

128 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-25439-2024 (O/M)
Date of decision : 14.01.2025

Didar Singh Petitioner

Versus

State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE HARSH BUNGER

Present :- Mr. Rajesh Bansal, Advocate
for the petitioner.

Ms. Upasana Dhawan, AAG Haryana.

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HARSH BUNGER, J. (ORAL)

1. Petitioner (Didar Singh) has filed the instant civil writ petition has been filed under Articles 226/227 of Constitution of India, inter alia, seeking a writ in the nature of certiorari for quashing/modification of the order dated 23.04.2024 (Annexure P-3) passed by learned Commissioner, Ambala Division, Ambala (in short 'Divisional Commissioner'), whereby respondent No. 4 (Hari Kishan) has been reinstated on the post of Lambardar of village Bahri, Tehsil Thanesar, District Kurukshetra.

2. Briefly, one Shri Ashok Bansal submitted a complaint against respondent No. 4 (Hari Kishan) that he had wrongly taken compensation on account of loss of crops, whereupon the learned Collector, Kurukshetra (in short 'Collector'), vide order dated 19.09.2019 (Annexure P-1), removed respondent No. 4 from the post of Lambardar of village Bahri.

2.1 It transpires that respondent No. 4 (Hari Kishan) challenged his removal order dated 19.09.2019 (Annexure P-1) by filing an appeal before learned Divisional Commissioner. During the pendency of the aforesaid appeal filed by respondent No. 4, the petitioner (Didar Singh) sought impleadment therein, which was allowed.

2.2 The learned Divisional Commissioner, vide order dated 23.04.2024 (Annexure P-3), set aside the order dated 19.09.2019 (Annexure P-1), whereby respondent No. 4 was removed from the post of Lambardar and reinstated him as Lambardar of village Bahri.

3. In the aforementioned circumstances, the petitioner has filed the instant civil writ petition before this Court for the relief (s), as noticed hereinabove.

4. Learned counsel for petitioner submits that the learned Divisional Commissioner has erred in law and facts in passing the impugned order dated 23.04.2024 (Annexure P-3) without appreciating the fact that respondent No. 4 had wrongly taken compensation of Rs. 8,765/- on a false plea that he had suffered loss due to damage to his crops sown in Khasra No. 905 on account of over flooding of water canal. It is stated that infact Khasra No. 905 was being used to dump garbage by Municipal Committee, Kurukshetra. It is contended that once respondent No. 4 had wrongly claimed compensation, therefore, he is not a fit candidate to be retained as Lambardar and is liable to be removed. Accordingly, prayer has been made for setting aside the impugned order dated 23.04.2024 (Annexure P-3).

5. Heard.

6. In the present case, respondent No. 4 was removed from the post of Lambardar, vide order dated 19.09.2019 (Annexure P-1), passed by learned Collector, Kurukshetra, by observing that he had wrongly taken compensation for loss of the crops, however, on an appeal filed by respondent No. 4, learned Divisional Commissioner has set aside the order dated 19.09.2019 (Annexure P-1), passed by learned Collector, vide order dated 23.04.2024 (Annexure P-3), by observing as under :-

“6. I have heard the arguments of Ld. Counsels for both the parties and perused the facts, evidences and order under appeal available on the case file. Collector found the appellant guilty only on the basis of investigation report and terminated him from the post of Lambardari, whereas as per Khasra Girdawari in revenue records paddy crop is standing. Apart from this special girdawari was prepared regarding the loss caused by flood, which was prepared by the field staff on the spot and special girdawari is also verified by the revenue officer on the spot. In this way, Khasra Girdawari cannot be ignored. Collector has removed the appellant from the post of Lambardari vide order under appeal. In my opinion it is excessive punishment.

So, by keeping in view the above mentioned facts, by taking the lenient view against the appellant, I warned him to be careful in future and by setting aside the order dated 19.09.2019 passed by Collector, Kurukshetra, the appellant is reinstated on the post of Lambardari and apart from this, appellant is directed to deposit the crop compensation of Rs. 8765/- alongwith 18% interest within one month from the receiving of the order which he has taken wrongly. Therefore, Collector, Kurukshetra is ordered to get deposited the wrongly taken crop compensation amount of Rs. 8765/- alongwith interest within a period of

one month after providing him the calculation. One copy of the same be sent to Collector, Kurukshetra for compliance. Case file may be consigned to record room after completing and organized.”

