

allotment of additional land to make good the alleged deficiency provided that such a recourse is permissible in law. The respondent-Gram Panchayat shall be at liberty to contend that the petitioner's deficiency cannot be made good out of Panchayat land and the Authority shall have to decide such a plea in accordance with law.

CWP No.15534 of 1992

6. In this case also, the order dated 29.12.1982 was passed by Additional Director, Consolidation giving additional land measuring 1 kanal 17 marla to the petitioners out of the alleged *Bachat* land of the village so as to make good the deficiency in their land-holdings. The said order has been recalled and set aside by the Director, Consolidation vide subsequent impugned order dated 13.12.1990 (Annexure P2) on the premise that the earlier order dated 29.12.1982 was passed *ex parte* behind the back of the Gram Panchayat for it obviously affects its rights.

7. There is a bone of contention between the parties as to whether the Gram Panchayat was proceeded against *ex parte* or was it duly represented by its Panch or Sarpanch. We, however, do not deem it necessary to go into this question. Since in the first case (CWP No.7737 of 1991), we have upheld the remand order, it appears, in conformity with the principle of natural justice and fair trial, that the Gram Panchayat as well as the petitioners or any other person(s) who, in the event of acceptance of the petitioners' claim, is/are likely to be affected, are heard before any order is passed.

8. For the afore-stated purpose, we set aside the order dated 13.12.1990 with a direction to the Competent Authority to not only hear the petitioners and the Gram Panchayat but to issue notice to the other persons also who are likely to be affected and thereafter only determine whether petitioners are entitled to allotment of land out of the khasra No.137 and/or they can be permitted to make good deficiency, if any, out of any other land.

9. Let the parties in both the cases appear before the authorities on 16.02.2015.

10. Disposed of.

Order accordingly.

PUNJAB AND HARYANA HIGH COURT

Before: Paramjeet Singh, J.

CWP No.15031 of 2001

Decided on: 17.12.2014

Om Parkash

Petitioner

Versus

State of Haryana and others

Respondents

Alongwith

CWP No.5725 of 2000, Ramphal v. State of Haryana and others

Present: Mr. Mani Ram Verma, Advocate, for the petitioner in CWP No.15031 of 2001

and for respondent No.3 in CWP No.5725 of 2000.

Mr. Sandeep S. Mann, Sr. DAG, Haryana.

Mr. Shailentra Jain, Sr. Advocate, with Mr. Gaurav Aggarwal, Advocate, for respondent No.4 in CWP No.15031 of 2001

and for respondent No.2 in CWP No.5725 of 2000.

Mr. Vikram Singh, Advocate, for the petitioner in CWP No.5725 of 2000

and for respondent No.5 in CWP No.15031 of 2001.

A. Punjab Land Revenue Rules, Rule 15 -- Appointment of Lambardar -- Case u/s 457/354/506 IPC -- Acquittal from -- Once the person is acquitted same cannot be taken as a disadvantage against that person -- It is common that once the persons are involved in such activities, their past record is seen, although they stand acquitted of the accusation -- In these circumstances, the Court has to compare the comparative merits leaving aside the limited part of acquittal.

(Para 10, 11)

B. Punjab Land Revenue Rules, Rule 15 -- Appointment of Lambardar -- Comparative merits -- Land holding -- "R" is 40 years old, was having 7 acres and 2 kanals of land and has persuaded ten persons of the village for opting the family planning scheme -- In view of Rule 15 there are certain things which are to be taken into consideration -- "R" is having property which is sufficient as a security for collecting revenue -- Although "O" is having more land but it does not override the other merits of "R" -- Another condition which is to be taken into consideration is the personal influence of the candidate, character, ability and freedom from indebtedness -- So far as case of "R" is concerned, his personal influence can be weighed from the fact that he had been elected as Panch of the village, his character has been found to be good by the authorities -- So far as freedom from indebtedness is concerned, there is no loan against "R" rather he has money in saving account whereas "O" and "Ra" at one or the other point of time had been defaulters of Banks, which they paid subsequently after the initiation of process for selection/appointment of Lambardar -- Another condition as per Rule 15(g), is services rendered by the candidate to the community and development programmes -- "R" has certainly rendered services to the community when he has been able to persuade ten persons to opt for family planning scheme whereas "O" has only two cases to his credit -- Thus "R" has edge over all the candidates.

