

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. 17334 of 2015

Date of Decision: 23.9.2016

Sukhjinder Singh

.....Petitioner

Vs.

Financial Commissioner, Punjab and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Rajiv Joshi, Advocate
for the petitioner.

Ms. Monica Chibber Sharma, DAG, Punjab

Mr Malkeet Singh, Advocate
for respondent No.4.

RAMESHWAR SINGH MALIK J. (ORAL)

Present writ petition is directed against the impugned order dated 26.5.2015 (Annexure P-4) passed by the Financial Commissioner (Revenue), Punjab, whereby order dated 19.2.2014 (Annexure P-3) passed by the Commissioner, Jalandhar Division, was upheld, setting aside the order dated 24.5.2011 (Annexure P-1) passed by the District Collector.

Notice of motion was issued and in compliance thereof, written statement on behalf of respondent No.4 was filed.

Petitioner has filed replication to the written statement by way of

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C.M. No. 11910 of 2016, which has been allowed.

Heard learned counsel for the parties.

It has gone undisputed before this Court that petitioner was appointed as Lambardar by the District Collector, vide his self contained order (Annexure P-1). Respondent No.4 challenged the abovesaid order passed by the District Collector by way of an appeal before the Commissioner, Jalandhar Division-respondent No.2. The Commissioner allowed the appeal of respondent No.4, appointing him as Lambardar,, by setting aside the well reasoned order passed by the District Collector. Feeling aggrieved, petitioner approached the Financial Commissioner by way of an appeal, which came to be dismissed by the Financial Commissioner, vide impugned order dated 26.5.2015 (Annexure P-4)

While issuing notice of motion, operation of the impugned order was stayed by this Court, thus, petitioner has been working as Lambardar, during all this period. Primary allegation against the petitioner which weighed with the Commissioner, while setting aside his appointment as Lambardar, was that petitioner was in illegal encroachment on the public rasta. Another allegation against him was that he obtained a handicap certificate in the year 2009, showing himself to be 60% handicap of his lower limb.

Learned counsel for the petitioner has emphatically denied both these allegations. In this regard, he rightly places reliance on Annexure P-5 written by Gram Panchayat of the village, pointing out that land measuring 21 kanal 8 marla out of khasra No. 4772 has been put to auction for lease for an amount of ₹63,500/-. This auction was conducted on 16.6.2016. It has been specifically stated by Gram Panchayat that petitioner was not in illegal

encroachment on this piece of land bearing khasra No.4772 and it was respondent No.4 who moved a false application only to level baseless allegations against the petitioner, so that respondent No.4 may succeed in the case of Lambardar.

Regarding the disability certificate, learned counsel for the petitioner submits that petitioner was disabled and the disability certificate was rightly issued in his favour, however, petitioner is capable to perform his duties of Lambardar.

When confronted with the abovesaid material fact situation obtaining in the present case, learned counsel for respondent No.4 could not address any meaningful argument to controvert the abovesaid stand taken by learned counsel for the petitioner and rightly so, it being a matter of record. In this view of the matter, it can be safely concluded that Commissioner as well Financial Commissioner have committed serious error of law, while passing their respective impugned orders and the same cannot be upheld.

It is the settled proposition of law that District Collector, being the appointing authority, his choice in the matters of appointment of Lambardar, will not be upset lightly by the higher revenue authorities until and unless the order passed by the District Collector is found suffering from any patent illegality or perversity.

A bare combined reading of the impugned orders passed by the Commissioner and Financial Commissioner would show that none of them have recorded any such findings that order passed by the District Collector, appointing the petitioner as Lambardar, was either without jurisdiction or was suffering from any patent illegality or perversity. In the absence of any such specific findings recorded by the Commissioner as well as Financial

Commissioner, they would have no jurisdiction to set aside the well reasoned order passed by the District Collector. Since the Commissioner as well as Financial Commissioner exceeded their jurisdiction, while passing the impugned orders, the same are liable to be set aside, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered view that since the impugned orders dated 19.2.2014 (Annexure P-3) passed by the Commissioner, Jalandhar Division-respondent No.2 and 26.5.2015 (Annexure P-4) passed by the Financial Commissioner (revenue), Punjab-respondent No.1 have been found patently illegal orders, the same cannot be sustained. Accordingly, impugned orders Annexures P-3 and P-4 are hereby set aside. Writ petition deserves to be allowed.

Resultantly, with the abovesaid observations made, instant writ petition stands allowed, however, with no order as to costs

(RAMESHWAR SINGH MALIK)
JUDGE

23.09.2016
Ak Sharma

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