6.1 A perusal of the above extracted finding returned by the learned Divisional Commissioner would show that the learned Divisional Commissioner has returned the finding that as per khasra girdawari, paddy crop was standing and even the special girdawari for the loss caused by the flood was prepared and verified by the revenue officer, therefore, the said khasra girdawari cannot be ignored. The aforesaid observation apparently indicates that the compensation claimed by respondent No. 4 may not be wrong, however, learned Divisional Commissioner has also directed respondent No. 4 to return the compensation of Rs. 8,765/- alongwith 18% interest.

7. It is apposite to indicate that Rule 16 (i) of Haryana Land Revenue Rules (in short 'HLR Rules') provides for dismissal of a Headman, which reads as under :-

"(i) A headman shall be dismissed when -

(a) he is sentenced to imprisonment for one year or upwards or to any heavier sentence; or

(b) in an estate owned altogether or chiefly of Government he ceases to possess the interest which led to his appointment;

(c) in any other estate he ceases to be a landowner in the estate or sub-division of the estate in respect of which he holds office;

(d) he has mortgaged his holding and has delivered possession to the mortgagee; but in special cases the Collector may with the Commissioner's sanction retain him in his office under such circumstances; if

he can furnish adequate security for the payment of the revenue he has to collect and for the due discharge of his duties; or

(e) his holding has been transferred under Section 71 of the Land Revenue Act or the assessment thereof has been annulled under Section 73 of the Act;

(f) he is convicted in a case involving moral turpitude.

(ii) A headman may be dismissed when -

(a) criminal proceedings which have been taken against him show that he is unfit to be entrusted any longer with the duties of his office; or

(b) he is seriously embarrassed by debt, or if his unencumbered holding is so small as to disqualify him in the Collector's opinion for the responsibility attached to the office of headman; or

(c) owing to age or physical or mental incapacity, or absence from the estate, he is unable to discharge the duties of his office; or

(d) There is reason to believe that he has taken part in, or concealed illicit distillation, or the smuggling of contraband articles such as narcotics, gold, jewellery, foreign exchange, (in Punjab only) cocaine, opium or charas;

(e) he takes part in any unconstitutional agitation against the Government or failed to give his active support to the Government in the maintenance of law and order;

(f) he neglects to discharge his duties or is otherwise shown to be incompetent;

(g) the estate or sub-division thereof, in respect of which he holds office, or his own holding is attached either for an arrear of land revenue or by order of any court."

7.1 A perusal of the above extracted Rule 16 of HLR Rules would indicate that at best the allegations levelled against respondent No. 4 would fall for consideration under Rule 16 (ii) (f) of HLR Rules, which states that a Headman may be dismissed when he is otherwise shown to be incompetent.

8. In the present case, the learned Divisional Commissioner upon considering the matter has apparently returned the finding that the claim of compensation of respondent No. 4 may not be incorrect as there was khasra girdawari indicating sowing of crops and in order to obviate any further issue regarding wrong claim of compensation by respondent No. 4, the learned Divisional Commissioner has directed respondent No. 4 to return the compensation alongwith 18% interest.

9. In my considered view, under Rule 16 (i) of HLR Rules, there is no discretion vested with the authority. If any of the situations stated in Rule 16 (i) is attracted then the dismissal of a Headman is mandatory, whereas the dismissal of a Headman falling under any of the categories under Rule 16 (ii) of HLR Rules is not mandatory and the competent authority may pass any other order.

10. In the present case, the learned Divisional Commissioner has chosen to set aside the removal order of respondent No. 4 by directing him to return the compensation alongwith 18% interest. Evidently, the learned Divisional Commissioner has exercised the discretion vested in her and it is not shown as to how the discretion exercised by learned Divisional Commissioner is arbitrary, capricious, perverse or bad in law.

11. In view of the above, I do not find any merit in the instant civil writ petition and the same is accordingly dismissed.

12. Pending application (s), if any, shall also stand closed.

(HARSH BUNGER)
JUDGE

14.01.2025
sjks

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No