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

CWP-7630-2018

Date of decision : 10.03.2023

Rajinder Kaur

...Petitioner

Versus

Financial Commissioner (FCR), Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Aakash Singla, Advocate and
Ms. Vaishali Singla, Advocate for the petitioner.

Mr. Rohit Ahuja, DAG, Punjab
for respondent Nos.1 to 4.

Mr. Ashish Aggarwal, Sr. Advocate with
Mr. Nandan Jindal, Advocate and
Mr. Govind Chauhan, Advocate for respondent No.5.

VIKAS BAHL, J. (ORAL)

This is a Civil Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ, order or direction especially in the nature of certiorari praying for setting aside of the order dated 13.09.2017 (Annexure P-8) passed by the FCR, Punjab-respondent No.1, whereby order dated 14.08.2013 (Annexure P-4) and order dated 09.04.2015 (Annexure P-6) passed by the Collector and the Divisional Commissioner respectively, appointing the petitioner as Lambardar have been set aside and the matter has been remanded back to the Collector.

Learned counsel for the petitioner has submitted that the Financial Commissioner has, without considering the material documents on record and without following due procedure, by passing a cryptic order, set aside the order passed by the Collector and the Commissioner appointing the petitioner as Lambardar of Village Enna Bajwa and remanded the matter to the Collector. It is further submitted that a perusal of zimni order dated 15.05.2017 (reproduced at page 14 of the writ petition) would show that a report was stated to have been sent by the Naib Tehsildar regarding the residence of the present petitioner and the Financial Commissioner, not being satisfied with the same, had directed the Deputy Commissioner/District Collector, Sangrur to send a report on the aspect as to whether the present petitioner was a resident of Ghanaur Khurd or Enna Bajwa and adjourned the case to 17.07.2017. It is contended that no report was submitted by the Deputy Commissioner/District Collector, Sangrur and without waiting for the same, the impugned order has been passed remanding the matter to the Deputy Commissioner/District Collector. It is further contended that a report dated 22.06.2017 (Annexure P-16) was submitted by the Naib Tehsildar, Sherpur to the Sub Divisional Magistrate, Dhuri and as per the said report (Annexure P-16), after verifying all the facts, it was found that the present petitioner is residing at Village Enna Bajwa and that she used to visit the village of her in-laws occasionally and while preparing the said report, information from 150-200 people, including renowned people of Village, was also taken into account while ascertaining the residence

of the present petitioner and most people had stated that the petitioner was residing in her paternal village at Enna Bajwa of which the Lambardari, is in question. It is argued that even the Aadhaar Card and Voter Card were considered before arriving at the said conclusion. It is further argued that the Financial Commissioner neither waited for the report of the Deputy Commissioner/District Collector which was sought nor the report dated 22.06.2017 (Annexure P-16) in favour of the petitioner was taken into consideration by the Financial Commissioner before passing the remand order.

It is further argued that even the earlier report dated 27.03.2017 was in favour of the petitioner and in the said report also, there were observations by the Patwari, Ghanaur Khurd to the effect that the petitioner was residing in Village Enna Bajwa, Dhuri and that she sometimes used to visit her in-laws at Ghanaur Khurd, Tehsil Dhuri. Learned counsel for the petitioner has also referred to the document (Annexure P-9), order dated 27.11.2013 passed by a Coordinate Bench of this Court in CRM-M-38296-2013 (Annexure P-10) as well as report dated 13.02.2017 (Annexure P-11) from the Sub Divisional Magistrate, Dhuri which was also signed by the Collector and has stated that in pursuance of the complaint given by respondent No.5-Baldev Singh, inquiry was conducted on the aspect as to whether the documents submitted by the petitioner showing the residence to be of Village Enna Bajwa were forged or fabricated and in the said inquiry, it was found that the petitioner is a permanent resident of Village Enna Bajwa. It is argued

