226 IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8709 of 2015(O&M)
Date of decision : 16.01.2017

Harjinder Singh ..... Petitioner

versus

Financial Commissioner (Animal Husbandry), Punjab, Chandigarh and others ..... Respondents

CORAM : HON'BLE MR. JUSTICE AMIT RAWAL

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Present: Mr. O.P.Kamboj, Advocate for the petitioner.

Mr. Yatinder Sharma, Addl.AG, Punjab.

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AMIT RAWAL, J. (Oral)

Petitioner is aggrieved of the impugned orders Annexures P-3 and P-5 whereby two appeals against the order dated 19.03.2004 passed by the District Collector, Moga appointing the petitioner as Lambardar of village Kot Mohammad Khan, Tehsil and District Moga, have been accepted on the premise that the petitioner has wrongly been appointed as Lambardar of the aforesaid village which also includes Patti Gujjran, whereas the finding rendered by the Commissioner and of the Financial Commissioner is that the post of Lambardar belongs to Patti Saidan and not Patti Gujjran.

Mr.O.P.Kamboj, learned counsel appearing for the petitioner submits that on the demise of Sarup Singh, Lambardar the necessary sanction to start the file was accorded by the District Collector and the Naib Tehsildar, after making proclamation in the village vide order dated 23.7.2002, invited applications and four persons namely Harjinder Singh, Pritam Singh, Hardial Singh and Sukhmander Singh applied for such post.

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The case was sent back for clarification with regard to status of Patti and Naib Tehsildar, Dharmkot vide his report dated 17.11.2003 clarified that post of Lambardar also related to Patti Gujjran, Thulla Beeja and vide order dated 19.3.2004 passed by the District Collector, Moga the petitioner was appointed Lambardar. Respondent No.2 preferred appeal before the Commissioner, Ferozepur Division (against the said order) which was allowed and the case was remanded to District Collector, Moga for fresh decision on the ground that it seemed that the post of Lambardari belongs to Patti Saidan and not Patti Gujjran. Against this order of the Commissioner, the petitioner went in appeal before Financial Commissioner which was dismissed and on account of dismissal of that the petitioner was compelled to approach this Court. However, the findings of the Commissioner and Financial Commissioner are based upon conjectures and surmises. On 5.5.2015 this Court had issued notice of motion. As per the office report the service on the contesting respondents has already been effected but there is no representation which has been reflected in the report of the Registry dated 23.7.2015 whereas learned counsel submits that the private respondents have no role to play.

I have heard learned counsel for the parties, perused the paper book and gone through the records of the Courts below and am of the view that the Collector, while considering the case of Lambrdari of the petitioner, had sought the report which is reflected in the order and relevant portion is extracted herein below:-

> "The case was sent back for the clarification. Naib Tehsildar, Dharmkot, vide his report dated 17.11.2003, clarified that this post of lambardari relates to patti Gujjran, Thulla Beeja. He,

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further, reported that Harjinder Singh candidate is resident of patti Gujjran and also owned landed property in the same patti. He recommended the candidature of Harjinder Singh and sent the file through Tehsildar, Moga and sub Divisional Magistrate, Moga for final decision."

This fact has not been noticed by the Commissioner and the findings are based upon surmises. Relevant portion of the finding is reproduced herein as under:-

" I have considered the arguments advanced by the learned counsel for the parties and have gone through the record. The various copies of jamabandies for the year 1945-46 etc produced by the learned counsel for Pritam Singh, appellant, and other facts narrated by him in para No.3 above, it seems that the present post of lambardari belongs to Patti Saidan and not patti Gujjran,. Harjinder singh, respondent No.1, does not belong to Patti Saidan nor he has landed property in patti Saidan. Thus, he is not eligible for appointment as lambardar of Patti Saidan, Kot Mohmad Khan, The qualification of holding land in the patti or taraf for which the lambardar is to be appointed is absolute and a labardar cannot be appointed without it. Moreover, on 6.11.1997 a decree for recovery of Rs.33,413/- along with costs of Rs. 8,972/- was passed against Harjinder Singh, respondent No.1, and one Kulbir Singh, and in favour of Punjab and Sind Bank, Kokr Kalan, and an execution application for the said amount is pending in the court of

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Addl.Civil Judge (Senior Division), Moga. Similarly, respondent No.1 owes a huge mount to the Punjab & Sind Bank, Bhinder Kaln, Tehsil Moga, and is proved from the Certificate issued by the said Bank. Thus, Harjinder Singh, respondent No.1, is not eligible for appointment to the post of lambardar of the village. Though it is true that a Commissioner should not interfere with the discretion of a collector in lambardari cases except for clear and strong reasons. But serious embarrassment caused by debt of the person appointed by the Collector is a sufficient reason for interference with the discretion of the Collector."

In the absence of any documentary evidence on record, in my view the order of Commissioner is not sustainable and is liable to be set aside and even the Financial Commissioner has not dealt with the issues specifically raised in the grounds of appeal. In view of the aforesaid findings, orders qua Annexures P-3 and P-5 are set aside and the order of the Collector is hereby restored.

Petition stands allowed.

(AMIT RAWAL)
JUDGE

January 16, 2016
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Whether speaking/reasoned Yes/No

Whether Reportable Yes/No

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