(Para 11)

C. Punjab Land Revenue Act, 1887 (XVII of 1887), Section 13, 16 -- Appointment of Lambardar -- Choice of Collector -- Choice of the Collector cannot be lightly set aside -- It can only be set aside if there is perversity or illegality in the impugned order of the Collector -- Choice of the Collector has been wrongly upset by the Commissioner and Financial Commissioner without recording any finding of perversity in this regard - - Therefore, the impugned orders passed by Commissioner and Financial

Commissioner are illegal, arbitrary and against the settled principles of law.

(Para 12, 13)

Cases referred:

1. Mahavir Singh v. Khiali Ram & others, 2009 (1) L.A.R. 571 (SC).
2. Lila Ram v. Asa Ram, 1995 Lahore Law Times-29.
3. Phool Kumar v. State of Haryana and others, 2009 (2) L.A.R. 421 (P&H).

JUDGMENT

PARAMJEET SINGH, J. (ORAL) –

1. This judgment will dispose of CWP No.15031 of 2001 titled 'Om Parkash v. State of Haryana and others' and CWP No.5725 of 2000 titled 'Ramphal v. State of Haryana and others' as they arise from the common orders.

2. For brevity sake, facts are being taken from CWP No.15031 of 2001.

3. Instant writ petition under Articles 226/227 of the Constitution of India has been filed for quashing the order dated 04.06.1997 (Annexure P-1) passed by Collector, Hisar, order dated 02.11.1998 (Annexure P-2) passed by Commissioner, Hisar, and order dated 20.10.1999 (Annexure P-3) passed by Financial Commissioner, Haryana.

4. Brief facts of the case are that to fill up the vacancy caused on account of death of Tara Chand, Lambardar of village Pali, Tehsil Narnaud, District Hisar, applications were invited from interested persons by making proclamation through beat of drum in the village after obtaining necessary approval from the competent authority. In pursuance of proclamation ten candidates submitted their applications. Later on, Dharambir son of Tara Chand, Sajan Singh son of Pirthi Singh, Balwant son of Mange and Jai Pal Singh son of Rishi Lal retired from the contest and only six candidates, namely, Rajbir Singh son of Tara Chand, Ramphal son of Richhpal, Om Parkash son of Kuda Ram, Kartar Singh son of Narain Singh, Karambir son of Dhanpat and Dharambir son of Tara Chand remained in the fray. After examining the comparative merits of the remaining six candidates, Naib Tehsildar and Tehsildar, Narnaud recommended the name of Om Parkash son of Kuda Ram for appointment as Lambardar. SDO, Hansi also considered the recommendations of the subordinate authorities and also recommended the name of Om Parkash. Contesting candidates appeared before the Collector, Hisar. The Collector after appreciating the comparative merits of the candidates found Ram Phal to be fit and suitable candidate and vide impugned order dated 04.06.1997 (Annexure P-1) appointed him as Lambardar of the village. Against the order of the Collector Om Parkash and Rajbir filed appeals before the Commissioner, Hisar. The Commissioner vide order dated 02.11.1998 (Annexure P-2) dismissed the appeal of Om Parkash and allowed the appeal of Rajbir and appointed him Lambardar of the village. Against the order of the Commissioner, Ramphal and Om Parkash filed revision petitions before the Financial Commissioner, which have been dismissed vide order

dated 20.10.1999 (Annexure P-3). Hence, instant writ petitions by Om Parkash and Ramphal.

5. I have heard learned counsel for the parties and perused the record.

6. Learned counsel for Om Parkash vehemently contended that he is middle pass and owns 15 acres of land. Learned counsel for Om Parkash further contended that he has also been persuading the residents of the village for opting the family planning scheme and has been in a position to persuade two persons to opt for family planning. It is submitted that although two criminal cases were registered against Om Parkash but subsequently he has been acquitted in both the cases. He is not defaulter of State Bank of India. Learned counsel for Om Parkash contended that Rajbir is not having any qualification and no certificate in this regard has been placed on record, therefore, his appointment by Commissioner as Lambardar of the village is against the settled principles of law as well as the considerations mentioned in Rule 15 of the Punjab Land Revenue Rules (as applicable to Haryana). Learned counsel for Om Parkash contended that Rajbir has been relying upon a false middle pass certificate and also making wrong statement which is contrary to the records. He has wrongly claimed as Sarbarah Lambardar.

