

(Mardian) under former/earlier proprietors.”

9. A perusal of above extract reveals that Khasra no.781 was used for common purposes, namely; Gair Mumkin Mardian (graveyard and cremation ground). The new Khasra Nos. are recorded as the ownership of “Jumla Mushtarka Malkan” i.e. land owned by proprietors but managed and controlled by the Gram Panchayat. It, therefore, belies reason as to why the petition was filed.

10. The prayer for rectification of revenue entries, recorded in consolidation proceedings, appears to be a mere eye wash. The dispute, in essence, arises from certain construction raised by the Gram Panchayat on this land. The petitioners should have, therefore, approached a court of competent jurisdiction, with respect to the construction raised or to be raised by the Gram Panchayat.

11. The writ petition is, therefore, dismissed, with liberty to the petitioners to seek adjudication of any right that may have in the land in dispute by approaching an appropriate forum. No order as to costs.

Petition dismissed.

PUNJAB AND HARYANA HIGH COURT

Before: Satish Kumar Mittal & M. Jeyapaul, JJ.

LPA No. 451 of 2011 (O&M)

Decided on: 09.03.2011

Jagjit Singh

Appellant

Versus

State of Punjab and others

Respondents

For the Appellant: Mr. Ashok Sharma Nabheewala, Advocate.

A. Punjab Land Revenue Rules, Rule 15, 16 – Appointment of Lambardar – Ex-Serviceman – Candidature of -- Ex-Serviceman should be given preference vis-à-vis the other candidate in the matter of appointment of Lambardar, particularly when the post is reserved for the Scheduled Caste community.

After hearing learned counsel for the appellant and keeping in view the aforesaid factual and legal position, we are of the opinion that the learned Single Judge has rightly not interfered in the order of the Financial Commissioner. It is not disputed before us that respondent No.5 belongs to the Scheduled Caste community and is an Ex-Serviceman. We concur with the reasoning, given by the Financial Commissioner as well as the learned Single Judge that an Ex-Serviceman should be given preference vis-à-vis the other candidate in the matter of appointment of Lambardar, particularly when the post is reserved for the Scheduled Caste community.

(Para 7)

B. Punjab Land Revenue Act, 1887 (XVII of 1887), Section 15 – Appointment of Lambardar – Heart patient – Autorickshaw puller -- Choice of Collector – Interference in -- Commissioner was not justified in interfering in the choice of the Collector, on flimsy ground that a candidate was plying an autorickshaw and was a heart patient -- On such

a ground, choice of the Collector appointing a person, who is Ex-Serviceman and also belongs to the community for which the post is reserved, should not have been interfered – Such interference is an arbitrary and perverse.

..... In our opinion, the Commissioner was not justified in interfering in the choice of the Collector, on flimsy ground that respondent No.5 was plying an autorickshaw and was a heart patient. On such a ground, choice of the Collector appointing a person, who is Ex-Serviceman and also belongs to the community for which the post is reserved, should not have been interfered and such interference, in our opinion, has rightly been assessed by the Financial Commissioner as an arbitrary and perverse interference in the choice of the Collector.

(Para 7)

Cases referred:

1. Om Parkash vs. Financial Commissioner, Haryana and others, 2009(3) RCR (Civil) 690.
2. Jog Dhian vs. Financial Commissioner, Haryana and others, 2005(1) RCR (Civil) 658.
3. Nirbhey Singh vs. Financial Commissioner, Appeals, Haryana, 2008(1) Volume 8 Local Acts Reporter, 1.

JUDGMENT

SATISH KUMAR MITTAL, J. -- Jagjit Singh, the unsuccessful candidate for appointment on the post of Lambardar of village Dhada, Tehsil and District Jalandhar, has filed this Letters Patent Appeal, challenging the order dated 9.2.2010, passed by the learned Single Judge, whereby his writ petition (CWP No. 47 of 2008), praying for quashing the order dated 17.10.2007, passed by the Financial Commissioner, Animal Husbandry, Punjab, Chandigarh, has been dismissed.

2. Though this appeal is barred by limitation and the appellant has filed an application (CM No. 1225 of 2011), duly supported by an affidavit, for condoning the delay of 290 days in re-filing the appeal, and another application (CM No. 1224 of 2011), duly supported by an affidavit, for condoning the delay of 8 days in filing the appeal, but we have heard learned counsel for the appellants on merits.

3. The instant case pertains to the appointment of Lambardar of village Dhada, Tehsil and District Jalandhar. The said post of Lambardar fell vacant on account of the death of the previous Lambardar. This post was reserved for the Scheduled Caste community. The appellant, respondent No.5 Hazara Ram and five other persons, were the contestants for the post. The Collector, Jalandhar, who was the appointing authority, while taking into consideration the recommendation of Naib Tehsildar, Bhogpur and the Sub Divisional Magistrate, Jalandhar, and while considering the comparative merits of all the candidates, appointed respondent No.5 as Lambardar of the village, vide his order dated 29.1.2004 (Annexure P-6).

4. The appellant challenged the above said order by filing appeal before the Commissioner, Jalandhar Division, Jalandhar, who vide his order dated 6.1.2005 (Annexure P-7), after setting aside the order of the Collector,

appointed the appellant as Lambardar of the village.

