

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

LPA No.1254 of 2016 (O&M)

Date of Decision: 16.08.2018

Bahadur Singh

...Appellant

VS.

Financial Commissioner (Revenue), Punjab & Ors. ... Respondents

**Coram : Hon'ble Mr.Justice Surya Kant
Hon'ble Mr.Justice Sudip Ahluwalia**

Present: Mr. Sushil Saini, Advocate for the appellant

Mr. Rajesh Bhardwaj, Sr.DAG Punjab

Mr. Ravi Malhotra, Advocate for respondent No.5

SURYA KANT J. (Oral)

(1) This Letters Patent Appeal assails the order dated 26.04.2016 whereby learned Single Judge upheld the order of Financial Commissioner, Punjab dated 20.11.2015 and has restored appointment of 5th respondent as Lamberdar of Village Mehtabpur, Tehsil Mukerian, District Hoshiarpur.

(2) The appointment of Lamberdar is made by the District Collector on comparative merit which is to be assessed in terms of the guidelines/criteria evolved under the Punjab Land Revenue Act, 1887.

(3) The Collector, Hoshiarpur having found that the appellant was in unauthorized possession of the Wakf land, held the 5th respondent more suitable and consequently appointed him as Lamberdar vide order dated 20.09.2011. In appeal under Section 13 of the Punjab Land Revenue Act, the Commissioner, Jalandhar Division, Jalandhar vide order dated 20.03.2013 reversed the order of the District Collector and remanded the case for afresh adjudication of the issue as to whether or not the appellant was in

unauthorized cultivating possession of the Wakf land? The 5th respondent

challenged the order of Commissioner in further appeal before the Financial Commissioner, Punjab who vide order dated 20.11.2015 allowed the appeal and set aside the order of Commissioner, Jalandhar Division on the sole ground that *“the choice of District Collector is final and should not be disturbed unless there is something significantly wrong or irregular”*.

(4) Before concluding so, the Financial Commissioner did notice the contention raised on behalf of the appellant that he is not in possession of the Wakf Board land as the said land was in fact in possession of Smt. Bishran. However, no finding returned by the Financial Commissioner on this issue.

(5) Learned Single Judge has also viewed that the choice made by the District Collector should ordinarily be accepted, hence the appointment of 5th respondent does not call for any interference.

(6) We have heard learned counsel for the parties and gone through the record.

(7) There can indeed be no quarrel with the settled proposition that the choice of District Collector in the matter of appointment of a Lamberdar should be accepted unless the conclusion so drawn is tainted with any perverse finding.

(8) It is not in dispute that in the instant case, the appellant was declared unsuitable only on the ground that he is in possession of the Wakf land. There is no gainsaying that if the appellant is in unauthorized possession of the Gram Panchayat or Wakf land, it would be a valid ground to disqualify him for the post of Lamberdar. However, there ought to be a categorical finding of fact that he is actually in unauthorized possession of such land. Unfortunately, no such categorical finding has come forth either in

the order of Collector or by the Financial Commissioner in his order dated 20.11.2015. We are thus of the view that it is imperative upon the Financial Commissioner, Punjab to call for the records and, if need be, seek a report from the Gram Panchayat and then determine whether or not the appellant is in unauthorized possession of the Wakf/Gram Panchayat land. The other consequences will depend upon the said finding.

(9) For the reasons afore-stated, the appeal is allowed in part; the order under appeal dated 26.04.2016 of the learned Single Judge as well as the order dated 20.11.2015 passed by Financial Commissioner, Punjab are set aside and the matter is remitted to the Financial Commissioner, Punjab to decide 5th respondent's appeal afresh with specific reference to the allegations whether or not the appellant is in unauthorized possession of the Wakf/Gram Panchayat land.

(10) As noticed above, the Financial Commissioner shall be at liberty to take additional evidence for the said purpose.

(11) Let the appeal be decided afresh within a period of four months from the date of receipt of certified copy of this order. Till such time the proceedings are concluded by the authorities, the 5th respondent will continue to perform the duties of Lamberdar.

(12) Parties are directed to appear before the Financial Commissioner, Punjab on 05.09.2018.

(Surya Kant)
Judge

16.08.2018
vishal shonkar

(Sudip Ahluwalia)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes
No