

In the High Court of Punjab and Haryana at Chandigarh

1. **CWP No. 14867 of 2015 (O&M)**
Reserved on: 23.8.2022
Date of Decision: 27.9.2022

Gram Panchayat Palli UchiPetitioner

Versus

Director Rural Development and Panchayats,Respondents
Punjab and another

2. **LPA No. 734 of 2014 (O&M)**

Gardawar SinghPetitioner

Versus

The Financial Commissioner, Appeals-I,Respondents
Punjab and others

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE N.S.SHEKHAWAT

Present: Mr. Hitesh Sood, Advocate for the petitioner
(in CWP No. 14867-2015).

Mr. Ashish Aggarwal, Senior Advocate with
Ms. Aashima Aggarwal, Advocate
for the appellant (in LPA-734-2014).

Mr. Maninder Singh, DAG, Punjab.

Ms. Shivani Jaglan, Advocate
for respondent No. 2 (in CWP-14867-2015).

Mr. Sarju Puri, Advocate
for respondent No. 4 (in LPA-734-2014).

SURESHWAR THAKUR, J.

1. This order shall dispose of LPA No. 734 of 2014, and, CWP
No. 14867 of 2015. LPA No. 734-2014 is instituted by Gardawar Singh
against the order dated 3.4.2014, as made by the learned Single Judge,

whereas CWP-14867-2015 is instituted by Gram Panchayat, Palli Uchi, against the verdict, as made on 28.1.2015 by the Director Land Records, Punjab, hence nullifying the consolidation proceedings, which occurred more than 40 years back. Since the Kanungo concerned, had declared Balram Singh to be an encroacher, upon the panchayat land, rather on the basis of the apposite consolidation operation. Therefore, when may be to some extent the above made order, upon its becoming quashed, may adversely affect the candidature of Balram Singh, thus, CWP-14867-2015, is also required to be decided along with LPA (supra).

2. For brevity the facts are being taken from LPA No. 734 of 2014.

3. The facts relevant for deciding LPA No. 734 of 2014, are that owing to demise of Lambardar Joginder Singh, a vacancy of Lambardar occurred, of village Palli Uchi, Tehsil, and, District Nawanshahr. The applications from the aspirants concerned, were invited, and, were also received. From the amongst applicants, only eight candidates appeared before Tehsildar, Nawanshar, and, the latter recommended the name of Balram Singh to the SDM, Nawanshahr. However, only six candidates appeared before the SDM, Nawanshahr, but one candidate withdrew in favour of Gardawar Singh, whereas, the remaining candidates did not make their appearances. After making a comparative evaluation(s) of the suitability(ies) of the aspirants to the vacant post of Lambardar, the SDM Nawanshahr, recommended the name of Gardawar Singh, and, forwarded the case to the District Collector, Nawanshahr, who however, yet vide order dated 20.12.2006, appointed Balram Singh as Lambardar of village Palli Uchi. In consequence, Gardawar Singh challenged the order of 20.12.2006,

before the Commissioner, Jalandhar Division, Jalandhar. Vide order dated 18.6.2007, as carried in Annexure P-2 (in LPA-734-2014), the Commissioner, Jalandhar Division, Jalandhar, after accepting the appeal, filed by Gardawar Singh, proceeded to set aside the order of the District Collector, Nawanshahr.

4. Balram Singh became aggrieved from the order, as carried in Annexure P-2 (in LPA-734-2014), and, through his filing a revision before the Financial Commissioner (Co-operation), Punjab, at Chandigarh, he made a challenge thereto. However, through Annexure P-4, the Financial Commissioner (Appeals), dismissed the revision petition filed by Balram Singh. In consequence, Balram Singh, instituted before this Court, Civil Writ Petition No. 13133 of 2011. However, through a decision, as made thereons, on 3.4.2014, this Court allowed the afore writ petition, as preferred by Balram Singh, and, set aside the concurrent orders, as made by the Collector, besides by the Financial Commissioner concerned, both of whom, for no valid reasons, were declared to unsettle a well reasoned order, as made by the Collector concerned. Aggrieved Gardawar Singh has against the decision, as made by the learned Single Bench, hence instituted the instant Letters Patent Appeal.

Relevant Rules relating to appointment of a Lambardar

5. Rule 15 of the Punjab Land Revenue Rules, which becomes extracted hereinafter, detail the parameters to be borne in mind by the authorities concerned, in theirs considering the competing claims of the aspirants qua the post of Lambardar.

