

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA no. 1157 of 2016 (O&M)

Date of Decision :11.07.2016

Karambir

....Appellant(s)

Versus

State of Haryana and others

...Respondent(s)

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER
HON'BLE MR JUSTICE DR. SHEKHER DHAWAN

- 1)Whether reporters of local newspapers may be allowed to see the judgment?
- 2) To be referred to the Reporters or not?
- 3) Whether the judgment should be reported in the Digest?

Present : Mr. K.S.Sidhu, Sr. Advocate with
Mr. G.S.Benipal, Advocate for the appellant

MAHESH GROVER, J.

This appeal is directed against the judgment of the learned Single Judge dated 4.5.2016.

Briefly the facts are that a vacancy of Lambardar was sought to be filled up after inviting applications to which the appellant responded. Bijender – respondent no.5 was preferred over appellant leading to a challenge before the competent authorities under the law and finally the proceedings culminated in CWP no. 8577 of 2011 where his claim was once again rejected largely on the reasoning that the choice of the Collector has to be respected unless a perversity is shown.

Before us learned counsel for the appellant has made a submission that he being the grandson of the deceased Lambardar would have a preferential claim on the basis of rule of primogeniture. In this regard he has referred to Rule 17 to support his claim.

It has been argued before us that Rule 17 has been amended to include a preferential claim of heredity i.e the rule of primogeniture.

We have heard learned counsel for the appellant.

Rule 15 of the Punjab Land Revenue Rules as applicable to the State of Haryana provides for factors to be considered in the matter of first appointment. It does not provide any consideration on the issue of heredity. Rule 16 envisages a vacancy created on account of dismissal of the headman on the contingencies envisaged therein and Rule 17 pertains to filling of vacancies in the matters of appointment of successors.

Evidently the considerations for first appointment are distinct from the ones relevant for appointment of a successor.

Once Rule 15 does not provide for any claim on the basis of heredity the appellant would be precluded from pressing such a claim as it is not a case of successor being appointed after a selected incumbent faces dismissal/disqualification under Rule 16. Rule 15, 16 and 17 are extracted herebelow:-

Rule 15. Matters to be considered in first appointments – In all first appointments of headman, regard shall be had among other matters to -

(a) (his experience as substitute/Sarbarah Lambardar.)

(b) extent of property in the estate possessed by the candidate.

(c) services rendered to the State by himself or by his family.

(d) his personal influence, character, ability and

freedom from indebtedness.

(e) the strength and importance of the community from which selection of a headman is to be made.

(f) services rendered by himself or by his family in the national movements to secure freedom of India.)

(In case of an ex-headman of an estate or Sub-division thereof in the territory now comprising the State of (Haryana) who had resigned or was dismissed on account of his participation in a national movement before partition and another headman was appointed in his place, the present incumbent of the post shall be removed irrespective of the provisions of rule 16 and the ex headman would be appointed in his place if he has not rendered himself unfit for appointment for any of the reasons given in rule 16 except imprisonment for a political offence before 15th August, 1947. In case the ex-headman is no longer alive, a person of his family who would under the rules have been entitled to be headmen if the resignation or dismissal had not intervened, would be appointed as headman. But when no such person exist there would be no need to remove the existing Lambardar.)

(g) services rendered by himself to the community and development programmes;

(h) he shall be not less than 21 years of age at the time of inviting the application for the appointment of Lambardar.

(i) he should be literate, preferably middle pass.)

Rule 16 Dismissal of headmen:- (i) A headman shall be dismissed when --

(a) he is sentenced to imprisonment for one year or upwards or to any heavier sentence or

(b) in an estate owned altogether or chiefly by Government he ceases to possess the interest which led to his appointment or

(c) in any other estate he ceases to be a landowner in the estate or sub-division of the estate in respect of which he holds office; or

(d) he has mortgaged his holding and has delivered possession to mortgage, but in special cases the Collector may with the Commissioner's sanction retain him in his office under such circumstances, if he can furnish adequate security for the payment of the revenue he has to collect and for the due discharge of his duties; or

(e) his holding has been transferred under Section 7 of the Land Revenue Act, or the assessment thereof has been annulled under Section 73 of (the same Act.)

(f) he is convicted in a case involving moral turpitude.

(ii) A headman may be dismissed when-

(a) criminal proceedings which have been taken against him show that he is unfit to be entrusted any longer with the duties of his office; or

(b) he is seriously embarrassed by debt, or if his

unencumbered holding is so small as to disqualify him in the Collector's opinion for the responsibility attached to the office of headman; or

(c) owing to age or physical or mental incapacity or absence from the estate, he is unable to discharge the duties of his office: or

(d) there is reason to believe that he has taken part in, or concealed illicit distillation or the smuggling of cocaine, opium or charas;

(e) he takes part in any unconstitutional agitation against the Government or fails to give his active support to the Government in the maintenance of law and order.

(f) he neglects to discharge his duties, or is otherwise shown to be incompetent; or

(g) the estate or sub-division thereof in respect of which he holds office or his own holding is attached either for an arrears of land revenue or by order of any court.

Rule 17 – Matters to be considered in appointment of successors – (i) in an estate, or sub division thereof, owned chiefly, or altogether by Government a successor to the office of headman shall be selected with due regard to all the considerations; stated in Rule 15.

Provided that in such an estate, or sub division thereof notified for the purpose by the Financial Commissioner, the selection shall as far as possible, be made in the manner prescribed by sub-rule (ii) if a suitable heir is forthcoming.)

(ii) (In other estates, while appointing successor, preference shall be given to a person having an experience of the functioning of Lambardar.

(a) (-----)

(b) Where a headman has been dismissed in accordance with the provisions of rule 16 the Collector may refuse to appoint any of his heirs.

(1) If the circumstances of the offence, dereliction of duty or disqualification for which the headman was dismissed make it probable that he would be unsuitable as a headman;

(2) If there is reason to believe that he has connived at the offence or dereliction of duty for which the headman has been dismissed;

(3) If any disqualification for which the headman has been dismissed attaches to him;

(4) if he may reasonably be supposed to be under the influence of the dismissed headman or his family to an undesirable extent.

Note: If a dismissed headman's heir is considered fit to succeed, regard shall be had to the property which he will inherit in like manner as if he had already inherited it.

(c) The Collector may also refuse to appoint a person claiming as an heir on any ground which would necessitate or justify the dismissal of that person from the office of headman.

(d) A female is not ordinarily eligible for the office, but may be appointed when she is the sole owner of the estate for which the appointment has to be made, or, for special reasons, in other cases.

(iii) Failing the appointment of an heir, a successor to the office shall be appointed in the manner, and with regard to the consideration described in rule 15.

(iv) Election shall not in any case be resorted to as an aid in making appointments under this rule and rule 14.”

We are clearly of the opinion that Rule 17 comes into play only when a vacancy occurs under Rule 15 but not in the case of vacancy occurring on account of Rule 16. We may also noticed that the grandfather of the appellant died in the year 1972. Therefore, by no stretch of imagination it would be considered to be an appointment of successor. For the aforesaid reasons, we do not find any reason to interfere with the judgment of the learned Single Judge.

Hence, dismissed.

(Mahesh Grover)
Judge

11.07.2016
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(Shekher Dhawan)
Judge