

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

**CWP No.16413 of 2020
Reserved on : 07.10.2020
Pronounced on : 13.10.2020**

Jatinder Singh

... Petitioner

Versus

Financial Commissioner (Appeals), Punjab and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr. Ankur Bansal, Advocate for the petitioner.

Mr. Shireesh Gupta, Sr. DAG, Punjab
for respondents No.1 to 3.

Mr. Vivek K. Thakur, Advocate
for the caveator/respondent No.4.

(The proceedings are being conducted through video
conferencing, as per instructions.)

G.S. Sandhawalia, J.

In the present writ petition filed under Articles 226/227 of the Constitution of India, the petitioner challenges the order dated 20.01.2020 (Annexure P-1) passed by the respondent No.1-Financial Commissioner (Appeals), whereby his appeal against the order dated 29.08.2017 (Annexure P-2) passed by the Commissioner, Jalandhar has been dismissed. Resultantly, the order passed by the Commissioner, wherein he had appointed respondent No.4-Surinder Singh as Lamberdar of village Fattu Dyinga, Tehsil and District Kapurthala, has been upheld.

The argument raised by Mr. Bansal, is specific to the fact that opportunity of hearing was not given to the petitioner by the Financial Commissioner, as he was not impleaded as a party in the appeal

filed by respondent No.4-Surinder Singh, against the order of the Collector dated 29.08.2017 (Annexure P-2), wherein the matter had been remanded for fresh proclamation for the post of Lamberdar. Resultantly, reliance was placed upon the findings recorded by the Commissioner, Jalandhar to hold out that he had wrongly come to the conclusion that respondent No.4 owned 80 kanals of land in the village, while placing reliance upon Annexure P-8, the Jamabandi to submit that he only owned 18 kanals 8½ marlas of land and, therefore, the petitioner had more land in his name to the tune of 96 kanals. It was further contended that it has wrongly been held by the Commissioner, Jalandhar that a criminal case bearing FIR No.70 dated 06.07.2009 under Sections 307, 323, 506, 148, 149 IPC and 25/27/54/59 of Arms Act, at Police Station Kotali, Kapurthala was pending against him, since the cancellation report had already been submitted on 04.08.2015, prior to the order passed by Commissioner. Therefore, his case had been wrongly ignored by the Commissioner, since he was not a party. It has further been submitted that the Collector had power to appoint Lamberdar, which had wrongly been usurped by the Commissioner. It being the settled principle that the Collector is the best person to appoint a Lamberdar, which was openly violated by passing the impugned order dated 29.08.2017 (Annexure P-2) and which had wrongly been upheld by the Financial Commissioner on 29.01.2020 (Annexure P-1).

The said arguments have been checkmated by Mr. Vivek K. Thakur, counsel for the caveator/respondent No.4, on the ground that the

order of remand dated 29.01.20016 (Annexure P-3) passed by the District Collector, Kapurthala, wherein directions had been given to issue fresh proclamation, in which observations had also been made that there is an FIR registered against the petitioner, had never been challenged by him and he had never been selected. He had not filed any appeal and, therefore, now has no locus standi as such to submit that the Commissioner had passed an illegal order appointing respondent No.4 as Lamberdar. The Financial Commissioner had thus rightly dismissed his appeal, though for different reasons, mainly on the ground that there were at least two criminal proceeding against the petitioner and though the matter may have been compromised, but when other candidates younger in age were available they should be appointed.

A perusal of the paper-book would go on to show that on the applications being invited, six persons had applied for the post. The Collector discussed the merits of three persons for the appointment to the post of Lamberdar of village Fattu DHINGA, in place of deceased Lamberdar Rattan Singh. The petitioner had one criminal case bearing FIR No.70 dated 06.07.2009 registered against him. Admittedly, the cancellation report prepared by the police, was accepted by the Judicial Magistrate 1st Class, Kapurthala on 04.08.2015 (Annexure P-4), before the order of the Collector.

It is not disputed that against the petitioner another case bearing FIR No.44 dated 13.05.2014 under Sections 452, 427, 148, 149, 323, 326, IPC was also registered at Police Station Fattu DHINGA,

Kapurthala. The same had been quashed by this Court in CRM-M-22400-2015 on 19.01.2016 (Annexure P-5), on the basis of compromise, while placing reliance upon the judgment of the Full Bench in **'Kulwinder Singh and others Vs. State of Punjab 2007 (3) RCR (Criminal) 1052.**

The reasoning given against respondent No.4 to reject his application was that his parental uncle Gian Singh was already working as a Lamberdar and had complaints against him that he did not go with the village people and, therefore, on account of such facts, the case was rejected of the said respondent. The third candidate Kuldip Singh had been fined by the Electricity Department to the tune of Rs.88,212/- and was stated to be in illegal possession of Panchayat land. The matter was, thus, remanded for fresh applications to get fresh proclamation from respective candidates.

