

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

CWP-23005-2019 (O&M)
Reserved on : 29.01.2024
Pronounced on: 07.02.2024

Davinder Singh

..... Petitioner

Versus

Financial Commissioner, Punjab and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. B.K. Mehta, Advocate, for the petitioner.

Mr. Arun William, Assistant Advocate General, Punjab.

Mr.K.S. Dadwal, Advocate and

Ms. Neha Jain, Advocate, for respondent No.2.

RAJESH BHARDWAJ J.**CM-16081-CWP-2023**

This is an application for impleading the LRs of petitioner-Davinder Singh, who died on 15.08.2023 i.e. during the pendency of the present petition.

It has been submitted by learned counsel for the applicants that deceased-petitioner Davinder Singh was appointed as Lambardar of the village by the Collector in the second round of litigation vide order dated 07.02.2018. He submits that appeals filed by respondents No.2 and 3 were dismissed by the Commissioner, Roopnagar Division, Roopnagar vide common order dated 20.07.2018. Aggrieved by the same, respondent No.2 filed ROR-549-2018 and respondent No.3 filed ROR-654-2018 before the learned Financial Commissioner, who after hearing all the parties allowed ROR-549-2019 filed by respondent No.2, whereas, dismissed ROR-654-2018 filed by respondent No.3, vide his order dated 01.04.2019. He submits that aggrieved by the same, the petitioner has approached this Court by way of filing the present petition. This Court vide interim order dated 28.08.2019

stayed the operation of the impugned order dated 01.04.2019. It is submitted that the petitioner continued to be Lambardar of the village till his death i.e. 15.08.2023. He submits that on account of death of the petitioner, the applicants, who are wife, sons and daughter of the deceased, have filed this present application praying for their impleadment as LR's of the petitioner.

Notice in the application was issued by this Court to the respondents.

In pursuance to the same, respondent No.2 has filed his reply.

Learned counsel for respondent No.2 has vehemently opposed the application on the ground of maintainability and prays for dismissal of the application for the impleadment of LR's of the petitioner. He submits that in view of the provisions of Order 22 Rules 3 & 4 CPC, no right to the applicants survives to sue as the petitioner was appointed as Lambardar of the village and he died during the pendency of the present petition. He has submitted that the post of Lamhardar is not inheritable and hence, the same cannot be treated as testamentary succession. He thus submits that the application being not maintainable deserves to be dismissed.

After hearing learned counsel for the parties and perusing the record, it is evident that the petitioner was appointed as Lambardar of the village by the Collector vide order dated 07.02.2018. The appeals filed by respondents No.2 and 3 before the learned Commissioner were dismissed vide order dated 20.07.2018 and thus, the order passed by the Collector was upheld by the Commissioner. However, in the revision petitions filed by respondents No.2 and 3 before the learned Financial Commissioner, Revision Petition filed by respondent No.2 was accepted and thus, the orders passed by the Collector and the Commissioner were set aside,

whereas, the Revision Petition filed by respondent No.3 was dismissed by the learned Financial Commissioner vide his order dated 01.04.2019. Learned Financial Commissioner upheld the order dated 24.02.2009 passed by the Collector in the first round of litigation and thus, appointed respondent No.2 as Lambardar of the village. In the present petition, this Court stayed the operation of the impugned order dated 01.04.2019 and thus, the petitioner continued to be the Lambardar till his death. However, unfortunately he died during the pendency of the present petition on 15.08.2023.

The statutory provisions of Order 22 Rules 3 & 4 CPC are reproduced as under:-

“3. Procedure in case of death of one of several plaintiffs or of sole plaintiff.--(1) Where one of two or more plaintiffs dies and the right to sue does not survive to the surviving plaintiff or plaintiffs alone, or a sole plaintiff or sole surviving plaintiff dies and the right to the sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit.

(2) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate so far as the deceased plaintiff is concerned, and, on the application of the defendant, the Court may award to him the costs which he may have incurred in defending the suit, to be recovered from the estate of the deceased plaintiff.

