

CWP-15198-2020

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

CWP-15198-2020

Date of decision: 23.09.2020

Bhupinder Kumar

...Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present:- Mr. Vikram Singh, Advocate,
for the petitioner.

HARNARESH SINGH GILL, J.

Case is taken up for hearing through video conferencing.

Challenge in the present writ petition is to the order dated 27.08.2020 (Annexure P-7) passed by respondent No.1, whereby upon remand by this Court, the RORs filed by the petitioner, had been dismissed as having rendered infructuous.

It may be noticed that the petitioner had earlier filed CWP-5220-2018 challenging therein the orders dated 22.03.2011 passed by the Commissioner, Ambala Division, Ambala and dated 13.02.2017 passed by the Financial Commissioner, Haryana. The said writ petition was decided by this Court on 29.05.2018, when the following order was passed:

“The present petition has been filed for setting aside the orders dated 22.03.2011 (Annexure P-2) and 13.02.2017 (Annexure P-4) respectively.

2. The grievance raised is that the order passed by the Financial Commissioner, Haryana in a revision petition is a non-speaking order as it does not take into

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consideration the respective merits of the candidates and no reasons have been mentioned.

3. *The learned State counsel states that he has no objection if the said order is set aside and the matter is remanded back to the Financial Commissioner to decide the same afresh.*

4. *The order dated 13.02.2017 (Annexure P-4) is, thus, set aside and the matter is remitted to the Financial Commissioner, Haryana for deciding revision petition afresh after hearing the parties and by passing a speaking order.”*

Even before the petitioner did challenge the aforesaid order in the writ petition filed before this Court as referred to above, respondent No.5-Kulwinder Singh was appointed as Lambardar by the Collector, Yamuna Nagar, vide order dated 07.04.2016.

Learned counsel for the petitioner has vehemently contended that while passing the order impugned in the present writ petition, respondent No.1 has not taken into consideration the very fact that in CWP No.5220-2018, the petitioner had impleaded Kulwinder Singh as respondent No.5 and the petitioner had specifically mentioned his challenge to the order dated 07.04.2016 passed by the Collector, Yamuna Nagar, in the cause title as also the prayer clause of the said writ petition. This being the position, respondent No.1 must have returned an adjudication on the legal validity of the said order as the doctrine of merger came into play the very moment this Court passed the order dated 29.05.2018 in CWP-5220-2018.

Continuing his emphasis on the said contention, the learned counsel for the petitioner has made a similar submission in the present writ

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petition and justified him filing the present writ petition laying challenge to the order dated 07.04.2016 passed by the Collector, Yamuna Nagar.

I have heard the learned counsel for the petitioner and have also gone through the documents available on file.

Respondent No.1 while passing the order dated 27.08.2020 impugned in the present writ petition, has specifically noticed that the petitioner did not challenge the order dated 07.04.2016 passed by the Collector, Yamuna Nagar, appointing respondent No.5-Kulwinder Singh as Lambardar. In view of the said fact, the revision petitions were dismissed as having been rendered infructuous.

The challenge in the revision petitions before respondent No.1 was to the order passed by the Commissioner, Ambala, whereby appointment of the petitioner as Lambardar was set aside. The said order was passed upon a challenge laid to his appointment as Lambardar, by the father of respondent No.5. The order passed by the Commissioner, Ambala Division, Ambala, was upheld by the Financial Commissioner, Haryana, on 13.02.2017. Respondent No.5 was appointed as Lambardar during the pendency of the said RORs, vide order dated 07.04.2016 passed by the Collector, Yamuna Nagar. On a perusal of the order dated 13.02.2017 passed by respondent No.1, it seems that the petitioner did not bring to his notice the factum of appointment of respondent No.5 as Lambardar. The petitioner did challenge the said order in CWP-5220-2018, but this Court while deciding the said writ petition on 29.05.2018 did not enter any adjudication thereon. It was only upon remand that respondent No.1 while deciding the RORs filed by the petitioner had noticed the factum of

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appointment of respondent No.5 as Lambardar on 07.04.2016 by the Collector, Yamuna Nagar.

Even though respondent No.1 has not passed a speaking order in compliance with the directions contained in the order dated 29.05.2018, yet not passing of a speaking order will not make much difference. From the documents on record, it appears that at no point of time, during the pendency of the proceedings before the Financial Commissioner, there was any stay as regards the fresh appointment of Lambardar, which is why vide order dated 07.04.2016 the Collector, Yamuna Nagar, appointed respondent No.5 as appointed as Lambardar.

Apart from the above, in the proceedings culminating into the impugned order, there was a challenge to the removal of the petitioner from the post of Lambardar, and there was no challenge to any other fresh process initiated by the authorities for/in appointing any other person as Lambardar. Therefore, once a fresh Lambardar i.e. respondent No.5 stands appointed, the finding of respondent No.1 that RORs filed by the petitioner had been rendered infructuous, cannot be found fault with.

Of course, the petitioner reserving his liberty, can always lay a challenge to the order dated 07.04.2016 passed by the Collector, Yamuna Nagar, appointing respondent No.5 as Lambardar, in accordance with law.

The contention of the learned counsel for the petitioner that considering the doctrine of merger, the order passed by the Collector, Yamuna Nagar, on 07.04.2016 appointing respondent No.5 as Lambardar, would become a part of the order dated 29.05.2018 passed by this Court in CWP-5220-2018, the same having specifically been challenged therein, has

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no force. As noticed above, while passing the order dated 29.05.2018, this Court did not enter any adjudication as regards the challenge to the order dated 07.04.2016 aforesaid. Even a perusal of the order dated 29.05.2018 passed by this Court would show that the prayer of the petitioner for setting aside the order dated 22.03.2011 and 13.02.2017 passed by the Commissioner, Ambala Division, Ambala, and the Financial Commissioner, Haryana, had been noticed.

Thus, the doctrine of merger cannot be said to have come into play for more than one reason. Firstly, there is no adjudication to the order dated 07.04.2016 passed by the Collector, Yamuna Nagar, and secondly, the said order being an independent order cannot be said to be a part of the proceedings in the RORs decided by respondent No.1 vide the impugned order. It was/is open to the petitioner to lay challenge to the order dated 07.04.2016 before the authorities concerned, in accordance with law.

Even otherwise, entertaining the challenge to the order dated 07.04.2016 passed by the Collector, Yamuna Nagar, directly in the writ petition would amount to scuttling and bypassing the procedure provided in the Punjab Land Revenue Act, 1887 (as applicable to Haryana) and divesting the aggrieved party, of any remedy available thereunder.

In view of the above, finding no merit in the present petition, the same is dismissed.

23.09.2020

parveen kumar

(HARNARESH SINGH GILL)
JUDGE

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No