5. Feeling aggrieved, respondent No.5 challenged the said order before the Financial Commissioner, who vide his order dated 17.10.2007 (Annexure P-9) set aside the order of the Commissioner and restored the order of the Collector, after coming to the conclusion that the Commissioner has arbitrarily set aside the order of the Collector on the perverse ground, whereas the Commissioner is normally not supposed to interfere in the choice of the Collector.

6. The appellant challenged the order of the Financial Commissioner by filing the aforesaid writ petition, which has been dismissed by the learned Single Judge, after coming to the following conclusion :

“... A number of judgments have been cited on behalf of respondents to canvass that the choice of the Collector is not to be interfered in regard to the appointment of Village headman. Reference is made to a Division Bench judgment in the case of **Om Parkash vs. Financial Commissioner, Haryana and others, 2009(3) RCR (Civil) 690, Jog Dhan vs. Financial Commissioner, Haryana and others, 2005(1) RCR (Civil) 658** and **Nirbhey Singh vs. Financial Commissioner, Appeals, Haryana, 2008(1) Volume 8 Local Acts Reporter, 1**. The dictum of all these judgments is that in the case of appointment of Lambardar, the choice of the Collector must be respected and accepted unless it is perverse. This seems to be a settled proposition of law. Applying the aforesaid ratio of various judgments of this Court, it is to be seen whether the opinion of the Collector suffers from any perversity. The Collector has selected respondent no.5 who admittedly belongs to Harijan community and is an Ex-serviceman. The allegations of the petitioner that respondent no.5 suffers from heart disease have not been established by any documentary and medical evidence. Even if such an allegation is true, merely that a person is a heart patient is not sufficient to deprive him of the appointment unless the ailment is to such an extent that he is unable to perform duty. There is no material on record to infer such a thing. Thus, the allegations against respondent no.5 have not been established. Financial Commissioner has concurred with the opinion of the Collector which is not to be interfered lightly, in view of the settled position of law.”

7. After hearing learned counsel for the appellant and keeping in view the aforesaid factual and legal position, we are of the opinion that the learned Single Judge has rightly not interfered in the order of the Financial Commissioner. It is not disputed before us that respondent No.5 belongs to the Scheduled Caste community and is an Ex-Serviceman. We concur with the reasoning, given by the Financial Commissioner as well as the learned Single Judge that an Ex-Serviceman should be given preference vis-à-vis the other candidate in the matter of appointment of Lambardar, particularly when the post is reserved for the Scheduled Caste community. In our opinion, the Commissioner was not justified in interfering in the choice of the Collector, on flimsy ground that respondent No.5 was plying an autorickshaw and was a heart patient. On such a ground, choice of the Collector appointing a person, who is Ex-Serviceman and also belongs to the community for which the post is reserved, should not have been interfered and such interference, in our opinion, has rightly been assessed by the Financial Commissioner as an

arbitrary and perverse interference in the choice of the Collector.

8. Thus, in our view, there is no merit in the instant appeal.

9. Dismissed.

Appeal dismissed.

PUNJAB AND HARYANA HIGH COURT

Before: Rajive Bhalla, J.

CWP No.11469 of 2002

Decided on: 15.09.2010

Ramesh Pal

Petitioner

Versus

State of Haryana and others

Respondents

For the Petitioner: Mr. G.S. Hooda, Advocate.

For the Respondents: Ms. Shruti Jain, AAG, Haryana for respondents no.1 to 3.

Punjab Village Common Lands (Regulation) Act, 1961 (18 of 1961), Section 2(g), 13-A – Shamilat deh – Charand land -- Ownership dispute -- Shamilat Deh to include land described as “Charand” (Pasture) – In the consolidation scheme, the land in dispute was reserved as “Charand” -- Argument that the land was “Shamilat Deh Hasab Rasad Paimana Hakiyat” in possession of “Makbuza Malkan” before 1950 is irrelevant -- With the enactment of the Shamilat Law in 1954 and the 1961 Act, land recorded as Shamilat Deh, whatever be its nature came to vest in a Gram Panchayat, except to the extent excluded by Section 2(g) and Section 4 of the 1961 Act -- Expression “Hasad Rasad Paimana Malkiat” and “Makbuza Malkan” refer to the position of ownership before the enactment of Shamilat Law and the 1961 Act -- Argument that the petitioner has been in possession of this land before 1950 remains unsubstantiated for want of any such entry in the revenue record establishing that the petitioner or his predecessors were in cultivating possession of his or their share, in accordance with the exclusion clauses enacted by Section 2(g) of the Act – Held, the land belongs to the Gram Panchayat and the petitioner has no right, title or interest therein.

I have heard counsel for the parties and perused the impugned orders.

Section 2(g) (1) of the Act reads as follows :-

“2. Definitions –

(g) “Shamilat deh” includes –

(1) lands described in the revenue records as (Shamilat deh or Charand) excluding abadi deh.”

Section 2(g)(1) defines Shamilat Deh to include land described as “Charand” (Pasture). It is not denied that as per clause (vi) of the consolidation scheme, the land in dispute was reserved as “Charand”. The reservation during consolidation and the entries in the revenue record puts paid to any argument that the land in dispute does not vest in the Gram Panchayat. The argument that the land was “Shamilat Deh Hasab Rasad Paimana Hakiyat” in possession of “Makbuza Malkan” before 1950 is irrelevant. With