“Matters to be considered in first appointments.-

In all first appointments of headman, regard shall be had among other matters to -

- (a) his hereditary claims ;*
- (b) the property in the estate possessed by the candidate to secure the recovery of land-revenue;*
- (c) services rendered to the State by himself or by his family ;*
- (d) his personal influence, character, ability and freedom from indebtedness;*
- (e) the strength and importance of the community from which selection of a headmen is to be made ;*
- (f) services rendered by himself or by his family in the national movements to secure freedom of India.”*

6. Though, therein there is no mention of the aspirants possessing any educational qualifications, but yet the omission therein qua the requirement of any educational qualifications (supra), being possessed by the aspirant concerned, cannot well empower any selectee, who does not possess adequate educational qualifications, given especially in modern times, when there is a concomitant increase of literacy amongst the inhabitants of all mohals concerned, to, to the optimal level perform the duties of the responsible post of Lambardar. The reason becomes comprised in the factum, that with the increase in the number of legislations, it is but an imperative requirement for a Lambardar, to obviously hold suitable educational qualifications, hence for his becoming aware of the latest Legislative Enactments, as made respectively by the Union or the State Legislatures concerned. Necessarily, his awareness would ensue only on his being suitably educated, as then he would become ably empowered to render the most suitable assistant services to the authorities concerned, besides to the inhabitants concerned, which but he is required to purvey, as and when he becomes solicited to render them to all concerned.

Recommendations of the Tehsildar

7. The Tehsildar, Nawanshahr, who had recommended the name of Balram Singh for appointment to the honorary post of Lambardar, had detailed therein, the comparative suitabilities of the aspirants but with respect to Balram Singh, he had mentioned therein, that he belongs to the Jat Sikh community, and, owns landed property, besides that he is a matriculate, and, can read, and, write Punjabi, Hindi, and, English languages. However, though even with respect to Gardawar Singh, he had mentioned that he was unanimously elected as Sarpanch. The Tehsildar also concluded that since Gardawar Singh did not appear before him, as he was in a foreign country at the relevant stage. He has also detailed therein, that since the passport of Gardawar Singh, became appended in proof of his residing in a foreign country. Therefore, he concluded, that the residents of the village would face difficulty in the performance of duties of a Lambardar by Gardawar Singh, as and when his assistances are required by the villagers. Thus, may be his absence at that stage, in the village, may work as a deterrent against Gardawar Singh, in his performing the duties of a Lambardar. In consequence, the Collector proceeded to appoint Balram Singh as Lambardar of village Palli Uchi, Tehsil, and, District Nawanshahr.

Proceedings in appeal

8. Gardawar Singh became aggrieved from the appointment of Balram Singh as a Lambardar, and, instituted an appeal before the Commissioner, Jalandhar Division, Jalandhar. The latter, through Annexure P-2, set aside the appointment of Balram Singh as a Lambardar. The reasons which prevailed, upon the Commissioner concerned, became grounded in the factum, that Gardawar Singh owns more landed property in

the village, and, is more popular, besides is more financially sound. Thus, given his contribution to social activities hence commensurate weightage was to be assigned thereto.

9. However, the above reason, as assigned by the Commissioner for setting aside the appointment of Balram Singh, by the Collector, does not yet appear to be a strong, and, justifiable reason, for validating the appointment of Gardawar Singh, as Lambardar of the village concerned, nor the dismissal order, as made by the Financial Commissioner concerned, upon the revision, preferred by Balram Singh, appears to be fully legally justifiable. The reason being that even if within the ambit of the relevant qualifications, as become detailed in the relevant rules (supra), Gardawar Singh, may have as a Sarpanch hence rendered community services, and, also may within the ambit of the rules (supra), rather possess all the requisite resources to enable him to perform the honorary duties of a Lambardar. However, since the Tehsildar concerned, had yet detailed in his report, that even at the stage when he was to make his personal appearances before him, yet then too, Gardawar Singh did not appear personally before him. The reason assigned by the Tehsildar for the non-appearance, at the relevant stage, before him, of Gardawar Singh becomes comprised in the factum of his being a non-resident Indian, and, his taken to normally reside in a foreign country. In respect thereof, he had also made a reference to the passport of Gardawar Singh, which became appended with the relevant report forwarded to the SDM, Nawanshahr.

