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

CWP-3827-2021

Reserved on: March 18, 2024

Pronounced on: April 04, 2024

Jogender Singh

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Mr.Jagjot Singh, Advocate for
Mr.Kunal Dawar, Advocate
for the petitioner.

Mr.Rajneesh Chadwal, Assistant Advocate General, Haryana.

Mr.Sanjay Verma, Advocate for
Mr.Parvesh Bishnoi, Advocate
for respondent No.5.

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RAJESH BHARDWAJ, J.

Prayer in the present petition is for quashing of the order dated 13.03.2020, Annexure P-6, passed by Finance Commissioner, Haryana (respondent No.1), (communication sent on 19.12.2020 to SDM, Palwal from the office of District Collector, Palwal), whereby the order dated 21.03.2017, Annexure P-3, passed by learned Commissioner Gurugram Division, Gurugram, respondent No.2, appointing petitioner as the Lambardar of the village, as per the recommendation of Assistant Collector, Ist Class, dated 20.09.2013, has been set aside. It is further prayed to stay the order dated 13.03.2020, Annexure P-6, passed by respondent No.1, during pendency of the present writ petition.

Lambardar, namely, Pat Ram son of Ram Phal, the post of Lambardar fell vacant in the village and thus, the process of appointment of new Lambardar was initiated. Mustari Munadi was conducted to invite the applications. In pursuance of the same, five applications were received out of which only three contested the same, namely, Jogender Singh (petitioner), Basant Singh and Devi Singh (respondent No.5). Character verifications of all the three candidates were got done from the concerned police station. On the assessment of *inter se* merits of these candidates, petitioner-Jogender Singh was found to be 28 years of age and B.A. by qualification. Candidate Basant Singh had produced the 8th class certificate, however, the same was found to be fake as per the report received. He was 48 years of age. So far respondent No.5-Devi Singh is concerned, he was found to be 58 years of age and MA by qualification. Besides this, he owned 6 acres of agricultural land. Learned Collector, on evaluation of *inter se* merits of all the three candidates in the fray, found respondent No.5-Devi Singh to be the most suitable candidate and thus appointed him as Lambardar of the village vide his order dated 31.10.2013. Aggrieved by the order dated 31.10.2013, the petitioner and Basant Singh assailed the said order by way of filing their independent appeals before the learned Commissioner, Gurugram Division, Gurugram. However, both the appeals were heard by the learned Commissioner together. On hearing of both the sides, learned Commissioner found the order passed by the Collector to be perverse and thus, accepted the appeal filed by petitioner-Jogender Singh and appointed him as Lambardar of the village whereas the second appeal filed by Basant Singh was rejected vide its order dated 21.03.2017. Being aggrieved

respondent No.5 assailed the order dated 21.03.2017 by way of filing revision petition under Section 16 of the Punjab Land Revenue Act, 1887 before the learned Financial Commissioner, Haryana. On hearing both the sides, learned Financial Commissioner found the order passed by learned Commissioner to be perverse and thus, set aside the same vide his order dated 13.03.2020 and thus restored the order passed by the Collector by virtue of which he had appointed respondent No.5 as Lambardar of the village. Being aggrieved, the petitioner is before this Court by way of filing the present petition.

Learned counsel for the petitioner has vehemently contended that on perusal of the inter se merits of all the three candidates, it is apparent that the petitioner was youngest candidate in the fray. By qualification, he was graduate and owned about one acre of land as well. It is submitted that the petitioner was also income tax payee. He has submitted that learned Commissioner had rightly set aside the order passed by the learned Collector as the same suffered from the perversity. However, the Collector had failed to appreciate the same and thus the Commissioner had rightly set aside the order of Collector by appointing the petitioner as Lambardar of the village. He has submitted that respondent No.5 was in illegal possession of panchayat land and the same is evident from the fact that a civil suit for permanent injunction was filed by respondent No.5 in the Court of Civil Judge, Junior Division, Palwal. He has submitted that Sarpanch of the village had also written a letter dated 12.06.2019 to the Commissioner, Gurugram for taking legal action against respondent No.5. He has submitted that besides the merits of the case, it is apparent from perusal of the

impugned order passed by learned Financial Commissioner that the petitioner was proceeded ex parte, as neither the petitioner nor his counsel was present at the time of decision of the case. He submits that learned Financial Commissioner has passed the impugned order in violation of the principles of natural justice as the petitioner was not heard by him before passing the impugned order and thus, the impugned order passed by learned Financial Commissioner is totally against the principles of natural justice and deserves to be set aside.

Per contra, counsel for respondent No.5 has opposed the submissions made by counsel for the petitioner. He has submitted that on the evaluation of inter se merits of all the candidates, learned Collector found respondent No.5 to be the most meritorious candidate and thus he was rightly appointed as Lambardar of the village. It is submitted that the petitioner in connivance with the revenue officials had sought false report for setting aside the appointment of respondent No.5 as Lambardar of the village. He has submitted that from the evidence on record, illegal possession, as contended, against respondent No.5, is not at all proved, which has been duly appreciated by the learned Financial Commissioner and thus he had rightly restored the order passed by the Collector by setting aside the illegal order passed by the Commissioner. It has been submitted by counsel for respondent No.5 that as per the settled law, the Collector is the prime authority in appointing the Lambardar and the order passed by him cannot be interfered by the higher Courts in a cavalier manner. It is submitted that learned Commissioner has fallen in error in setting aside the well reasoned order passed by learned Collector, which has been rightly

restored by the learned Financial Commissioner. It has been submitted by counsel for respondent No.5 that respondent No.5 is working as Lambardar of the village. He thus submits that the petition being devoid of any merit deserves to be dismissed.

Heard.

On hearing counsel for the parties and perusing the record, it is apparent that on conducting the *Mustari Munadi*, three candidates including the petitioner and respondent No.5 had applied for the appointment of Lambardar. On evaluation of their inter se merits, the Collector had appointed respondent No.5 as Lambardar of the village but the same was set aside by the Commissioner. In the revision filed by respondent No.5, learned Financial Commissioner had restored the order passed by the Collector appointing respondent No.5 as Lambardar of the village. There are allegations and counter allegations from both sides against each other. Learned Financial Commissioner though has discussed merits of the case, however, this is an admitted position that neither the petitioner nor his counsel were present at the time of hearing of the revision petition filed by respondent No.5 before the learned Financial Commissioner. Thus, this is an evident position that the impugned order was passed by learned Financial Commissioner in the absence of the petitioner and hence the same is in violation of the principles of natural justice. In the facts and circumstances, this Court would refrain itself from commenting anything on the merits of the case. The Court is in agreement with the submissions made by counsel for the petitioner that the petitioner had the right to be heard before passing of the impugned order, as the order passed by the Commissioner was in his

favour which had been set aside by the learned Financial Commissioner without hearing counsel for the petitioner. Thus, in the over all facts and circumstances of the case, this Court is of the opinion that the impugned order passed by learned Financial Commissioner has been passed without hearing the petitioner or his counsel and hence the same is set aside. The case is remanded to the learned Financial Commissioner for passing a fresh order on merit after hearing both the sides afresh expeditiously preferably within two months from the date of receipt of a copy of this order. It is being clarified that learned Financial Commissioner would pass a fresh order on merits without being influenced by the observations made by this Court. Till the fresh decision of the Financial Commissioner, Respondent No.5 would continue to work as Lambardar of the village.

Disposed of accordingly.

April 04, 2024

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(RAJESH BHARDWAJ)

JUDGE

1. Whether speaking/reasoned ?

Yes/No

2. Whether reportable ?

Yes/No