that the impugned order having been passed without taking into consideration all the relevant documents has caused serious prejudice to the case of the petitioner inasmuch as the petitioner was appointed as the Lambardar by the Collector and her appointment was upheld by the Commissioner and it is settled law that it is the Collector which is the appointing authority and only in case there is perversity or illegality in the order of the Collector that the same can be interfered with by the higher Revenue Authorities and the Financial Commissioner without observing that there is any illegality or perversity in the order of the Collector has remanded the matter to the Collector which would in effect result in denovo proceedings and would also result in setting aside the order of the Collector and the Commissioner which had been passed after considering the merits of the candidates. It is submitted that the petitioner is in every way qualified to be appointed as the Lambardar inasmuch as she was 45 years of age on the date of passing of the order by the Collector and was also 8th class pass and had land measuring 6 acres and was daughter of the deceased Lambardar and the Naib Tehsildar, Tehsildar and SDM had recommended the name of the petitioner for being appointed as the Lambardar. It is also submitted that in the said circumstances, the Financial Commissioner should have considered the entire matter and should have decided the same in accordance with law or in the alternative, as had been ordered on 15.05.2017, should have awaited the report from the Deputy Commissioner/District Collector with respect to the residential status of the petitioner and only after considering

the said report and other documents on record and also the other relevant factors, should have passed the final order. It is thus, prayed that the impugned order being cryptic and non-speaking deserves to be set aside. It is also prayed that the Financial Commissioner should decide the case afresh after taking into consideration all the relevant factors and documents.

On the other hand, learned Senior Counsel appearing on behalf of respondent No.5 has submitted that in the present case, the previous Lambardar i.e., Mahinder Singh had died on 31.03.2011 and the present petitioner had applied to be considered for the post of Lambardar vide application dated 14.11.2011 (Annexure P-1). It is further submitted that in the said application, the petitioner had claimed that she is a resident of Village Enna Bajwa, Tehsil Dhuri, District Sangrur and the said application was duly supported by a self-declaration letter which was in the form of an affidavit and in the said application, the petitioner had stated that her vote is entered in the Voter List of Village Enna Bajwa and learned Senior Counsel submits that the said affidavit, which was executed on 24.12.2011, was factually incorrect inasmuch as a perusal of Annexure R-5/2 (at page 96 of the paper book) would show that as per the information received by respondent No.5 from the Electoral Registration Officer under the RTI Act, the name of the petitioner was not entered in the Voter List of Village Enna Bajwa for the year 2011. Further reference has been made to page 87 of the paper book, wherein a chart which has been detailed by respondent No.5 has been highlighted in order to show

that the name of the petitioner was deleted from the Voter List of Village Ghanaur Khurd in July, 2012 and her name was deleted from the Ration card list on 13.07.2012 and the new ration card of the petitioner was prepared in Village Enna Bajwa on 17.07.2012 and it is contended that it is apparent that in the year 2011, the petitioner was not in the voter list of Village Enna Bajwa and thus, her statement in the affidavit to the said effect was incorrect. It is further submitted that the plea raised by the petitioner to the effect that she started residing in Village Enna Bajwa to take care of her mother was also incorrect inasmuch as a perusal of the Identity Card of the petitioner issued by the Election Commission of India (Annexure P-12) (at page 55 of the paper book) would show that the petitioner has been shown to be a resident of House No.284, Village Enna Bajwa, Tehsil Dhuri, District Sangrur whereas it has been specifically averred by respondent No.5 in para 13 of the written statement (at page 92 of the paper book) that the mother of the petitioner is residing with her nephew at House No.293 and not with the petitioner who even as per her own case, is a resident of House No.284. It is further submitted that House No.284 belongs to one Mazbi Sikh Family and thus, the petitioner is not residing in the said House bearing No.284. It is also submitted that a perusal of ration card (Annexure P-15) annexed by the petitioner herself, which is stated to have been issued on 17.07.2012, would also show that the petitioner is residing with her husband and two minor children and not with her mother as name of the mother of the petitioner is not mentioned in the said ration card and it is, thus,

submitted that the plea of the petitioner to the effect that she was looking after her mother is incorrect. Learned Senior Counsel for respondent No.5 has further referred to the averments made in para 13 of the written statement in order to state that the mother of the petitioner has a separate ration card.

Learned Senior Counsel for respondent No.5 contends that in fact, respondent No.5 is a better candidate than the petitioner inasmuch as respondent No.5 was 32 years of age on the date of passing of the order of Collector and is younger than the petitioner and is also more qualified inasmuch as he is 12th class pass whereas the petitioner is 8th class pass and thus, considering the totality of the facts and circumstances, it is respondent No.5 who should have been appointed as the Lambardar of the Village.

