

242. IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 17602 of 2016

Date of decision : 17.03.2017

Jarnail Singh

..... Petitioner

versus

Financial Commissioner(Appeals)Punjab and
others

..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Sandeep Arora, Advocate for the petitioner.

Ms. Lavanya Paul, AAG, Punjab.

Mr.N.S.Sodhi, Advocate for the respondent No.4.

AMIT RAWAL, J.

The grievance of the petitioner before this Court is that vide impugned order Annexure P-3 Financial Commissioner (Appeals) in the absence of the petitioner has allowed the revision petition, on the points which have never been proved or taken before the authorities below particularly the Collector who is the final authority for the purpose of appointment of Lambardar.

Mr. Sandeep Arora, learned counsel appearing on behalf of the petitioner submits that though the petitioner had received a notice of ROR No.415 of 2014 but very short period was given and was not ineffectively given chance to represent the case and an attempt should have been made by the Financial Commissioner to effect the service in accordance with law. The factum of the criminal background taken into consideration is of the period of 2002 whereby the application for appointment was invited in 2007

and as regards the alleged illegal possession of the land belonging to the Panchayat in village kaile khurd is concerned, no documentary evidence has been placed on record to demonstrate that it was an unauthorized occupation. In essence a person can be in possession of a land belonging to Gram Panchayat either in the capacity as a proprietor, a tenant or a lessee and is required to be bound by it but since this opportunity of addressing arguments and putting across the defence as noticed above has been denied, the order of the Financial Commissioner is not sustainable.

Per contra Mr. N.S.Sodhi learned counsel appearing on behalf of respondent No. 4 submits that as per the jamabandi of village Kaile khurd the petitioner is in unauthorised possession of the land belonging to the shamlat deh in the village Kaile Khurd. The person having a criminal background cannot be appointed as a Lambardar whereas the answering respondent had been working as Lambardar for the last so many years i.e. since 2006 as an interim arrangement and there has not been any single complaint since his record is impeccable.

I have heard learned counsel for the parties and perused the paper book and am of the view that as the finding rendered by the Financial Commissioner is on the basis of the particulars furnished during the course of the revision petition for the first time, though it has been observed that the revisional authority cannot, while exercising the powers of revision, take into account any document but in order to strike the equity has remanded the matter back. In such circumstances the opportunity of addressing the issue ought to have been given even on the first date he put in appearance rather matter could have been adjourned for awaiting the appearance. It is only after undertaking the aforementioned exercise the matter could have been

proceeded and decided. All these factors have to be taken into account and in my view if taken into consideration, the Financial Commissioner would have been in a better position to strike equities and decide the matter effectively and objectively.

Resultantly, the order is set aside. The matter is remitted back to the Financial Commissioner since ROR No. 415 of 2004 is restored. Parties through counsel are directed to appear before the authorities on 17.04.2017. This Court is sanguine of the fact that the Financial Commissioner shall decide the matter within a period of two weeks from the date of receipt of a certified copy of this order. Parties should appear to produce all the documents by way of affidavit in support of their respective defence.

Writ petition is disposed of.

(AMIT RAWAL)
JUDGE

March 17, 2017
sunita

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No