10. However, none of the authorities concerned, appear to either delve into the relevance of the above trite factum, nor did they make any adjudication in respect thereof, whereas, it comprised a relevant fact, in

relation to the most optimal performance of duties of a Lambardar by Gardawar Singh. The importance of the aspirant being available in the village concerned, or at least in the vicinity concerned, for hence his becoming regularly accessed by the local villagers or by the authorities concerned, as and when need arises, but cannot be at all undermined. The reason being that, the above accessings, are of the gravest relevance in determining the suitability of any aspirant concerned. Necessarily, in case the aspirant concerned, is rather an NRI or is taken to normally reside in a foreign land. Thus, the potentiality of his being regularly accessed by the local villagers, or by the authorities concerned, does become direly affected. Moreover, the aspirant concerned, also becomes deterred from optimally performing the duties appertaining to the honorary post of a Lambardar.

Conclusion

11. Therefore, in the appellate authority concerned, besides in the Financial Commissioner concerned, not bearing in mind either the relevance, nor the utmost importance of the above prime fact, thus, irrespective of the same not occurring in the relevant rules, rather theirs only considering the earlier contributions of Gardawar Singh as Sarpanch in the panchayat concerned, as the predominant parameter, to appoint him as a Lambardar, rather to the considered mind of this Court, has resulted in the authorities concerned, rather committing a grave fallacy. Therefore, the orders, as made by the appellate authority concerned, besides by the revisional authority concerned, do require interference. Moreover, also the verdict, as challenged in the instant LPA, and, as passed by the learned Single Judge of this Court, does also require its being invalidated by this Court.

Candidature of Balram Singh (CWP No. 14867 of 2015)

12. Balram Singh though, is a matriculate, and, also belongs to the Jat Sikh community, besides owns sufficient land. Moreover, though he has also remained a member of the Panchayat. However, the imminent effect of his, at the relevant stage, as apparent on a reading of the order, as made by the Commissioner, Jalandhar Division, Jalandhar, hence unfolding qua the Kanungo reporting his making encroachments, on the panchayat land, also does assume some relevance. Nonetheless, it has to be determined, whether the encroachments, if any, made by Balram Singh on the Panchayat land, and, that too, when the above fact became revealed in the report of the Kanungo concerned, rather was a truthful or a valid fact, besides it has to be also determined whether it then held any relevance. In that regard, it is necessary to bear in mind the order, made on 28.1.2015, by the Director, Land Records. The said order is challenged in Civil Writ Petition No. 14867 of 2015, titled Gram Panchayat Palli Uchi versus Director Rural Development and Panchayats, Punjab and another. Therefore CWP (supra) also requires its being adjudicated along with the instant LPA. The report of the Kanungo about Balram Singh making encroachments on panchayat lands, though occurred at a stage, when the authorities concerned were considering the respective suitabilities of the aspirants concerned. Thus, at the relevant stage, the above report did assume grave relevance, and, importance. The reason being that if an encroacher, on the panchayat land, is barred under the relevant statute to claim eligibility for contesting elections to any office in the panchayat concerned. Resultantly also the responsible post of the village headman, would also require any aspirant

thereto, to, at the relevant stage, being not an encroacher upon the panchayat land. Though, in the year 2007, Balram Singh succeeded in establishing before the Director, Land Records, that, qua the relevant tract of the land, there was some mistake during the consolidation operations, in the same not becoming allotted to him. It the very same contentious tract of the land in respect whereof, the Kanungo reported, that he was an encroacher.

Relevance of the report of Kanungo

13. Moreover, though through Annexure P-2 (in CWP-14867-2015), the requisite corrections were ordered to be made, but subject to the hereafter conclusion, since at the relevant stage of comparative evaluations being made qua the suitabilities of the aspirants concerned, each of them was required to be completely taint free. Resultantly, when at the relevant stage, one Balram Singh was an encroacher, upon the panchayat land. Thus, irrespective of the Director, Land Records, nullifying the report of the Kanungo concerned, rather through an order, as made on 28.1.2015. Nonetheless yet the above order cannot be assigned retrospective or *ex post facto* effect, but may assumingly hold only prospective effect. If so, at the relevant stage, the report of the Kanungo was truthful, unless it was then established to be untruthful, through an order negating it, being then made by the Director, Land Records, Punjab. However, then or in contemporaneity to the report of encroachments, over the panchayat land, being made by the Kanungo against Balram Singh, the Director, Land Records, Punjab, rather had not negated the same. Thus, the candidature of Balram Singh was not amenable for being accepted, moreso when, there is a reference in that regard in the order made by the Collector.

