

227

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

CWP-620-2016

Date of decision : 22.05.2017

Amrik Singh

... Petitioner(s)

Versus

Financial Commissioner, Punjab and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Jagjit Singh, Advocate
for the petitioner.

Mr. Yatinder Sharma, Addl. A.G., Punjab.

Mr. J.S. Bhandohal, Advocate
for respondent No.2.

AMIT RAWAL, J. (ORAL)

The petitioner is aggrieved of the impugned order dated 18.11.2015 (Annexure P-1) passed by the Financial Commissioner/ respondent No.1, whereby on remand from LPA Bench i.e. LPA No.1564 of 2012 dated 09.01.2013, the Financial Commissioner has taken into consideration the following points by accepting the revision petition' i) Education qualifications; ii) hereditary claim; and iii) registration of FIR.

Mr. Jagjit Singh, learned counsel appearing on behalf of the petitioner submits that regarding two points i.e. hereditary claim and conviction, the findings are against the statutory provisions and as well as settled law, for, statute has done away with the claim of hereditary and registration of an FIR under Sections 379 & 430 of the Indian Penal Code is not a criminal offence in view of the findings rendered by the Coordinate

Bench of this Court in *“Parkash Singh V/s The State of Punjab” 1994 (3) RRR 512* and as well as by the Hon'ble Supreme Court in *“Jawala Ram and others V/s The State of Pepsu (now Punjab) and others” AIR 1962 SUPREME COURT 1246*, thus, the impugned order, under challenge, is not sustainable in the eyes of law and liable to be set aside.

Mr. J.S. Bhandohal, learned counsel appearing on behalf of the private respondent No.2 submits that on going through comparative chart, not only the hereditary claim had weighed in the mind of the Financial Commissioner, but education qualifications and as well as the recommendations by the residents of the Villages, much less, by the Assistant Collector 2nd Grade. All these factor were noticed for appointing the private respondent, who is now working as Lambardar owing to the issuance of *Sanad*, thus, urges this Court for dismissal of the present writ petition.

I have heard the learned counsel for the parties and appraised the paper book and of the view that the reasoning assigned by the Financial Commissioner particularly on the aforementioned two points, is not sustainable in view of the amendment caused in the statute, whereby the hereditary claim has done away with and registration of FIR for unauthorized used of canal water, is not a criminal offence. For the sake of brevity, the finding rendered in paragraph 5 of the judgment rendered in *“Parkash Singh's case* (supra), reads as under:-

"5. Having heard the learned counsel for the parties, I am of the view that the petition deserves to be allowed and the FIR has to be quashed on the short ground that unauthorised use of canal water cannot be said to be an offence, it has been held by the Supreme Court in 1962 A.I.R. (SC) 1246 that unauthorised

use of canal water is not an 'offence' and imposition of enhanced water charges under Rules 32 and 33 of the Pepsu Sirhind Canal Rules is not a penalty for such an offence. It has further been held that enhanced water charges can be made that may be prescribed by the Rules. Even otherwise, I am satisfied that the present FIR has been registered at the instance of the heirs of Sher Singh against whom order of injunction is operative."

The only points, which were left for consideration, are qualification and holding of the land and regarding holding of land, no consideration has been done, thus, it is a fit case of remand.

Keeping in view the aforementioned facts, the impugned order dated 18.11.2015 (Annexure P-1) passed by the Financial Commissioner/ respondent No.1, is not sustainable in the eyes of law and the same is hereby set aside and the matter is remitted back to the Financial Commissioner to decide the controversy afresh, in accordance with law, as expeditiously as possible preferably within a period of two months from the date of receipt of the certified copy of this order.

The parties or through their counsel are directed to appear before the Financial Commissioner on 02.06.2017.

Disposed of, accordingly.

22.05.2017
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**