was based on an order without jurisdiction. Having said that, this Court feels no hesitation to conclude that petitioner has worked for some time as Lambardar, if at all, without any authority of law.

Besides the above basic defect which could not have been cured by passing one or more subsequent orders, there were two other allegations against the petitioner. One was that he attested refusal report against the Sarpanch on the notice issued in a case of ejectment against his own father, regarding illegal possession over the panchayat land. Second allegation was that, petitioner became a witness to an equitable mortgage of the panchayat land which was mortgaged without any authority of law, by one loanee namely Shish Ram, resident of the village of the petitioner.

During the course of enquiry conducted by the Naib Tehsildar (Palwal), it also came to the notice in the deposition of one Sh. Jagan Singh that the petitioner, in connivance with his father, got a decree of 14 acres of land of Gram Panchayat in his name illegally and also got the land mutated in his favour. Thereafter, he filed 14 cases against the Gram Panchayat through his father. Gram Panchayat met the Deputy Commissioner and got girdawaris as well as mutations changed in favour of the Gram Panchayat. Criminal case was registered against father of the petitioner as well as Halqa Patwari under Section 420 IPC, which was stated to be pending trial. A copy of self contained enquiry dated 1.12.1995 is available on record as Annexure P-12. While recording the abovesaid facts, learned District Collector, Faridabad, passed the impugned order dated 15.2.1996 (Annexure P-13), removing the petitioner from the post of Lambardar.

Relevant operative part of the impugned order passed by the

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District Collector, which deserves to be noticed here, reads as under:-

“I have heard both the parties and I have heard in detail Shri Kishan Singh and his learned counsel, from which it is found that the enquiry report of Sub Divisional Officer (Civil), Palwal is based on true facts. The Munadi of Lambardar case does not appear to have been done and it appears that only formalities have been done. Refusal report of Sarpanch in the case of correction of Khasra Girdawari titled Goli Versus Gram Panchayat is also based on false facts. The fixing of the case at short dates and the ex parte order in the original Jimni file has been written later on. It does not bear the signatures of the Presiding Officer. Because this case had been instituted by his father Goli, therefore, he should not have witnesses in this case. By witnessing in this case he has clearly shown that he has helped his father irregularly and this has been done with the intention of grabbing the Gram Panchayat land which should not have been done by the Lambardar. Besides this, during the arguments it has also come to the light that this Lambardar has obtained loan to a person with the name of Shri Shish Ram and he has signed as witness No.1 in executing the equitable mortgage of the Gram Panchayat land. It is clear from all these facts that this Lambardar has misutilised the office of Lambardar and his appointment has also not been made according to rules. It is not in public interest for such a Lambardar to remain in the office of Lambardar because he will continue to do irregular verifications in which interests of people will be jeopardised i.e. one party will be unlawfully benefited and the other party will be unlawfully suffering loss.

According to the above discussion, I order the removal of Shri Kishan Singh, Lambardar, of the

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Backward Community of village Badhram, from the office of Backward community Lambardar. Tehsildar, Palwal, be informed that he should take action according to rules for filling this post. Order was pronounced.”

In the circumstances of the case noted above, it can be safely concluded that Commissioner, Gurgaon Division, exceeded his jurisdiction, while passing the impugned order (Annexure P-14) which was rightly set aside by the Financial Commissioner (Revenue) vide order dated 7.6.1999 (Annexure P-15), observing as under:-

“I have heard both the learned counsel at length and gone through the record. The appellant raised a pertinent question before the Commissioner, Gurgaon Division that the respondent was appointed by the Sub Divisional Officer (civil) Palwal and it was further argued that the Collector is the only competent authority to appoint Lambardar. The Commissioner in the impugned order has not returned finding on this pertinent question raised by the learned counsel for the appellant. The impugned order contains an evasive finding to the effect that the respondent has been appointed rightly. The Commissioner was supposed to return a specific finding to the effect as to whether the Sub Divisional Officer (civil) Palwal was competent to appoint as Lambardar of that the respondent was appointed by the Collector and the arguments to the effect that the respondent was appointed by the Sub Divisional Officer (civil) was against the record. Similarly, the Commissioner, vide impugned order has admitted that the respondent was not supposed to witness of the respondent directly reflects the character of the respondent and character is pivotal consideration

for appointment and consequently for dismissal of a Lambardar. Thus viewed from any angle, findings of the Commissioner Gurgaon Division regarding appointment of the respondent as Lambardar and witness of denial report in the case instituted by the father of the respondent are not in consonance with law.”

