

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

**Civil Writ Petition No.26947 of 2018 (O&M)
Decided on : 22.10.2018**

Nachhatar Singh

... Petitioner

Versus

Financial Commissioner, Punjab and others

... Respondents

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

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

Mr. Munish Gupta, Advocate
for the caveator/respondent No.6.

G.S. Sandhawalia, J. (Oral)

Challenge in the present writ petition filed under Article 226/227 of the Constitution of India is to the order dated 12.07.2018 (Annexure P-5) passed by the Financial Commissioner (Appeals), Punjab and to the order of remand dated 09.01.2018 (Annexure P-4) passed by the Divisional Commissioner, Patiala Division, Patiala. The petitioner who was appointed as Lamberdar of village Guru Nanak Nagar Gill, Tehsil Ludhiana (Central), District Ludhiana by the Assistant Collector 1st Grade on 05.04.2016 (Annexure P-1) is, thus, aggrieved against the remand.

The remand is primarily on the ground that there was illegal possession on the Panchayat land and civil court contempt proceedings were also pending against the petitioner and, therefore, it was observed that he was not a fit candidate for the post of Lamberdar.

Counsel for the petitioner has vehemently argued that at the

appellate stage the Commissioner Patiala Division, Patiala was not justified in remanding the matter to the District Collector, Ludhiana on this ground. It is submitted that the petitioner was more meritorious as such that the private respondent No.6 has improved his qualification from 10+2 and because he has studied upto 5th Semester of B.Sc. (IT), it was not justified, since the date of consideration would be the important date and subsequent improvements as such would not be taken into consideration.

The said argument regarding improving academic qualification is justified to that extent only. However, this Court is dealing with the appointment of Lamberdar and since the matter is also remanded on the ground of illegal possession on the Panchayat land, it is vital consideration which rightly prevailed with the Commissioner.

Counsel for the caveator/private respondent on the other hand has submitted that as per the Family Partition (Annexure P-6) itself executed by Amar Singh, the father of the petitioner, there was reference to the house constructed in *Shamlat* land adjacent to the land owned by the family and the same had been *inter se* been partitioned against the amongst the family members.

An effort has been made to justify that the partition deed is not a genuine document. This Court is not to go into the merits of the candidates also and only the decision making process is to be seen as per the judgment of the Apex Court passed in '**Mahavir Singh Vs. Khialia Ram and others**', 2009 (1) RCR (Civil) 757.

Prima facie once it has been found that the person appointed is in unauthorized occupation of the land, the Commissioner is well justified in remanding the matter, as the District Collector has not even considered this aspect, since it had not been raised at that point of time. Merely, because the same has been raised at the appellate stage, would not as such debar the Commissioner in appeal which is in continuation of the proceedings. A person who is holding a post of Headman is also supposed not to encroach upon the *Shamlat* land belonging to the village as it is his duty to report regarding encroachment by others, therefore, the remand is justified. In such circumstances, the petitioner is not prejudiced in any manner.

Accordingly, there is no merit in the present writ petition and same is dismissed in limine.

Anything said herein is only *prima facie* to uphold the orders of the authorities below and Collector while deciding the matter afresh shall not be owned by the observations made by this Court.

OCTOBER 22, 2018
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No