The private respondent No.4 aggrieved by the same filed an appeal holding out that he was having 80 kanals of land (41 kanals land in village Fattu DHINGA and 39 kanals land in village Mehmadwal). He was younger and had been wrongly ignored on the conduct of his uncle, which was not a valid reason as such to reject his case. On the other hand, the petitioner chose to accept the rejection and was satisfied with the order of the Collector.

During the pendency of the proceedings, respondent No.2- Kuldip Singh was impleaded before the Commissioner and it was the specific case of the counsel for respondent No.4 before the

Commissioner, the said person had not filed any appeal against the order of the Collector, Kapurthala and had no right to contest the proceedings, as would be the case of the petitioner. The case of Kuldip Singh was again rejected on the ground that he had been fined by the PSPCL and was also in illegal possession of Panchayat land. The Commissioner rightly set aside the findings of the Collector that on account of the unsatisfactory work of the parental uncle of respondent No.4, the said appellant-respondent No.4 could not be disqualified, as his character and capability could not be opined upon. Resultantly, a finding was recorded that he being owner of 80 kanals of land and 47 years of age was suitable for appointment as Lamberdar and there was no reason for the Commissioner to remand the case as no other contesting applicant had been left in the fray.

The said order having been passed in favour of respondent No.4 on 29.08.2017, the present petitioner woke up from his slumber and filed the revision petition on 12.02.2018 (Annexure P-7) before the Financial Commissioner stating that he was not given an opportunity to be heard and projected his merits and the fact that criminal proceedings had come to an end on account of a cancellation report being accepted by the Judicial Magistrate 1st Class, Kapurthala. It was then claimed that he was more younger and qualified etc.

The Financial Commissioner has though not opined upon the conduct of the petitioner on this account, but has come to the conclusion that involvement in criminal proceedings is enough to disqualify the

petitioner. Reliance was placed upon the judgment of this Court passed in '**Mahinder Pal Vs. The Financial Commissioner, Haryana and others**', 2013 (3) LAR 95 (P&H) that the endeavour of the revenue authorities should be to appoint a person of clean integrity and image.

Counsel for the petitioner has relied upon the judgment of this Court passed in '**Harpreet Kaur Vs. Financial Commissioner (Appeals-I), Punjab and others**', 2019 (1) PLR 243 to contend that in village litigation is common and resort to criminal litigation is taken to keep one set under pressure.

The said judgment would go on to show that the criminal proceedings which had been relied upon were initiated by the unsuccessful candidate Harpreet Kaur, under Sections 499 and 500 IPC against the private respondent, who had been appointed as Lamberdar of the village. It was in such circumstances, this Court had opined regarding the said fact and that the proceedings were of defamation and, therefore, the said judgment would not be of any help to the counsel for the petitioner, in the facts of the present case.

Reliance by the Financial Commissioner upon **Mahinder Pal's case (supra)** is justified in the facts and circumstances, since this Court in the said case had found that both the parties had criminal case registered against them and, therefore, directions were issued to initiate proceedings for appointment of Lamberdar of clean image.

In the present case, the petitioner chose not to agitate for his rights and had never filed any appeal before the Commissioner. Once he

accepted the order of the Collector, he cannot now turn around and submit that he was to be given an opportunity to be heard on merits and contest the case against the private respondent No.4. His conduct has been noticed to the extent that after the order had been passed by the Commissioner, he chose to initiate the proceedings before the Financial Commissioner at the belated stage on 12.02.2018. Thus, he now cannot contend that the matter should be remanded for inviting fresh applications, so that he can also contest on merits, once the Commissioner noticed that out of the three persons only one was left in the race, who had appealed against the order of the Collector.

Accordingly, there is no apparent error and irregularity in the orders passed by the Financial Commissioner and the Commissioner in appointing respondent No.4 as Lamberdar of village Fattu Dzinga, District Kapurthala. The present writ petition is, accordingly, dismissed in limine.

13.10.2020
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes
Whether Reportable:	Yes