

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

**Civil Writ Petition No.24181 of 2017 (O&M)
Reserved on: 11.09.2018
Pronounced on : 24.09.2018**

Labh Singh

... Petitioner

Versus

Financial Commissioner (Revenue), Punjab and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Sherry K. Singla, Advocate
for the petitioner.

Mr. P.S. Bajwa, Addl. AG, Punjab.

Mr. S.S. Sidhu, Advocate
for respondents No.4 to 7.

G.S. Sandhawalia, J.

In the present writ petition filed under Article 226/227 of the Constitution of India, the petitioner challenges the order dated 18.09.2017 (Annexure P-4) passed by the Financial Commissioner (Revenue), Punjab whereby the matter had been remanded to the District Collector, Bathinda for fresh decision for consideration of the case of the appointment of the Lamberdar for village Baandi, Tehsil & District Bathinda.

Mr. Singla has attacked the order on the ground that the order of the Commissioner dated 27.05.2015 (Annexure P-3) was challenged by Harmohinder Singh who died on 22.05.2016 during the pendency of the revision petition. Therefore, the Finance Commissioner had noticed the same has become infructuous, but on account of the

allegations levelled that there was some illegal encroachment by the present petitioner-Labh Singh, the fact needed to be verified by the District Collector. It is, accordingly, argued that there was no such occasion for remanding the matter, once the appellant had himself died and the petition should have been dismissed as infructuous.

The petition has been contested by the legal heirs of the said deceased Harmohinder Singh by filing an application under Order 1 Rule 10 CPC bearing CM-17561-CWP-2017 to be impleaded as respondents and they have also placed on record order dated 26.08.2010 (Annexure A-1), which is an order of the Collector, passed *inter se* the parties on an earlier occasion, apart from other documents.

Mr. Sidhu has, accordingly, argued that there is concealment of facts, as on an earlier occasion there was a remand vide Annexure A-1, whereby it had been found that Labh Singh was in illegal possession of the Government land and the said order was never challenged by the petitioner. Thereafter, also he was wrongly appointed on 29.09.2011 which order was again set aside on 11.09.2013 (Annexure P-1) and that the matter had been remanded by the Commissioner, Faridkot Division. Resultantly, the subsequent appointment on 18.03.2014 (Annexure P-2) was questioned and it was submitted that the Commissioner had rightly as such remanded the matter for proper inquiry and for fresh decision and the matter was not liable to be disposed of as infructuous.

Keeping in view the averments made in CM-17561-CWP-2017, and since it is a case for appointment of the Headman/Lamberdar,

this Court is of the opinion that application under Order 1 Rule 10 CPC for impleading the legal heirs is liable to be allowed and even otherwise no reply has been filed to the said application by the counsel for the petitioner. Resultantly, the application is allowed. The legal heirs are brought on record as respondents No.4 to 7, since their presence would only help this Court to adjudicate the case in a proper manner.

The case has a checkered history as noticed in as much as from the record which transpires that on an earlier occasion one Gurpreet Singh was appointed as Lamberdar on 15.12.2008 as the process of appointment was started in the year 2007. The petitioner had filed an appeal which was allowed on 10.03.2010 and the matter had been remanded. Thereafter, on 26.08.2010 (Annexure A-1), the Collector found that Gurpreet Singh had no land in the village and Labh Singh was in illegal possession of the Government land, on the basis of the Jamabandi which was on the file. Resultantly, the matter was sent back for fresh proclamation and applications were sought from eligible candidates and for fresh decision. This order was never placed on record by the petitioner as such now has been brought on record by the private respondents. The order reads as under:-

“I after hearing the advocates of both the candidates have considered and have perused the file. Hon'ble Commissioner Faridkot Division, Faridkot vide order dated 10/3/2010 has written for deciding after conducting the investigation at the point of whether Sh. Gurpreet Singh candidate has got the land or not. After hearing the arguments of both the Ld. Advocates Sh. Gurpreet Singh has no land in village Baandi and Sh. Labh

Singh candidate has taken the illegal possession at the Government land. As a proof the copy of Jamabandi is also on the file. Both the candidates are found ineligible. Be sending this case back to Tehsildar, Bathinda it is written that in the village again proclamation be done and application be sought from eligible candidates and proceedings be done as per rules.

The order was pronounced. File after compliance and completion be filed in the record room.”

Thereafter, by virtue of the said order, fresh proclamation was issued (Annexure A-4), whereby the applications from eligible candidates were invited. The petitioner was again appointed on 29.09.2011, which was contested by Harmohinder Singh and Commissioner had set aside the said order to decide the same afresh after considering all the pros and cons of the case and merits of the candidates for appointment as Lamberdar. The Collector again persisted with the appointment of the petitioner vide order dated 18.03.2014 (Annexure P-2) which order was upheld by the Commissioner on 27.05.2015 (Annexure P-3) and which led to the filing of the revision petition before the Financial Commissioner. Unfortunately, Harmohinder Singh expired on 22.05.2016 during the pendency of revision petition which led to the passing of the impugned order.

Mr. Sidhu counsel for the private respondents, thus, has been justified to hold out that once on an earlier occasion and a finding has been recorded that Labh Singh was in illegal possession of the Government land and the order dated 26.08.2010 (Annexure A-1) had not been challenged, the petitioner cannot take benefit of the death of

Harmohinder Singh. A perusal of the above said order would go on to show that applications were to be invited from eligible candidates and proceedings had to be done as per rules, once the Collector as such had found that Labh Singh was in illegal possession of Government land. The subsequent order of fresh appointment of the present petitioner could only be there, in case it was found that he was not in illegal possession. The Financial Commissioner has only remanded the matter on this account that the fact has to be verified by the District Collector.

It is settled principle that a person who is in illegal possession is not entitled for appointment as Headman under Rule 20 (vi) of the Punjab Land Revenue Rules, whereby he is to report to the Tehsildar regarding all encroachments on roads including village roads or on Government waste lands and injuries to, or appropriation of nazul property situated within the boundary of the State. Accordingly, under Rule 16 (ii) (f), a Headman may be dismissed if he neglects to discharge his duties or is otherwise shown to be incompetent. A person who himself is in illegal possession, thus, cannot seek any right to be appointed as Headman.

Accordingly, by exercising his jurisdiction the Financial Commissioner while remanding the matter has not committed any illegality or irregularity which would cause prejudice to the petitioner, as he cannot claim appointment for Headman on the basis of the default due to the death of the contesting appellant during the pendency of the revision.

Resultantly, there is no merit in the present writ petition and the same is, accordingly, dismissed.

SEPTEMBER 24, 2018
Naveen

(G.S. SANDHAWALIA)
JUDGE

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