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**(2012) 03 P&H CK 0040**

**High Court Of Punjab And Haryana At Chandigarh**

**Case No:** Civil Writ Petition No. 5429 of 2011

Duli Chand

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

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**Date of Decision:** March 26, 2012

**Acts Referred:**

- Constitution of India, 1950 - Article 226, 227
- Punjab Land Revenue Act, 1887 - Section 16

**Hon'ble Judges:** Paramjeet Singh, J

**Bench:** Single Bench

**Advocate:** Ashok Kaushik, for the Appellant; Sandeep S. Mann, Advocates, D.A.G., Haryana for Respondents No. 1 and Mr. Chanakya Pandit, Advocate, for the Respondent

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**Judgement**

Paramjeet Singh, J.

The instant writ petition has been filed under Articles 226/ 227 of the Constitution of India for quashing of order dated 14.09.2010 (Annexure P-3) passed by Commissioner and order dated 16.03.2011 (Annexure P-4) passed by Financial Commissioner, whereby the order dated 25.01.2010 (Annexure P-2) passed by District Collector, appointing Duli Chand-petitioner as Lambardar of the village has been set aside. Brief facts of the case are that to fill up the vacant post of Lambardar caused due to death of Babu Ram, previous Lambardar of Village Bata Tehsil and District Palwa, applications were invited by making proclamation in the village after obtaining necessary sanction from the District Collector. After completing formalities, matter came up for consideration before the District Collector. The District Collector, Palwal after appreciating the comparative merit of the candidates found Duli Chand-petitioner to be fit and suitable candidate and vide order dated 25.01.2010 (Annexure P-2) appointed him as Lambardar of the Village. Suresh-respondent No. 2 filed appeal before the Commissioner. The Commissioner, Gurgaon Division, Gurgaon vide order dated 14.09.2010 (Annexure P-3) accepted the appeal and remanded the case to the District Collector, Palwal with the direction

to appoint Suresh-respondent No. 2 as Lambardar of the village. Petitioner filed revision u/s 16 of the Punjab Land Revenue Act, 1887 before the Financial Commissioner, who vide order dated 16.03.2011 (Annexure P-4) affirmed the order of the Commissioner. Hence, the instant writ petition.

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

3. Learned counsel for the petitioner contended that Duli Chand petitioner was rightly appointed as Lambardar of the village by the District Collector. The Commissioner has wrongly set aside the order of the District Collector. The Financial Commissioner has also wrongly dismissed the revision by recording a finding that petitioner is not resident of the village and respondent has hereditary claim being son of deceased Lambardar. Learned counsel for the petitioner further argued that hereditary claim has been held to be unconstitutional.

4. Learned counsel for respondent No. 2 has opposed the contentions raised by the learned counsel for the petitioner and states that the orders of the Commissioner as well as Financial Commissioner are legal and justified.

5. I have considered the rival contentions of the parties.

6. It is a settled principle of law that the order of the Collector can only be set aside if the order suffers from illegality or perversity. The Commissioner as well as Financial Commissioner have not recorded any finding with regard to perversity in the order passed by the District Collector. The order of the District Collector has been set aside by the Commissioner on the ground that petitioner is working at Faridabad which is at a distance of 25 kilometers from the village and this fact has not been considered by the District Collector. This cannot be a ground to hold the order of the district Collector illegal. Being non-resident of the village does not amount to perversity. As per the provisions contained in Rule 15 of the Lambardari Rules, the person is required to have estate/land in the same revenue estate/village. Only relevant condition is the property of the candidate possessed in the estate to secure the land revenues which he is to collect as Lambardar. There is no specific provision that he must be having residence in the village. Otherwise also for sake of livelihood the tendency to move towards the urban area is commonly seen as the better educational and employment opportunities are not available in the rural areas at par with those available in the urban areas. In my view it will not make any difference if one works at some reasonable distance. Merely on the ground that he is working at some distance, he cannot be ignored on this score alone. Otherwise also there is a specific provision in rule 27 of the Lambardari Rules for appointment of substitute Lambardar. In cases where the Government servants, who were working at different places and appointed as Lambardar, appointment of substitute Lambardar/Sarbrah Lambardar to work on behalf of actual Lambardar, has been allowed.

7. In view of peculiar facts and circumstances of the case, I deem it fit and appropriate to set aside the orders passed by the District Collector, Commissioner and Financial Commissioner. Matter is remanded to the District Collector for fresh decision who after taking into consideration the provisions of the Lambardari Rules specifically Rules 15 and 27, shall pass a speaking order. Parties through their counsel are directed to appear before the District Collector on 26.04.2012.

Disposed of.

No costs.