Reason for setting aside the impugned order in CWP (supra)

14. Be that as it may, the consolidation proceedings became admittedly concluded about more than 40 years ago. Therefore, the learned counsel for the petitioner argues, that though under Section 42 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (for short 'the Act'), provisions whereof become extracted hereinafter, there is an assignment of empowerment(s) to the Government, "to at any time", for the purpose of satisfying itself, as to the legality or propriety of any order, passed under the Act, call for examine the record of any case. Thus, the learned counsel for the petitioner argues, that since in CWP No. 14867 of 2015, instituted at the instance of Gram Panchayat Palli Uchi, a challenge is made to the order, as made by the Director, Land Records, hence accepting the motion of Balram Singh against mistakes in allotments of lands, being made to his predecessor in interest, during the course of consolidation operations being underway in the mohal concerned. The challenge is rested on the relevant motion, whereons it became made, rather being completely time barred, inasmuch as, even if no time is prescribed for the relevant purpose in Section 42 of the Act, yet then too the relevant motion can be caused only within a reasonable time. Therefore, he argues that since a period of 40 years cannot be concluded to be a reasonable period for the relevant purpose. Thus, he submits that the order, as challenged in CWP-14867-2015, is liable to be quashed, and, set aside. Resultantly, he argues that Balram Singh's candidature is not liable to be accepted.

42. Power of [State] Government to call for proceedings.- The [State] Government may at any time for the purpose of satisfying itself as to the legality or propriety of [any order

passed, scheme prepared or confirmed or repartition made by any officer under this Act], call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks fit:

Provided that no order or scheme or repartition shall be varied or reversed without giving the parties interested notice to appear and opportunity to be heard [except in cases where the State Government is satisfied that the proceedings have been vitiated by unlawful consideration.]

15. The learned counsel further argues, that a period of 40 years, since the conclusion of consolidation operations, is not a reasonable time, for re-opening of the consolidation proceedings, as, became completely concluded in the mohal concerned. In making the above submission, he has placed reliance on a judgment made by the Hon'ble Apex Court in case titled ***Gram Panchayat, Kakran versus Additional Director of Consolidation*** to which Civil Appeal No. 72221 of 1997 is assigned. The relevant para whereof becomes extracted hereinafter.

*“This, however, cannot be understood as enabling the party which is aggrieved by the scheme or by repartition to make an application under Section 42 after an unreasonably long lapse of time. Even where no period of limitation is prescribed, the party aggrieved is required to move the appropriate authority for relief within a reasonable time. In fact this Court in the case of *Gram Panchayat, Village Kanonda vs. Director, Consolidation of Holding* (1989 Suppl. (2) SCC 465) dealing with Rule 18 itself, said that when no limitation is prescribed for an application under Section 42 dealing with confirmation of the scheme, the application should be made within a reasonable time and this question will have to be decided on the facts of each case. In that case the delay of about 3 years and 8 months in filing an application under Section 42 by the Panchayat was held to be not unreasonable. In the present case, however, the delay is of 40 years. We have tried to ascertain from the 2nd respondent whether there is any explanation for this unreasonable and inordinate delay. But no satisfactory explanation appears to be there for this inordinate delay in making the application under Section 42. The only contention which has been urged before us by respondent No.2 relates to the application of Rule 18 and the period of*

limitation prescribed therein not being applicable where the challenge is to the consolidation scheme and repartition. But even if Rule 18 is not directly attracted, an application which made after such inordinate delay ought not to have been entertained. It is also contended by the 2nd respondent that the appellants have no locus standi to challenge the order of the Additional Director of Consolidation in a writ Petition because the land in question continued to remain in the name of the proprietary body. He drew our attention to Rule 16(ii) of the said Rules. Rule 16(ii), however, quite clearly provides that the management of such land shall be done by the Panchayat of the estate or estates concerned on behalf of the village proprietary party and the Panchayat shall have to utilise the income and the benefits of the estate or estates concerned. Even before Additional Director, the appellants were made a party-respondent. This contention, therefore, has no merit.”

