

CWP No. 12305 of 2016

Date of Decision: March 04, 2020

Gurdeep Singh

.....Petitioner

versus

Financial Commissioner Appeals Punjab, Chandigarh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. Sherry K. Singla, Advocate
for the petitioner

Ms. Samina Dhir, DAG Punjab

Mr. Amarjit Markan, Advocate
for respondent No. 4

Sudhir Mittal, J. (Oral)

On the death of the previous Lambardar process was initiated for appointment of a new Lambardar and after receipt of recommendations, Collector appointed the petitioner as Lambardar vide order dated 29.07.2009. Against the said order, an appeal was filed by respondent No. 4 which was allowed by the Commissioner vide order dated 13.04.2010 and the matter was remanded to the Collector for a fresh decision. Thereafter, the Collector again appointed the petitioner vide order dated 28.08.2012. Respondent No. 4 appealed against the said order and vide order dated 26.11.2013, once again the matter was remanded by the Commissioner. The order of remand was challenged by the petitioner by way of a revision petition but the same was dismissed by the Financial Commissioner vide order dated 15.01.2016.

The Commissioner remanded the case vide his order dated 26.11.2013 because respondent No. 4 had alleged that the petitioner was in unauthorized occupation of the panchayat land and was an accused in a criminal case. These findings have been upheld by the learned Financial Commissioner.

Learned counsel for the petitioner submits that the petitioner was honorably acquitted by the trial Court vide judgment dated 19.01.2013 against which no appeal was filed. Thus, the finding of the Commissioner as well as the Financial Commissioner that the petitioner was involved in a criminal case, was patently incorrect. He further submits that according to report dated 28.04.2011 (Annexure P-8) it is evident that the petitioner is not in unauthorized occupation of panchayat land. This report was on the record of the authorities below as well. Yet, the matter has been remanded. The impugned orders, thus, suffer from the vice of misreading and ignoring the evidence on record. The grounds on which the case has been remanded are non-existent and, thus, the writ petition deserves to succeed.

Learned counsel for respondent No. 4 submits that the position regarding involvement in a criminal case and being in unauthorized occupation of Panchayat land, is to be seen on the date on which the process of appointment of Lambardar was initiated. As on that date, the petitioner was in unauthorized occupation of Panchayat land as is evident from Jamabandis of the year 2001-02, 2006-07 and 2011-12 which are on record as Annexures R-4/9, R-4/10 and R-4/3, respectively. The judgment of acquittal dated 19.01.2013 also can not help the petitioner as acquittal has come after the process was initiated.

In rebuttal learned counsel for the petitioner has stated that order of the Commissioner is dated 26.11.2013 and on the said date, judgment of acquittal dated 19.01.2013 was in existence, therefore, order of the learned Commissioner is

erroneous.

The process of appointment of Lambardar commences with the issuance of Munadi inviting applications. The applications would be evaluated after the last date for submitting applications as mentioned in the Munadi. Thus, the qualification of an applicant is to be seen as on the last date of application. The order of the Collector appointing the petitioner as Lambardar is dated 29.07.2009 and the last date for submission of applications would be earlier to the said date. The Jamabandis for the year 2001-02 and 2006-07 show that the petitioner was in occupation of certain land owned by the Nagar Panchayat and, thus, as on last date of submission of applications the petitioner was in unauthorized occupation of the Panchayat land. Accordingly, he could not have been appointed as Lambardar by the Collector.

So far as the judgment of acquittal dated 19.01.2013 is concerned, if the matter is examined with reference to the last date of submission of applications, a criminal case was pending against the petitioner.

Accordingly, there is no infirmity in the orders of the Commissioner as well as the Financial Commissioner even though the exact same reasons have not been given therein.

The writ petition has no merit and the same is, accordingly, dismissed.

March 04, 2020

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[SUDHIR MITTAL]
JUDGE

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No