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(2007) 1 RCR(Civil) 318

High Court Of Punjab And Haryana At Chandigarh

Case No: Review No. 1 of 2004 in ROR No. 440 of 2001

Buta Singh	APPELLANT
Vs	
Narata Singh and another	RESPONDENT

Date of Decision: Jan. 9, 2006

Citation: (2007) 1 RCR(Civil) 318

Hon'ble Judges: B.K.Srivastava, F.C.

Advocate: Sh. R.S. Chauhan, Advocate, Sh. Naveen Sharma, Advocate., Advocates for appearing Parties

Judgement

B.K. Srivastava, F.C.

1. Petitioner, Buta Singh was appointed as Lambardar of village Palheri, Tehsil Kharar, District Ropar vide order dated 4.6.1997. Appeal

preferred by the present respondent, Narata Singh was dismissed by the Commissioner, Patiala Division. In this appellate proceeding the petitioner

Buta Singh was proceeded ex parte. After dismissing Narata Singh"s appeal, Commissioner entertained his review application without serving a

fresh notice to the petitioner Buta Singh who was then respondent before him. Commissioner accepted the review application vide his order dated

27.3.2001 and reversed his previous order dated 14.11.2000. Against this reviewed order the present petitioner preferred revision petition in this

Court which was dismissed by my predecessor on 18.9.2003 due to nonappearance of the petitioner. My predecessor dismissed his revision

petition by making an observation that his default in appearance showed his indifference and lack of respect for the court. The petitioner then filed

a review application which is being decided by this order.

The petitioner''s counsel has advanced following arguments :

(i) The impugned order of Commissioner vide which he reviewed and reversed his previous order is illegal because it was passed without issuing a

fresh notice to him as warranted under the Punjab Land Revenue Act.

(ii) That the predecessor Financial Commissioner dismissed his revision petition in default of his appearance but the order passed shows as if he

passed it on merits. In fact, it should have been a simple ""dismissed in default"" order so that its restoration could be applied for by the petitioner.

He had to apply for review instead of restoration because the impugned order is a detailed order although it is shorn of discussion on merits of his

case.

(iii) District Collector had appointed the petitioner after considering all aspects and the Collector''s choice was reversed by the Commissioner after

entertaining review application without passing a speaking order as to why he reversed his order of dismissal of respondent''s appeal and how he

found the present respondent, Narata Singh, superior to the petitioner. It is well settled that District Collector''s choice should be reversed only

when it is perverse or unsustainable.

2. I admitted the review application of the petitioner by passing a detailed order dated 3.10.2005. Both the parties were accordingly heard.

After hearing both the parties I conclude as under :

(i) Commissioner''s impugned order suffers from legal infirmity because he did not serve a fresh notice to the petitioner which was necessary as per

Section 15(1)(c) of Punjab Land Revenue Act before an order reversing or modifying one''s own order after review is passed.

(ii) The impugned order is infirm also due to the reason that it does not discuss the comparative merits of these two candidates.

(iii) The biggest drawback with the respondent Buta Singh is that he is absolutely illiterate by his own admission. I have constantly taken stand that

a completely illiterate person must not be appointed as Lambardar if literate/educated candidate is available because a Lambardar has to attest a

variety of transactions and documents of great significance which cannot be comprehended/understood by an illiterate person. Times have changed

since Lambardara Rules were framed a century ago when everybody was illiterate in rural areas.

(iv) The respondent says that he was appointed as Sarbrah by the deceased Lambardar and he, therefore, deserved preference on the ground of

this experience. I disagree because his experience as Sarbrah is minimal, just for a period of four months only. Therefore, much value cannot be

attached to this specially when he is illiterate.

(v) He is also too old, around 65 years of age. Due to this reason also he is absolutely unfit for appointment as Lambardar. Both the candidates are

present before me and I cannot make out that the respondent, Narata Singh is rather too old. On the contrary the petitioner, Buta Singh, is young,

around 38 years old and is a matriculate.

3. The petitioner has also argued that he was never served during the appellate proceeding before the Divisional Commissioner preferred by the

respondent, Narata Singh. He alleges that the note regarding refusal of service by him was certainly wrong and manipulated. Munadi report dated

21.9.1998 was also false and manipulated. It is even otherwise unbelievable that after being appointed as Lambardar by the District Collector after

a hot contest he would show indifference to lose his case by nonappearance during appellate proceeding before the Commissioner. I quite agree

with his argument and do believe that he must not have actually been served. However, without refuting question of service, the main reasons for

passing this order in favour of the petitioner are twofold :

(i) That the Commissioner"s reviewed order is illegal and unsustainable due to the reasons explained above.

(ii) On merit, the petitioner is far superior and the respondent is unworthy of appointment being too old and illiterate.

4. In view of the above I recall the earlier order dated 18.9.2003 of this court and uphold the District Collector"s order by setting aside the

Commissioner"s impugned order.

Announced.