IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

LPA No.401 of 2017(O&M)
Date of decision: 05.09.2019

Hasmat Khan

… Appellant

Versus

State of Haryana and others

… Respondents

CORAM: HON'BLE MR. JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

Present: Mr. Jamshed Ahmed, Advocate, for the appellant.
Mr. Deepak Balyan, Additional Advocate General, Haryana.
Mr. Ashwani Bakshi, Advocate, for respondent No.4.
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ARUN PALLI, J.

This is an intra-court appeal under Clause X of the Letters Patent against an order and judgment dated 14.02.2017, rendered by the learned Single Judge, vide which the writ petition preferred by the appellant assailing the order dated 01.09.2014 passed by the Financial Commissioner, whereby appointment of respondent No.4 – Sudhir Kumar as Lambardar was affirmed, has since been dismissed.

The facts that are required to be noticed are limited.

Owing to death of Ram Dass, the post of Nambardar in Village Karhera, Sub Tehsil Firozepur Jhirka, District Nuh, fell vacant. Pursuant to the process initiated by respondent-authorities to fill up the said post, many candidates including the appellant as also the private respondents submitted their claims. Upon evaluating the comparative merit of the candidates, the District Collector, Gurgaon, found respondent-Sudhir Kumar to be most suitable and vide order dated 01.03.2001, he was appointed as Lambardar. The said order was assailed in appeal and was set aside by the Commissioner vide order dated 17.01.2002, for there was nothing conclusive to show that respondent-Sudhir Kumar was even a resident of Village Karhera. The matter was accordingly remitted to the Collector for re-decision. Post remand, an inquiry was conducted by the Assistant Collector, who submitted a report dated 27.09.2002, whereupon vide order dated 30.01.2003, the Collector reiterated its decision as also the appointment of respondent No.4 as Lambardar. Even the said order was assailed in appeal and was set aside by the Commissioner vide order dated 20.10.2005, for the material on record showed that respondent-Sudhir Kumar was a resident of Janakpuri in Delhi. Once again, the matter was remitted to the District Collector to ascertain if respondent No.4 was indeed a resident of Village Karhera. Upon carrying out the necessary exercise, Naib Tehsildar, Nagina submitted a report dated 26.02.2007 to the District Collector, Mewat and clarified that although Sudhir Kumar owned a house in Village Karhera, but he was not a permanent resident of the said Village. However, despite that report, the District Collector, vide order dated 28.11.2007, reiterated the appointment of respondent-Sudhir Kumar as Lambardar. Appellant-Hasmat Khan challenged the said order in appeal before the Commissioner, who vide order dated 29.12.2008 set aside the same, as it was observed that despite two earlier orders passed by the Commissioner, whereby the matter was remitted to verify if respondent-Sudhir Kumar was a permanent resident of Village Karhera and despite the report dated 26.02.2007, he was appointed as Lambardar. For there existed a doubt, if respondent No.4 was actually a permanent resident of Village Karhera, the matter was remitted and S.D.O. (Civil), Ferozepur Jhirka, was appointed as an inquiry officer and to visit the spot himself and conduct an open inquiry, whereupon a speaking order was required to be passed by the District Collector. However, being aggrieved against the said order, respondent-Sudhir Kumar filed a revision under Section 13(C) of the Punjab Land Revenue Act, 1887. Vide order dated 01.09.2014, the Financial Commissioner while recording a finding that respondent No.4 had a house and was permanent resident of village Karhera, set aside the order passed by the Commissioner dated 29.12.2008 and affirmed the appointment of respondent No.4 as Lambardar. Which is why, appellant-Hasmat Khan assailed the said order vide a writ petition referred to above, which has since been dismissed. Thus, this appeal.

We have heard learned counsel for the parties and perused the record.