16. This Court is bound to accept the above judgment. The reason for accepting the above judgment, becomes comprised in the factum, that the motion for the relevant purpose, was evidently made by Balram Singh with more than 40 years elapsing since the completion of consolidation operations. Therefore, obviously he could not, after more than 40 years since the complete conclusion of consolidation proceedings, make any motion for the relevant purpose, before the Director of Land Records. The contentious khasra number, though appears to be declared in the possession of the Gram Panchayat concerned. Thus, the Director, Land Records concerned, who drew the impugned order (Annexure P-2), has obviously but untenably reviewed the validity of the apposite order confirming the consolidation operation, and, that too after more than 40 years elapsing since the confirmation of the consolidation proceedings. Moreover, the Director, Land Records concerned, in making an order for corrections, on the basis of the principle of equality, inasmuch as, his adding onto the purported major portion of the land of Balram Singh rather the contentious khasra number, does appear, to be the makings of an untenable exercise in

about 40 years back. Though, on the above principle, the Director, Land Records concerned, assigned the contentious khasra number to the petitioner, but yet unless there was cogent evidence displaying, rather qua the major portion or the bulk of the land of Balram Singh, became not earlier added onto the contentious khasra number. Resultantly, then alone the purported principle of equality, or field numbers of the small tracts of lands of the land owners, being required to be consolidated with their major tracts of land, could be concluded to be earlier breached. Moreover also hence the Director, Land Records, may for the above breach (supra), being caused, may hence have made tenable corrections in the revenue records, which became completed about 40 years back, by the consolidation department concerned. However, there is neither any discussion about the above trite factum nor any evidence in respect thereof exists on records. Since there is no discussion about the above trite factum, consequently, the re-opening of confirmed consolidation proceedings after an elongated period of 40 years, but cannot be validated by this Court. Moreso when the phrase “even at any time”, as existing in Section 14 of the Act, is but a reasonable time, and, does not encompass any elongated period of 40 to 45 years. In consequence, the judgment, as relied upon by the learned counsel for the petitioner, rather works against the respondent, as such, the impugned order, as made by Director, Land Records, Punjab, on 28.1.2015, is quashed and set aside.

17. In consequence, one Balram Singh does become an encroacher, on the Panchayat land, therefore, he cannot be a suitable candidate to the post of Lambardar.

Conclusion

18. The result of the above discussion, is that, since both the candidates, namely Balram Singh, and, Gardawar Singh, may not be the best suitable persons for the honorary post of Lambardar of the village concerned, therefore, the respondents concerned, are directed to forthwith draw a fresh schedule for inviting applications to the post of Lambardar of village Palli Uchi, Tehsil, and, District Nawahshahr. Furthermore, they are also directed to, within three months hereafter, complete the process for making appointment to the post of village headman of village Gram Panchayat Palli Uchi.

Summarization of principles

19. (i) The suitability of an aspirant is to be gauged from the stand point of accessibility to all concerned, irrespective of the relevant rules not making speakings about the same.
- (ii) Educational qualification of an aspirant is the dire need in the modern age of literacy. Thus, proficiently educated persons are required to perform the responsible duty(ies) of a village Lambardar. The relevant rules not making the above requirement are but archaic, and, require an amendment to the above extent.
- (iii) To eliminate unemployment, the respondents concerned may contemplate to grant a suitable remuneration(s), to the holder of the post of village Lambardar. The respondents may make suitable amendments in the relevant rules.

- (iv) The provisions of Section 42 of the Act (supra) are to be resorted within a reasonable time.
- (v) Moreover, the completed consolidation operations are to be shown to be tainted with vices of fraud, misrepresentation or being irreverential to the principles relating to consolidation of small tracts of land with the major portion of the land owners.

Final order

20. With the afore observations, both LPA-734-2014, and, CWP-14867-2014, are allowed. Consequently, the verdict, as made by the learned Single Judge of this Court on 3.4.2014 (in LPA-734-2014), is quashed, and, set aside. In addition, the order, as made by the Director, Land Records, Punjab, on 28.1.2015 (in CWP-14867-2015), is also quashed, and, set aside.

21. No orders as to costs.

22. Copy of the verdict be forwarded to the Secretary, Panchayat, and, Rural Development, Government of Punjab, for necessary action being taken.

(SURESHWAR THAKUR)
JUDGE

(N.S.SHEKHAWAT)
JUDGE

September 27, 2022
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No