Learned Senior Counsel for respondent No.5 has also submitted that in fact, the petitioner is not readily available in the Village and is residing at her in-laws house in Village Ghanaur Khurd and even summons issued during the proceedings filed by the petitioner before the Commissioner as well as before the Financial Commissioner, were served upon the petitioner in Village Ghanaur Khurd and has referred to Annexure R-5/5 in the said regard. He has also disputed the report dated 19.07.2017 and has submitted that as per order dated 15.05.2017, report was called from the Deputy Commissioner/District Collector but no report has been submitted by the Deputy Commissioner/District Collector and report has been submitted by the Naib Tehsildar who had already

submitted a report earlier and the said report had been submitted on the basis of a call made by the Reader and has submitted that thus, the report dated 22.06.2017 (Annexure P-16) deserves to be ignored.

Learned counsel for the petitioner, in rebuttal, has refuted the abovesaid arguments made by learned Senior Counsel for respondent No.5.

This Court has heard learned counsel for the petitioner and learned Senior Counsel for respondent No.5 and has gone through the record.

It is not in dispute that the petitioner was appointed as the Lambardar by the Collector and the appeal filed by respondent No.5 was dismissed by the Commissioner and when the matter came before the Financial Commissioner, on 15.05.2017, the Financial Commissioner was pleased to pass the following order (as reproduced at page 14 of the Civil Writ Petition and not disputed by the respondents):-

“Report sent by Naib Tehsildar, Sherpur, regarding residence of Rajinder Kaur that whether she is resident of Ghanaur Khurd or Enna Bajwa, is not clear. Thus, clear report called from Deputy Commissioner/Distt. Collector Sangrur that whether respondent no.4 is resident of Ghanaur Khurd or Enna Bajwa. Case be adjourned for 17.7.2017 for arguments/further proceedings.”

A perusal of the above-reproduced order would show that the Financial Commissioner had thought it appropriate to direct the Deputy Commissioner/District Collector to submit a clear report as to whether the present petitioner (who was respondent No.4 before the Financial

Commissioner) was resident of Ghanaur Khurd or Enna Bajwa. It is not in dispute that neither any report from the Deputy Commissioner/District Collector has been submitted nor any reference regarding the same has been made in the impugned order dated 13.09.2017 and the matter has been remanded by the Financial Commissioner by passing a cryptic and a non-speaking order.

The arguments raised on behalf of the petitioner and respondent No.5, as well as the record referred to by both the counsel/Senior Counsel representing them, would show that substantial material has been produced by the petitioner as well as respondent No.5 in support of their respective claims. The said document, in addition to the report submitted by the Deputy Commissioner/District Collector, should be sufficient material for the Financial Commissioner to decide the case on merits and thus, keeping in view the abovesaid facts and circumstances, the present Civil Writ Petition is partly allowed with the following directions:-

- i) The order of the Financial Commissioner dated 13.09.2017 (Annexure P-8) being cryptic and non-speaking is set aside and the parties are directed to appear before the Financial Commissioner on 16.03.2023 at 11:00 AM.
- ii) It would be open to the petitioner as well as respondent No.5 herein to place on record all the documents in support of their respective claims within a period of two weeks from 16.03.2023. The said documents would be taken on record by the Financial

Commissioner.

- iii) The Financial Commissioner would call for a report from the Deputy Commissioner/District Collector, Sangrur in furtherance of order dated 15.05.2017 passed by the Financial Commissioner, which has been reproduced hereinabove.
- iv) Since the appointment of Lambardar in question is pending since 2011, thus, the Financial Commissioner is requested to decide the case as expeditiously as possible preferably within a period of six months from the date the parties appear before the Financial Commissioner.

It is made clear that this Court has not opined on the merits of the case and the Financial Commissioner would decide the case independently after considering the arguments raised by both the parties and the entire record, in accordance with law.

Needless to mention that the Financial Commissioner would consider the entire matter including the merits and demerits of both the candidates before passing a final order.

All the pending miscellaneous applications, if any, shall stand disposed of in view of the abovesaid order.

10.03.2023

Pawan

**(VIKAS BAHL)
JUDGE**

Whether speaking/reasoned:- **Yes/No**

Whether reportable:- **Yes/No**