

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

CWP-4221-2020 (O&M)

Date of Decision: 01.02.2024

Manpreet Singh

..... Petitioner

Versus

Financial Commissioner (Revenue), Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. D.S. Randhawa, Advocate, for the petitioner.

Ms. Akshita Chauhan, Deputy Advocate General, Punjab.

Mr. Lekh Raj Sharma, Advocate, for respondent No.4.

Rajesh Bhardwaj, J.

CM-17772-CWP-2023

Allowed as prayed for. Annexures P-5 and P-6 are taken on record.

Main case

Prayer in the present petition is for setting aside the order dated 17.12.2019 (Annexure P-3) passed by respondent No.1 vide which instead of setting aside the order dated 23.07.2019 (Annexure P-2) passed by respondent No.2, he has set aside the well reasoned order dated 08.08.2018 (Annexure P-1) passed by respondent No.3 and has remanded the matter to respondent No.3 for decision afresh.

Adumbrated facts of the case are that on account of death of Nirbhay Singh, earlier Lambardar of the village Rajalheri, Tehsil Moonak, District Sangrur on 06.11.2017, post of Lambardar fell vacant and thus, process for the appointment of new Lambardar was initiated. *Mustri munadi* was got done in the village for inviting applications from the interested and eligible candidates. In pursuance to the same, four applications from the

candidates, namely, Amrik Singh, Manpreet Singh (petitioner), Jaspal Singh and Ranbir Singh (respondent No.4) were received. Candidate Jaspal Singh did not record any statement and did not appear, whereas, candidate Amrik Singh withdrew his application in favour of his son Manpreet Singh. Finally, Manpreet Singh (petitioner) and Ranbir Singh (respondent No.4) remained in the fray. Their character verifications were got conducted from the Police. On receipt of the same, respondent No.4-Ranbir Singh was found to have been prosecuted in FIR No.87 dated 25.04.2002, under Section 279, 337, 338 IPC registered at Police Station Tohana, however, he was acquitted by the trial Court on 05.10.2004. On perusal of their inter-se merits and demerits, Assistant Collector IInd Grade-cum-Tehsildar, Moonak recommended the name of Ranbir Singh (respondent No.4) for appointment of Lambardar to the SDM, Moonak. However, learned SDM, Moonak disagreeing with the report of the Assistant Collector IInd Grade-cum-Tehsildar, Moonak, recommended the name of Manpreet Singh (petitioner) for the appointment of Lambardar to the Collector. On appreciation of the inter-se merits of both the candidates i.e. the petitioner and respondent No.4, it was found as follows:-

Name	Manpreet Singh	Ranbir Singh
Father's name	Amrik Singh	Raghbir Singh
Village	Rajalheri/Moonak/Sangrur	Rajalheri/Moonak/Sangrur
Age	37 years	51 years
Educational qualification	12 th pass	MA Pass
Relation with earlier Lambardar	Grandson	Nothing
Experience	Nothing	Nothing
Land	20 Kanal 19 Marla	98 Kanal 5 Marla

Character Report	Never involved in any case	FIR No.87, dated 25.04.2002, under Section 279, 337, 338 IPC, Police Station Tohana is found registered, in which he was acquitted on 05.10.2004.
Opposite Remarks	Nil	Nil
Sub Divisional Magistrate, Moonak	Manpreet Singh	—
Tehsildar, Moonak	—	Ranbir Singh

Learned Collector on evaluation of the inter-se merits and demerits of both the candidates, finding the petitioner to be more meritorious candidate appointed him as Lambardar of the village vide order dated 08.08.2018 (Annexure P-1). Aggrieved by the same, respondent No.4 filed an appeal under Section 13 of the Punjab Land Revenue Act, 1887 before the Commissioner, Patiala Division, Patiala. Learned Divisional Commissioner after hearing both the sides found the order passed by the Collector to be perverse and thus, set aside the same by appointing respondent No.4 Ranbir Singh as Lambardar of the village vide order dated 23.07.2019 (Annexure P-2). Aggrieved by the same, the petitioner filed an appeal under Section 13 of the Punjab Land Revenue Act, 1887 before the learned Financial Commissioner, who heard both the sides and found the orders passed by the Collector and the Commissioner to be patently illegal and thus, he set aside both the orders passed by the learned Collector and Commissioner vide order dated 17.12.2019 (Annexure P-3) by remanding the case to the Collector for decision fresh. Hence, aggrieved by the same, the petitioner is before this Court by way of filing the present petition.

Learned counsel for the petitioner has vehemently contended that on the comparison of the inter-se merits of both the petitioner and respondent No.4, it is apparent that the petitioner was younger in age than

respondent No.4 and besides this he is 12th pass and owned 20 Kanal 19 Marla of land. He submits that the petitioner has an impeccable record, whereas, respondent No.4 was found to have faced criminal prosecution in FIR No.87 dated 25.04.2002. He submits that though respondent No.4 was acquitted by the trial Court, however, he carried stigma of facing the criminal prosecution. He also submits that respondent No.4 has encroached upon the Panchayat land, as is evident from the *Khasra Girdawari* placed on record as Annexure P-4. He submits that from the perusal of the *Khasra Girdawari* for the year 2016-17, it is evident that Khasra No.18//17/1 is *Jumla Mushtarka Malkan* land and respondent No.4 has been shown to be in cultivating possession of the same, thus, it is evident that respondent No.4 encroached upon the Panchayat land. He submits that the Collector thus, has rightly appointed the petitioner as Lambardar of the village finding him the most suitable candidate. It is submitted that the learned Commissioner has miserably failed to appreciate the evidence on record and the law settled and thus, has fallen in error in setting aside the well reasoned order passed by the Collector and hence, appointed respondent No.4 as Lambardar of the village. He submits that the petitioner assailed the order passed by the Commissioner before the learned Financial Commissioner, who not only set aside the order passed by the Commissioner, but he also set aside the well reasoned order passed by the Collector as well. It is submitted that as per law settled, the order passed by the Collector can be interfered by the Appellate/Revisional Authority only if it suffers from any patent illegality or perversity, however, as there was no perversity in the order passed by the Collector, hence, the view taken by the learned Financial Commissioner to the extent of setting aside the order passed by