Ex facie, the Financial Commissioner, as indicated above, upon a consideration of the matter concluded that respondent-Sudhir Kumar had a house in Village Karhera, and the electricity bills as also the electoral record showed that he was a permanent resident of the said Village:

> **"…I find that the petitioner have their house in Village Karhera, and electricity bills, his name recorded in the electoral record shows that he is a permanent resident of village Karhera. Accordingly, I accept the revision application and set aside the impugned orders dated 29.12.2008 passed by Commissioner Gurgaon Division Gurgaon."**

Likewise, even the learned Single Judge affirmed the said findings and concluded:

> **"On the contrary, respondent No.4 as per inquiry has been found to be the resident of Village as indicated above.**

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> **I do not find any illegality and perversity in the findings rendered by the Collector, much less, reiterated by the Financial Commissioner."**

However, upon an analysis of the record, we find that the Commissioner while passing the order dated 20.10.2005 and remitting the matter had observed that respondent-Sudhir Kumar was a resident of Janakpuri Delhi, and he even admitted that he had a house not only in Karhera but also in Nagina. Rather, he also conceded that his ration card, voter card and driving licence were issued on his house address at Nagina:

> **"After heard the arguments of both the counsels and perusal of the record available on the file I find that it is disclosed about the respondent Sudhir Kumar that he resides in Janakpur Delhi. Respondent Sudhir Kumar also admitted before me that his house is also in Karhera and he has also house in Nagina and he is also admitting that his ration card, voter card and driving licence were issued on the address of Nagina which is not cleared whether he resides in village karhera or in Nagina while the Numberdari is for the post in village Karhera, thus, the order of District Collector Gurgaon dated 30.01.2003 is illegal and the same is set aside and the case is remanded to District Collector Gurgaon with a direction that he considered the voter list, ration card and other documents and verified about the respondent Sudhir Kumar that where he is actually resides."**

Therefore, to ascertain the true position the matter was remitted to the District Collector with a direction to examine the records and decide afresh.

The matter was inquired into by the Naib Tehsildar, Nagina, and in his report dated 26.02.2007, submitted to the District Collector, he reported that although respondent-Sudhir Kumar had a residential house in Village Karhera, purchased by his father on 25.04.1967, but it was in occupation and possession of Ali Mohd. and Jaan Mohd sons of Ilyas. Further, respondent-Sudhir Kumar was not a permanent resident of village Karhera:

> **"… Sudhir Kumar having residential house in village Karhera which was purchased by his father vide sale deed No.64 dated 25.4.1967. Copy is attached. Seen the same.**
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> **Ali Mohd. And Jaan Mohd. Sons of Ilyas are residing in the above said house those verified this and having a Pakka Nohra, in which Sudhir Kumar stored his grain and mustard and a telephone is installed. Photocopy of bill is attached herewith.**
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> **2. Sudhir Kumar is not a permanent resident of village Karhera because he not resides in Karhera with his family and his name is not mentioned in voter list of village Karhera. He had a residential house in village Nagina also.**
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> **3. The name of Sudhir Kumar is mentioned in voter list of Gram Panchayat Nagina, Ward No.9 at the Sr. No.356. Copy is attached."**

However, despite the report dated 26.02.2007, referred to above, vide order dated dated 28.11.2007, the District Collector appointed respondent-Sudhir Kumar as Lambardar. But in an appeal preferred by appellant-Hasmat Khan, the Commissioner with a specific reference to the report dated 26.02.2007 set aside the order dated 28.11.2007 and remitted the matter directing SDO (Civil), Ferozepur to visit Village Karhera and conduct an open inquiry. But, as indicated above, the said order was set aside in revision by the Financial Commissioner, for he held that respondent No.4 was a permanent resident of Village Karhera, the finding that has even been affirmed by the learned Single Judge. Bt that as it may, for it all recedes to the background since a coordinate Bench while hearing this appeal had taken cognizance of the precise issue and to conclusively conclude: if respondent-Sudhir Kumar was indeed a resident of village Karhera or not, vide order dated 17.03.2017 required the appellant to file an affidavit, if he was willing to deposit the exemplary costs in case a fresh inquiry is ordered regarding respondent No.4 being a resident of the place where he was assigned the post of Nambardar. On a subsequent date, i.e. 17.07.2017, as the appellant furnished the affidavit, the Court passed the following order:

