

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

**Civil Writ Petition No.496 of 2018
Decided on : 17.09.2018**

Tilak Raj

... Petitioner

Versus

Commissioner, Gurugram Division, Gurugram and others

... Respondents

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

Present : Mr. Aditya Jain, Advocate
for the petitioner.

G.S. Sandhawalia, J. (Oral)

Challenge in the present writ petition filed under Article 226/227 of the Constitution of India is to the concurrent findings of the authorities below, whereby respondent No.4-Heera Lal was appointed as Harijan Nambardar of village Naharpur Kasan.

Counsel for the petitioner has vehemently argued that the said respondent was in illegal possession of the land in the village and the said aspect has not been dealt with by the authorities below. It is submitted that in such a situation the mantle of responsibility should have fallen upon the petitioner rather than the said respondent.

A perusal of the paper-book would go on to show that on the death of Shri Chhote Lal on 09.01.2013, the said post became vacant. Four applications were received before the authorities below and Assistant Collector 2nd Grade, Gurgaon recommended the name of respondent No.4 (Annexure P-1), which recommendations were carried forward by Assistant Collector 1st Grade (Annexure P-2) also. The Collector on the basis of the

reports of the authorities below assessed the comparative merits as such and opted for the private respondent No.4 vide order dated 10.02.2015 (Annexure P-3). The said order has been upheld by the Commissioner on 13.01.2017 (Annexure P-5) even though the averments were made in the appeal that there was encroachment upon the land of Panchayat comprised in Rectangle No.24, Killa No.9/1, on account of constructing the house by respondent No.4.

The comparative merits as such of both the petitioners are similar and there was very little difference as such to chose between the two as much the petitioner is 44 years old in comparison to the private respondent No.4 who is 39 years old. The petitioner had studied upto 10+2 Class and had Diploma in Electronics, whereas the private respondent has studied upto 10th Class and had done ITI and had obtained certificate of apprenticeship from Maruti. It was noted that he has donated blood 19 times and taken part in the Pulse Polio Drive and obtained two certificates. He having a good moral character and being financially sound, on the basis of which the Collector had appointed him.

It is a settled principle that the order of the Collector is not to be disturbed until there is perversity as such. The argument raised by the counsel for the petitioner that there was encroachment as such does not also require consideration, as it was always open to the petitioner to place material to that effect in a form of demarcation report on record. It is well known that everybody is aware regarding the issue of encroachment in a village, specially when the petitioner and the private had been

contesting for the post of Namberdar and the said issue would have been raised at the first instance.

A perusal of the report of the Assistant Collector 1st Grade would go on to show that there was no such recommendation against the private respondent No.4. Even in the present case also nothing has been placed on record in the form of demarcation report which could helpful to the petitioner.

Keeping in view the overall discussion, this Court is of the opinion that as per the settled law, this Court is not to go into the merits of the candidates, as the authorities below have followed the procedure prescribed and there is no perversity in the order of the Collector. Accordingly, there is no merit in the present writ petition and the same is dismissed in limine.

SEPTEMBER 17, 2018
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No