

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

229

Civil Writ Petition No.7928 of 2017

Date of Decision: August 29th, 2019

Om Parkash

...Petitioner

Versus

The State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

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

Mr. Manish Dadwal, Assistant Advocate General, Haryana.

Mr. Vijay Singh Kajla, Advocate
for respondent No.6.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court challenging the order dated 03.03.2015 (Annexure P-5) passed by the Collector, Hisar, order dated 04.08.2016 (Annexure P-6) passed by the Commissioner, Hisar Division, Hisar and order dated 20.03.2017 (Annexure P-7) passed by the Financial Commissioner, Haryana.

2. It is the contention of learned counsel for the petitioner that the report on which reliance has been placed by the Collector for holding that the petitioner is in unauthorized possession of Khasra No.219 of *shamlat* land which was the ownership of the Gram Panchayat is dated 08.01.2015 (Annexure P-4), which is the report of the Sub Divisional Officer (Civil)-cum-Assistant Collector Ist Grade, Hisar. He contends that the said report shows that one Shri Karambir, who is admittedly the nephew of respondent No.6-Jagdish Chander, is in possession of the Gram Panchayat land. He contends that nothing has come on record except for the bald statements of some persons, who alleged that the petitioner had handed over

the possession of the said khasra number to Karambir for saving his lambardari. His submission is that as per the remand order dated 21.05.2013 passed by the Financial Commissioner, what was required to be seen is whether the petitioner is ineligible for appointment to the post of Lambardar on the date of his appointment i.e. 10.05.2011 (Annexure P-1). He contends that the relevant date for taking into consideration the eligibility of the petitioner for appointment to the post of Lambardar would be the said date. Even the report dated 08.01.2015 (Annexure P-4), which has been submitted by the Sub Divisional Officer (Civil)-cum-Assistant Collector Ist Grade, Hisar, does not indicate that the petitioner was in unauthorised possession of any Gram Panchayat land prior to the date of his appointment as Lambardar. He, thus, contends that the subsequent orders which have been passed by the authorities, which are impugned by the petitioner i.e. order dated 03.03.2015 (Annexure P-5) of the Collector, Hisar, order dated 04.08.2016 (Annexure P-6) of the Commissioner, Hisar Division, Hisar and order dated 20.03.2017 (Annexure P-7) of the Financial Commissioner, Haryana, have been passed proceeding on a wrong assumption and presumption of the petitioner being in illegal possession of land. He, thus, contends that the impugned orders deserve to be set aside.

3. On the other hand, counsel for the State submits that the demarcation report, on which reliance has been placed by the Collector and other authorities i.e. 08.01.2015, clearly gives a finding that the petitioner was in unauthorized possession of Khasra No.219 and to save his lambardari, he had handed over possession to Karambir. His contention is that the report of the Sub Divisional Officer (Civil), being on proper appreciation of the statements of the persons present on the spot, cannot be

faulted with. He, however, could not dispute the fact that there is nothing on the record which would indicate that the petitioner was in unauthorized possession of any Gram Panchayat land prior to 10.05.2011, the date of his appointment as Lambardar.

4. Counsel for respondent No.6 has also asserted on the basis of the statements of the persons, who were present on the spot and as recorded by the Naib Tehsildar, Hisar, on 24.12.2014 (Annexure R-6/1) that petitioner as well as his father were in unauthorized possession of Khasra No.219 and had handed over the possession to Karambir by taking an amount of ₹2,50,000/- from him. Counsel for the respondent is also placing reliance upon the demarcation report dated 08.09.2011 (Annexure P-8). He on the basis of these reports, submits that the petitioner had always been in unauthorized possession of Khasra No.219. He, thus, contends that the orders, as have been passed by the authorities starting from the Collector to the Financial Commissioner, deserve to be upheld as the same are based upon demarcation report. He further contends that the Financial Commissioner on 21.05.2013 had remanded the case to the Collector, Hisar, not only on the question of finding out the fact as to whether the petitioner was in unauthorized possession of the land or not but also to assess the comparative merit of the candidates and then take a decision afresh. He, thus, contends that there is no merit in the present writ petition and the same deserves to be dismissed.