> **"On 17.03.2017, we had passed the following order:**
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> > **"Let an affidavit be filed by the appellant as to whether he is willing to deposit the exemplary costs in case a fresh inquiry is ordered to the SDM or SHO of the concerned area regarding respondent no.4 being a resident of the place where he has been assigned the post of Nambardar.**
> >
> > **Let needful be done well before the date fixed.**
> >
> > **List again on 28.03.2017."**
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> **Today an affidavit has been filed through CM No.2653-LPA of 2017 which is allowed. In para No.3 of the said affidavit, the appellant states that Sudhir Kumar does not resides in Village Karhera.**
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> **Notice of motion for 01.12.2017.**

In the meantime, we direct the SDM of the concerned area to verify the fact and file an affidavit as to whether respondent No.4-Sudhir Kumar is a resident of village Karhera or not. In case the information is received contrary to the contention of the appellant, the appellant shall be burdened with a costs of Rs.50,000/-."

In terms of the order referred to above, the Sub Divisional Magistrate, Ferozepur Jhirka, District Nuh, after carrying out the necessary exercise, furnished his affidavit dated 16.10.2017, which reads thus:

" Affidavit of Anish Yadav, IAS, Sub Divisional Magistrate, Ferozepur Jhirka District Nuh (Haryana).

That the above names deponent do hereby solemnly affirm and declare as under:

1. That an enquiry has been conducted on the spot at village Karhera Sub Tehsil Nagina Tehsil Ferozepur Jhirka District Nuh to ascertain whether respondent No.4- Sh. Suhir Kumar resides in village Karhera or not, in compliance of the orders passed by the Hon'ble Court in above said SLP on dated 17th July, 2017.

2. That during this enquiry, it was found that respondent No.4 – Sh. Sudhir Kumar does not reside in village Karhera. The people who were present at the spot told that Sh. Sudhir Kumar had been living in Delhi for last 25 years. Spot inspection report has been prepared separately and a photocopy of the same is attached (Mark-A).

3. That a photocopy of voter list of Electoral Roll – 2014 of 29-Tilak Nagar Assembly Constituency (Gen) NCT, Block-2 Ashok Nagar, Delhi was also produced at the spot in which the name of the above

respondent Sh. Sudhir Kumar is available at Sr. No.63. A photocopy of the same is attached (Mark-B).”

Apparently, respondent-Sudhir Kumar does not reside in village Karhera and in fact the people, who gathered at the spot, informed the S.D.M. that he was residing in Delhi for the past 25 years. Not just that, a photocopy of the Electoral Roll for Assembly Constituency (Gen) NCT, Block-2 Ashok Nagar, Delhi, was also produced, which reflected the name of Sudhir Kumar at Sr. No.63. Neither any counter affidavit has been filed on behalf of respondent No.4 nor the learned counsel appearing on his behalf disputes this position.

In the wake of the above, as also the report dated 26.02.2007, the findings recorded by the Financial Commissioner, as also the impugned order and judgment rendered by the learned Single Judge, are unsustainable. Accordingly, the appeal is allowed. The impugned order and judgment dated 14.02.2017, and the order passed by the Financial Commissioner dated 01.09.2014, are set aside. The matter is remitted to the Financial Commissioner for re-decision. And, in the wake of the position sketched out above, we deem it expedient to direct the Financial Commissioner to decide the matter and pass appropriate orders taking into account all relevant factors, as also that lis at hands lasted nearly two decades, within a period of one month from the receipt of certified copy of this order.

(Krishna Murari)
Chief Justice

(Arun Palli)
Judge

05.09.2019
Rajan

Whether speaking / reasoned: YES
Whether Reportable: NO