7. On the other hand, learned senior counsel for Rajbir vehemently contended that Commissioner and Financial Commissioner have rightly appointed him Lambardar of the village. He was young man of 30 years, having 7 acres of land and he has not committed any default as he has deposited everything. Learned senior counsel for Rajbir also pointed out demerits of other candidates i.e. Om Parkash and Ramphal to the effect that criminal cases were registered against them. Learned senior counsel further contended that after filing of the writ petition approximately 14 years have elapsed and he is continuing as Lambardar. There is no complaint against him.

8. On the other hand, learned counsel for Ramphal submitted that he is M.A. Pass, 40 years of age, having 7 acres and 2 kanals of land and has eight cases of family planning to his credit and two cases were added later on. He was having Rs.2.78 lacs in his saving account at that point of time. He remained Panch of the village from 1988 to 1991. He has popularity in the village community and election as Panch indicates so. Learned counsel for Ramphal further submitted that he has been appointed by the Collector and choice of the Collector cannot be lightly set aside.

9. I have given my anxious thought to the arguments raised by learned counsel for the parties.

10. It would be appropriate to reproduce the comparative merits of Om Parkash, Rajbir and Ramphal, which read as under: -

	Ram Phal	Rajbir	Om Parkash
Qualification	M.A	No certificate of education Middle class certificate in the name of Raj Kumar	Middle pass
Age	40 years of age at	30 years of age at	59 years at that

	that point of time	that point of time	point of time
Land	7 acres 2 kanals of land	7 acres of land	15 acres of land
Service to the State	8 cases of family planning and 2 cases lateron	No family planning case	2 cases of family planning
Freedom from indebtedness	Small savings of Rs.2,78,000/- and Rs.27,000/-	No saving, Defaulter of Chulla Tax. Fake certificate of lower class, Canal water theft case, Defaulter of PNB, Defaulter of SBOP, Revenue not deposited in time	No saving, Criminal cases under Sections 457/354/506 IPC (acquitted) FIR No.289 dated 01.11.1979 Defaulter of SBI FIR against brother.
Popularity in village community	Remained Panch from 1988 to 1991 Appointed as Lambardar by Collector		

11. So far as registration of one case against Ramphal wherein he was released on probation and two cases against Om Parkash wherein he is stated to have been acquitted is concerned, it is settled principle of law that once the person is acquitted same cannot be taken as a disadvantage against that person. It is common that once the persons are involved in such activities, their past record is seen, although they stand acquitted of the accusation. In these circumstances, the Court has to compare the comparative merits leaving aside the limited part of acquittal. In the present case, I find that Ramphal is certainly having edge over all the candidates i.e. his qualification is more, at that point of time he was of reasonable age of 40 years, was having 7 acres and 2 kanals of land and has persuaded ten persons of the village for opting the family planning scheme. Besides this, his popularity can be taken into consideration as he remained Panch of the village from 1988 to 1991. In view of Rule 15 there are certain things which are to be taken into consideration. So far as extent of property is concerned, Ramphal is having property which is sufficient as a security for collecting revenue. Although, Om Parkash is having more land but it does not override the other merits of Ramphal. So far as condition of service rendered by the candidate to the State is concerned, none of these persons has rendered any service to the State except persuading the villagers for family planning. Another condition which is to be taken into consideration is the personal influence of the candidate, character, ability and freedom from indebtedness. So far as case of Ramphal is concerned, his personal influence can be weighed from the fact that he had been elected as Panch of the village, his character has been found to be good by the authorities. So far as freedom

from indebtedness is concerned, there is no loan against Ramphal rather he has money in saving account whereas Om Parkash and Rajbir at one or the other point of time had been defaulters. Rajbir had been defaulter of Punjab National Bank and State Bank of Patiala and Om Parkash had been defaulter of State Bank of India, which they paid subsequently after the initiation of process for selection/appointment of Lambardar. Another condition as per Rule 15(g), is services rendered by the candidate to the community and development programmes. Ramphal has certainly rendered services to the community when he has been able to persuade ten persons to opt for family planning scheme whereas Om Parkash has only two cases to his credit. Thus, Ramphal has edge over all the candidates.

