

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

CWP-29680-2019 (O&M)

Date of Decision: 05.09.2023

Nirmal Singh @ Nirmal Dass

..... Petitioner

Versus

The Financial Commissioner (Appeal) and othersRespondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Liaqat Ali, Advocate, for the petitioner.

Mr. Arun William, Assistant Advocate General, Punjab.

Mr. Umesh Kumar Kanwar, Advocate, for respondent No.4.

Rajesh Bhardwaj, J.

CM-15013-CWP-2023

Allowed as prayed for. Annexures P-6 to P-8 are taken on record.

Main case

Prayer in the present petition is for quashing the order dated 15.07.2019 (Annexure P-3) passed by respondent No.1, whereby, the Numberdari case of the petitioner has been remanded back by respondent No.1 to respondent No.3 in spite of the fact that the petitioner has been duly recommended and appointed as Numberdar of village Bir Pind, Tehsil Nakodar, District Jalandhar.

Adumbrated facts of the case are that on the death of Chainchal Dass, earlier Numberdar of village Bir Pind, Tehsil Nakodar, District Jalandhar, post of SC Numberdar fell vacant and process for the appointment of new Numberdar was initiated. *Mushtari Munadi* was conducted in the village and in pursuance to the same, five applications were received within the stipulated period from the candidates, namely, Varinder Kumar, Kewal Krishan, Nirmal Singh, Gian Chand and Jasvir. On

the receipt of applications, character verification of all the candidates was conducted. On their verification, respondent No.4 Varinder Kumar was found to be 38 years of age and matriculate. So far as, Nirmal Singh i.e. the petitioner is concerned, he was found to be 49 years of age and matriculate, besides this, he remained member of Gram Panchayat for five years. On hearing the candidates and perusing the overall record, the learned Collector, Jalandhar vide order dated 08.03.2016 (Annexure P-1) appointed the petitioner, namely, Nirmal Singh as Numberdar of the village. Aggrieved by the same, respondent No.4 Varinder Kumar and two co-applicants, namely, Jasbir Singh and Gian Chand filed their independent appeals before the Commissioner, Jalandhar Division, Jalandhar under Section 13 of the Punjab Land Revenue Act. All three appeals were heard together by the Commissioner and on hearing all the parties, finding no infirmity in the order of the Collector dated 08.03.2016, the appeals were dismissed by the Commissioner vide order dated 21.09.2016 (Annexure P-2). Aggrieved by the order dated 21.09.2016, two RORs were filed by Gian Chand and Varinder Kumar before the learned Financial Commissioner. Both the revisions were heard together and learned Financial Commissioner on hearing all the parties, set aside the order dated 21.09.2016 passed by the Commissioner and the order dated 08.03.2016 passed by the Collector and thus, remanded the case to the District Collector for decision afresh vide impugned order dated 15.07.2019 (Annexure P-3). Hence, the petitioner is before this Court by way of filing the present petition.

It has been contended by learned counsel for the petitioner that in pursuance to *Mushtari Munadi* conducted in the village, in all five applications were received and the petitioner was found to be more

meritorious and thus, he was appointed by the Collector vide order dated 08.03.2016. He submits that aggrieved by the same, the appeals were filed by respondent No.4-Varinder Kumar and two co-applicants, namely, Jasbir Singh and Gian Chand, which has also dismissed by the learned Commissioner finding no infirmity in the order passed by the Collector. He submits that the learned Financial Commissioner, however, has fallen in error in overlooking the complete evidence on record and thus, illegally set aside both the well reasoned orders passed by the Collector and the Commissioner and thus, remanded the case in an arbitrary manner for decision afresh. It is submitted that it was wrongly observed by respondent No.1 that the petitioner has encroached upon the Gram Panchayat land and he was evicted by DDPO-cum-Collector vide order dated 31.01.2008, whereas, the Director had set aside the eviction order dated 31.01.2008 remanding the case to the DDPO with a direction to pass an order by conducting demarcation of the land in dispute in the presence of both the parties and hence, on demarcation it was found that the petitioner was not in any illegal encroachment. He has submitted that FIR No.116 dated 05.05.2017 under Section 16 of the NDPS Act, at Police Station Nakodar was registered against respondent No.4. He further submits that the Gram Panchayat passed resolution No.3 dated 07.08.2015, wherein, it was observed that if the petitioner is appointed as SC Numberdar of the village, people would benefit a lot from it and he was strongly recommended by the Gram Panchayat for the post. He further submits that the Gram Panchayat also observed that the petitioner was not in illegal possession of the Gram Panchayat land. He has submitted that thus, the observation made by the learned Financial Commissioner in the impugned order that the petitioner

was in illegal possession of land, is beyond the evidence on record. He has submitted that as per the law settled, the order passed by the Collector cannot be interfered with in a cavalier manner until and unless the same suffers from any patent illegality and thus, the Financial Commissioner failed to appreciate the facts and circumstances of the case and the law settled and hence, the impugned order deserves to be set aside.

On the other hand, learned counsel for respondent No.4 has opposed the submissions made by learned counsel for the petitioner. He has submitted that it is apparent from the order passed by the DDPO dated 31.01.2008, wherein petition under Section 7 of Punjab Village Common Lands (Regulation) Act, 1961 was filed by the Gram Panchayat against the petitioner and eviction order was passed against him. He submits that hence, the impugned order suffers from no illegality and thus, the matter was rightly remanded for decision afresh.

Heard.

It is apparent that on the demise of earlier Numberdar of the village, *Mushtari Munadi* was conducted and process for the appointment of new Numberdar was initiated. In all five applications were received. On the comparison of inter-se merits of the petitioner and respondent No.4, the petitioner was found to be more meritorious and thus, he was appointed as Numberdar of the village by the Collector. Aggrieved by the same, respondent No.4 and two other co-applicants filed their appeals before the Commissioner, which has dismissed by the Commissioner finding no infirmity in the order passed by the Collector. However, the Financial Commissioner accepted the revision petitions filed by respondent No.4 and one another co-applicant and remanded the case specifically observing that

the petitioner was in illegal possession of the Gram Panchayat land. It is evident from the record that the eviction proceedings against the petitioner regarding encroachment pertains to the year 2008, whereas, he was appointed as Numberdar of the village in the year 2016. As submitted by the petitioner the Director had set aside the order of eviction by passing order dated 01.10.2013. Resolution passed by the Gram Panchayat is also placed on record, wherein the petitioner was strongly recommended for the post of the Numberdar of the village. Besides this, it was also observed that he was not in illegal possession of any land of the Gram Panchayat.

In Sukhjinder Pal Singh Vs. State of Punjab and others, 2016(3) R.C.R. (Civil) 725, this Court while dealing with the same question has held as under:-

“14. It is pertinent to mention here that the appointment of Lambardar is primarily the prerogative and administrative act of the District Collector. The selection made by him is normally not to be undone unless and until it is shown that the same suffers from gross irregularity, perversity or there is some patent error in the appointment.”

As per the law settled, there is no gainsaying that the choice of the Collector should not be disturbed in a cavalier manner. It is the Collector, who not only appreciates the record of the candidates but also personally interacts with them. Thus, this Court finds the impugned order dated 15.07.2019 passed by the learned Financial Commissioner is against the facts and circumstances of the case and the law settled, hence, the same is set aside. The petition stands allowed.

05.09.2023
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I attest to the accuracy and
authenticity of this document

Whether Speaking/Reasoned
Whether Reportable

(RAJESH BHARDWAJ)
JUDGE

: Yes/No
: Yes/No