4. Procedure in case of death of one of several defendants or of sole defendant-- (1) Where one of two or more defendants dies and the right to sue does not survive against the surviving defendant or defendants alone, or a sole defendant or sole surviving defendant dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the

legal representative of the deceased defendant to be made a party and shall proceed with the suit.

(2) Any person so made a party may make any defence appropriate to his character as legal representative of the deceased defendant.

(3) Where within the time limited by law no application is made under sub-rule (1), the suit shall abate as against the deceased defendant.

(4) The Court whenever it thinks fit, may exempt the plaintiff from the necessity of substituting the legal representatives of any such defendant who has failed to file a written statement or who, having filed it, has failed to appear and contest the suit at the hearing; and judgment may, in such case, be pronounced against the said defendant notwithstanding the death of such defendant and shall have the same force and effect as if it has been pronounced before death took place.

[(5) Where-

(a) the plaintiff was ignorant of the death of a defendant, and could not, for that reason, make an application for the substitution of the legal representative of the defendant under this rule within the period specified in the [Limitation Act, 1963](#) (36 of 1963), and the suit has, in consequence, abated, and (b) the plaintiff applies after the expiry of the period specified therefor in the [Limitation Act, 1963](#) (36 of 1963), for setting aside the abatement and also for the admission of that application under section 5 of that Act on the ground that he had, by reason of such ignorance, sufficient cause for not making the application within the period specified in the said Act,

the Court shall, in considering the application under the said section 5 have due regard to the fact of such ignorance, if proved.]”

A Division Bench of this Court in Satnam Singh vs. The

Financial Commissioner Appeals-I, Punjab and another, 2003(2)

RCR(Civil) 730 has held that right to sue does not survive after the death of petitioner during the pendency of Lambardari revision.

There is no gainsaying that the post of Lambardar is not inheritable, rather as per the law settled hereditary claim cannot be the sole basis for appointment of a Lambardar. Once, the appointed Lambardar has died, it is obvious that *de novo* process for the appointment of the Lambardar needs to be initiated by making fresh *munadi*. This Court is in the agreement with the submissions made by counsel for respondent No.2 that in view of the provisions of Order 22 Rules 3 & 4 CPC, the applicants in the application do not have any surviving right to sue in place of the petitioner.

Thus, keeping in view the statutory provisions of Order 22 Rules 3 & 4 CPC and Rule 15 of the Punjab Land Revenue Rules, this Court is of the opinion that the application filed for impleadment of the LRs, is not maintainable and hence, the same is dismissed.

Main case

Prayer in the present petition is for quashing the order dated 01.04.2019 (Annexure P-8) passed by the Financial Commissioner, Punjab being wrong, illegal, unjust, against the facts and circumstances of the case as available on record.

This Court refrains itself from commenting anything on merits of the case regarding any of the parties. As the appointed candidate i.e. the petitioner has died on 15.08.2023 and the post of Lambardar being not inheritable, the orders passed by the authorities below do not further sustain and hence, are set aside.

Resultantly, the respondent/competent authority is directed to

initiate fresh process for the appointment of Lambardar in accordance with law. However, it is being clarified that respondents No.2 and 3 and the applicants in the application seeking their impleadment as LR's and other interested candidates, would be at liberty to participate in the fresh process to be initiated for the appointment of Lambardar.

Keeping in view the facts and circumstances of the case, the Collector concerned is directed to initiate the process for the appointment of Lambardar by making fresh *musharti munadi*/proclamation and conclude the same expeditiously preferable within a period of six months from the date of receipt of copy of this order without being influenced by the earlier decisions taken by the Revenue authorities

Disposed of in the abovesaid terms.

In view of the fact that the main case stands decided today, there is no need to pass any order in CM-14360-CWP-2019 filed by the respondents for vacation of *ex parte* order dated 28.08.2019 and the same is disposed of as such.

The office is directed to send a copy of this order to the Collector concerned forthwith, who on receipt of the same initiate fresh proceedings for the appointment of Lambardar.

07.02.2024			(RAJESH BHARDWAJ)
sharmila			JUDGE
	Whether Speaking/Reasoned	:	Yes/No
	Whether Reportable	:	Yes/No