In view of the above mentioned discussion that I impugned order is set aside and appeal is accepted.

So far as judgments in the cases of **Darshan Singh Vs. State of Punjab and others, 2013 (3) RCR (civil) 349; Milkha Singh and others Vs. Nirmal Singh and others, 2007 (4) RCR (civil) 842; Somasudarshan Goud Vs. The District Collector, Haryana, 1978 AIR (A.P.) 420; Bajii alias Baijanath and others Vs. Narain (since dead) through LRs Smt. Krishana Bai and others, 2006 (5) MPHT 306 and Lingappa Shivajogappa Hutagonnavar VS. Hubli-Dharwad Municipal Corporation and others, 2014 (3) AIR Kar R 517**, relied upon by learned senior counsel for the petitioner are concerned, there is no dispute about the observations made therein, however, a close perusal of the cited judgments would make it crystal clear that none of them is of any help to the petitioner, being clearly distinguishable on facts.

It is the settled principle of law that peculiar facts of each case are to be examined, considered and appreciated first, before applying any codified or judgemade law thereto. Sometimes, difference of even one circumstance or additional fact can make the world of difference, as held by the Hon'ble Supreme Court in **Padmausundara Rao and another Vs. State of Tamil Nadu and others, 2002 (3) SCC 533**.

So far as argument raised by learned senior counsel for the petitioner regarding applicability of Section 114 of the Evidence Act, 1872,

in the present case, is concerned, it would have been attracted in favour of the petitioner only if there would have been some doubt about the abovesaid facts and circumstances of the case. A bare glance of the original official record has made it clear that the competent authority never appointed the petitioner as Lambardar. In such a situation, Section 114 of the Evidence Act would not be attracted. It is neither pleaded nor argued case on behalf of the petitioner that Assistant Collector 1st Grade was the competent authority or he was exercising his delegated powers in this regard. Once there was no order passed by competent authority, i.e. District Collector, appointing petitioner as Lambardar, available on record, issuance of certificate of Lambardari would be hardly of any significance. Further, the abovesaid allegation against the conduct of the petitioner would also disentitle him for continuing as Lambardar.

Although, in the circumstances of the case, no further allegation against the petitioner was required, because he has never been appointed as Lambardar by the competent authority, yet the abovesaid allegations were also duly proved against the petitioner, vide enquiry report (Annexure P-12). Lambardar is also known as Headman of the village. He is expected to enjoy clean record not only at the time of his appointment but later as well. If a person who is not enjoying clean record, is permitted to continue as Lambardar, it will send a very wrong message to the residents of the village. It is so said because many government authorities would be dependent on the information supplied by the Lambardar. He is expected to assist the government agencies in the performance of public functions.

In the present case, petitioner has misconducted himself to such an extent that he made himself liable to be removed from the post of

Lambardar. Thus, under these circumstances, it is unhesitatingly held that District Collector was well within his jurisdiction to pass the impugned order against the petitioner, for the abovesaid justified reasons. Financial Commissioner also committed no error of law, while passing the impugned order, setting aside the order passed by the Commissioner and restoring the order passed by the District Collector.

Neither any other contrary judgment was cited nor any other argument was raised on behalf of the petitioner, which may warrant interference at the hands of this Court, while exercising its writ jurisdiction under Articles 226/227 of the Constitution of India.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that instant writ petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out.

Resultantly, with the abovesaid observations made, present writ petition stands dismissed, however, with no order as to costs.

(RAMESHWAR SINGH MALIK)
JUDGE

26.9.2016
AK Sharma

Whether speaking/reasoned Yes/No
Whether reportable: Yes/No