12. Besides this, Ramphal has been appointed by the Collector. It is a settled principle of law that the choice of the Collector cannot be lightly set aside. It can only be set aside if there is perversity or illegality in the impugned order of the Collector. This view of mine is supported by the law laid down by Hon'ble the Supreme Court of India in the case of **Mahavir Singh Vs. Khiali Ram & others, 2009 (1) L.A.R. 571 = 2009(3) SCC-439, Lila Ram Vs. Asa Ram, 1995 Lahore Law Times-29** followed by Division Bench of this Court in the case of **Phool Kumar Vs. State of Haryana and others, 2009 (2) L.A.R. 421 = 2010(2) RCR (Civil) 819**. In **Mahavir Singh's** case (supra) the Supreme Court of India has observed that there should be no interference with the choice made by the Collector in the matter of appointment of Lambardar even if two views are possible. It is only the prerogative of the Collector to compare the merits of the candidates for appointment to the post of Lambardar.

13. Against the settled law, choice of the Collector has been wrongly upset by the Commissioner and Financial Commissioner without recording any finding of perversity in this regard. Therefore, the impugned orders passed by Commissioner and Financial Commissioner are illegal, arbitrary and against the settled principles of law.

14. So far as plea of learned senior counsel for Rajbir that he is acting as Lambardar of the village for about 15 years, therefore, writ petitions be dismissed is concerned, same cannot be accepted as any benefit derived during the pendency of the writ petition cannot be taken into consideration.

15. So far as contention of the learned counsel for Om Parkash that he is having 15 acres of land whereas Ramphal and Rajbir are having seven acres of land is concerned, it can be one of the factors, whereas cumulative effect of the overall comparative merits has to be taken into consideration. However, in the present era better educational qualification is necessary as everything is to be done in writing, therefore, more educated person is the more suitable person for the appointment.

16. Learned senior counsel for Rajbir contended that there is interse rivalry between the parties as a result of which false cases were filed.

17. So far as the conduct of Rajbir is concerned, he appears to have created entire evidence subsequent to the initiation of proceedings for appointment of Lambardar as such his conduct is blameworthy from the very beginning. It will be more dangerous to appoint such a person as Lambardar of the village who creates false documents and rivalry in the village.

18. In view of above, CWP No.5725 of 2000 is allowed. Impugned order

dated 02.11.1998 (Annexure P-2) passed by Commissioner, Hisar, and order dated 20.10.1999 (Annexure P-3) passed by Financial Commissioner, Haryana are set aside and order dated 04.06.1997 (Annexure P-1) passed by Collector, Hisar, is restored.

19. Since Om Parkash has also challenged the orders passed by Commissioner and Financial Commissioner, his writ petition is partly allowed to the extent that impugned orders passed by Commissioner and Financial Commissioner have been held to be illegal, arbitrary and against the settled principles of law. However, in view of the consideration of comparative merits, Ramphal has edge over Om Parkash. Om Parkash cannot be appointed as Lambardar in view of the discussion above. Hence, claim of Om Parkash for appointment as Lambardar is declined.

20. No order as to costs.

Order accordingly.

PUNJAB AND HARYANA HIGH COURT

(Full Bench)

Before: Hemant Gupta, G.S. Sandhawalia & Kuldip Singh, JJ.

CWP No. 6860 of 2007 (O&M)

Reserved on: 12.09.2014

Decided on: 24.12.2014

Maharana Pratap Charitable Trust (Regd)

Petitioner

Versus

State of Haryana and others

Respondents

Present: Shri M.L. Sarin, Senior Advocate, with S/Shri Hemant Sarin and Nitin Sarin, Advocates, for the petitioner.

Shri Shailendra Jain, Senior Advocate, with Shri Mannu Chaudhary, Advocate.

&

Shri R.S. Rai, Senior Advocate, with S/Shri Rajeev Anand and Harsh Bunker, Advocates.

&

Shri Puneet Bali, Senior Advocate, with S/Shri Parveen Jain and Arun Gupta, Advocates.

&

Shri Mohan Jain, Senior Advocate, with S/Shri Dinesh Thakur, Fateh Saini and Ms. Arastu Chopra, Advocates.

&

Dr. Ashwani Kumar, Senior Advocate, with Shri Aashish Chopra and Ms. Stuti Tandon, Advocates.

Shri Adarsh Jain, Advocate.

[FOR THE LAND OWNERS]