5. I have considered the submissions made by the counsel for the parties and with their assistance, have gone through the records of the case.

6. There can be no dispute that the relevant date for considering eligibility of a candidate for appointment to the post of Lambardar is the

date on which such appointment is made for the first time by the Collector. In the present case, the date of first appointment of the Lambardar (Scheduled Castes category) of Village Shahpur, Tehsil and District Hisar, by the Collector, Hisar, is admittedly 10.05.2011 (Annexure P-1), when petitioner was appointed. This is the date, which is relevant for considering the qualification and disqualification of the candidates.

7. It is admitted between the parties that there is no evidence/report on record which would indicate that the petitioner was in unauthorized possession of any Gram Panchayat land prior to his date of appointment as Lambardar. The first report which has cropped up and has been referred to by the counsel for respondent No.6 is dated 08.09.2011 (Annexure P-8). Perusal of the said report would also indicate that there were conflicting statements given by the persons, who were present on the spot. One set indicating that the plot was in possession of Om Parkash and/or Ram Sarup, who is the petitioner and his father. There is a statement of one Karambir, who is asserting that he is actually in possession of the said plot. In the light of this report, which although is subsequent to the date of appointment of the petitioner as Lambardar i.e. 10.05.2011, would not be in any case having any impact on the appointment of the petitioner as Lambardar as on the relevant date, there was nothing on the record to indicate that he was in unauthorized possession of any Gram Panchayat/Government land. The said report is not clear and nor is it categorically held that the petitioner was in unauthorized possession of Khasra No.219. The finding is that on Plot No.27, nobody was named in unauthorized possession of any piece of land except for the claim on the part of Karambir, who is the nephew of respondent No.6, that he is in

possession of plot No.27 in Khasra No.219.

8. If that be so, petitioner cannot be said to be disqualified for appointment to the post of Lambardar.

9. The contention of learned counsel for respondent No.6 to the extent of remand of the case vide order dated 21.05.2013 by the Financial Commissioner being not only restricted to verification of alleged unauthorized possession of the petitioner but to assess the comparative merit of the candidates as well, may be correct but perusal of the order dated 03.03.2015 (Annexure P-5) passed by the Collector would show that the Collector had proceeded to rely upon the report dated 08.01.2015 (Annexure P-4) of Sub Divisional Officer (Civil), Hisar, to hold the petitioner ineligible for appointment to the post of Lambardar. Rest of the merits of the petitioner have not been taken into consideration because he was held to be a person ineligible for consideration for appointment to the post of Lambardar. Even taking the contention of counsel for respondent No.6 to be correct, the mandate of the order passed by the Financial Commissioner has not been fully complied with as Collector, Hisar, has proceeded to assess the merit of respondent No.6 vis-a-vis another candidate namely Omkar, who has been found to be unqualified because of his qualification being less than 8th class, which is the minimum qualification prescribed. The impugned orders, thus, cannot sustain.

10. In view of the above, the writ petition is allowed.

11. The orders impugned dated 03.03.2015 (Annexure P-5) passed by the Collector, Hisar, order dated 04.08.2016 (Annexure P-6) passed by the Commissioner, Hisar Division, Hisar and order dated 20.03.2017 (Annexure P-7) passed by the Financial Commissioner, Haryana,

are set aside.

12. The matter is remanded back to the Collector, Hisar, for fresh decision on merits by assessing the comparative merit of the petitioner and respondent No.6.

13. Parties are directed to appear before Collector, Hisar, on **16.09.2019**.

14. Let the Collector, Hisar, proceed to take a final decision in the matter within a period of three months from date of appearance of the parties keeping in view the fact that the matter is an old one and pending since the year 2011.

August 29th, 2019
Puneet

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No