the Collector is unsustainable in the eyes of law. To buttress his arguments, he has relied upon the judgments of Hon'ble Supreme Court as well as this Court in Mahavir Singh vs. Khiali Ram and others, 2009(1) RCR (Civil) 757; Kabal Singh vs. State of Punjab and others, 2017(3) Law Herald 2458; Paramjit Lal vs. The Financial Commissioner (Appeals), Punjab, Chandigarh and others, in CWP-22276-2019 pronounced on 26.09.2023; Hari Chand vs. Financial Commissioner (Revenue), Punjab and others, 2015(4) RCR (Civil) 921; Kabul Singh vs. The Financial Commissioner, Punjab, 2006(3) RCR (Civil) 213 and Major Singh vs. Financial Commissioner Revenue, Punjab and others, 2016(2) RCR(Civil) 663. It is submitted by him that *Chacha* of respondent No.4 filed an appeal against the order dated 05.04.2017 before the Collector, Moonak after he was appointed as Lambardar of the village by the Commissioner only to wriggle out of the allegations of illegal encroachment made by him on the Panchayat land. It is further submitted by him that this appeal was allowed on 31.10.2018 (Annexure P-6) i.e. after the process for the appointment of Lambardar was already initiated. He further submits that the petition be allowed by setting aside the order passed by the Financial Commissioner to the extent of setting aside the order passed by the Collector.

Per contra, learned counsel for respondent No.4 has opposed the submissions made by learned counsel for the petitioner. He has submitted that this is an admitted fact that respondent No.4 is a mature person and highly educated as he is MA by qualification. He submits that respondent No.4 though was prosecuted in FIR No.87 dated 25.04.2002, however, he was acquitted by the trial Court vide order dated 05.10.2004 i.e. much before the initiation of process for the appointment of Lambardar.

He has submitted that the allegations against respondent No.4 regarding the illegal encroachment was not proved from the record. It is submitted that correction of *Khasra Girdawari* was carried out by the Revenue authorities and thus, it was found that no encroachment was made by respondent No.4. He submits that the order passed by the Collector is totally cryptic wherein no merits of respondent No.4 was discussed, hence, the same being perverse has rightly been set aside by the learned Commissioner. He has submitted that the order passed by the learned Financial Commissioner in remanding the case for decision afresh suffers from no illegality as the learned Financial Commissioner directed the learned Collector to decide the case afresh by taking into consideration the merits and demerits of both the candidates. It is submitted by him that the petition being devoid of any merits deserves to be dismissed.

After hearing learned counsel for the parties and perusing the record, it is apparent that on the evaluation of the inter-se merits and demerits of both the candidates, the Collector appointed the petitioner as Lambardar of the village vide order dated 08.08.2018. However, learned Commissioner not only set aside the order passed by the Collector, but also appointed respondent No.4 as Lambardar of the village finding him more suitable. In the appeal filed against the order of the Commissioner before the Financial Commissioner, both the orders were set aside and the case was remanded to the Collector for decision afresh. As per record, the petitioner was 37 years of age, 12th class pass and having land holding of 20 Kanals 19 Marlas, whereas, respondent No.4 was 51 years old, MA by qualification and was having land holding of 98 Kanals 5 Marlas. So respondent No.4 was more qualified than the petitioner and he was also having more land

than the petitioner. It is well settled that the choice of the Collector should not be interfered unless it suffers from perversity. Learned Commissioner finding the order passed by the Collector perverse has rightly set aside the same, but has went wrong in appointing respondent No.4 as Lambardar of the village which mistake has been rectified by the learned Financial Commissioner by setting aside both the orders passed by the Collector and the Commissioner and by remanding the matter to the Collector for decision afresh.

In the overall facts and circumstances of the case, this Court finds that the view taken by the learned Financial Commissioner in remanding the case to the Collector for decision afresh is legally justified. The allegations regarding the illegal encroachment made by respondent No.4, deserves to be re-appreciated. Thus, to meet the ends of justice, the case deserves to be decided afresh by taking into consideration the issue raised by both the sides. Hence, this Court does not find any infirmity in the order dated 17.12.2019 passed by the learned Financial Commissioner and the same is upheld.

There is no dispute regarding the judgments relied upon by learned counsel for the petitioner, however, in the facts and circumstances of the case, the same are distinguishable.

Keeping in view the peculiar and circumstances of the case, the learned Collector is directed to decide the case afresh after hearing both the sides by appreciating the merits and demerits of both the candidates, expeditiously preferably within two months from the date of receipt of copy of this order.

Registry is directed to send a copy of this order to the Collector

concerned, who on receipt of the same would issue notice to the parties for appearance and proceed with the matter in accordance with law.

Disposed of in the abovesaid terms.

01.02.2024

sharmila

Whether Speaking/Reasoned

Whether Reportable

:

:

Yes/No

Yes/No

(RAJESH BHARDWAJ)

JUDGE