



2025:HHC:24277

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.578 of 2013

Reserved on: 10.07.2025

Date of Decision: 25.07.2025

Sanjay Kumar

...Petitioner

Versus

State of H.P. & others

...Respondents

Coram

Hon'ble Mr. Justice Satyen Vaidya, Judge

Whether approved for reporting? Yes.

For the petitioner:

Mr. Ajay Kumar, Senior Advocate with
Mr. Rohit, Advocate.

For the respondents:

Mr. Pratush Sharma, Additional
Advocate General, for respondent-State.

Mr. N.K. Thakur, Senior Advocate with
Mr. Divya Raj Singh and Ms .Ritu Singh,
Advocate, for respondent No.5.

Satyen Vaidya, Judge

The instant petition has been filed for following
substantive relief:

*"It is therefore prayed that this writ petition may
very kindly be allowed by issuance of writ in the
nature certiorari or other writ, order or direction for
quashing and setting aside the order Annexure
P11 dated 11.12.2012 passed by the learned
Financial Commissioner (Appeals) H.P. in case
No. 10/2012 titled Shri Kamal Singh versus Shri
Sanjay Kumar with further directions to restore the
orders passed by Respondent No. 3 and 4*

Annexure P6 and P9 be passed in favor of the petitioner and against the Respondents Records of the case may very kindly be called for and such other further order or relief or direction, as this Hon'ble Court deems fit and proper in the facts of the case, be also passed in the ends of law and justice. Costs of the petition be also allowed to the petitioner."

2. Brief facts necessary for adjudication of the petition are that on vacation of the post of Lambardar of Village Jankaur, Tehsil and District Una on the death of Joginder Singh on 27.10.2010, process was initiated by District Collector, Una for appointment of Lambardar of aforesaid village.

3. Petitioner Sanjay Kumar and respondent No.5 Kamal Singh were amongst various other candidates, who applied for the post.

4. District Collector, Una appointed Kamal Singh as Lambardar of village Jankaur *vide* order dated 29.01.2004, passed in Case No.72 of 2003.

5. Sanjay Kumar challenged the order of appointment of Kamal Singh as Lambardar by way of appeal under Section 14 of Himachal Pradesh Land Revenue Act, 1954 (for short, "the Act") before the Divisional Commissioner, Kangra. The appeal was allowed *vide* order dated 22.11.2006 and the matter was

remanded back to the District Collector, Una for considering the candidature of both candidates i.e. Sanjay Kumar and Kamal Singh again on the basis of factors specified in Rule 15 of the Punjab Land Revenue Rules.

6. Thereafter, the District Collector *vide* order dated 30.05.2008 appointed Sanjay Kumar as Lambardar. This order was now challenged by Kamal Singh before Divisional Commissioner, Kangra, who allowed the appeal, but the said order was set aside by this Court *vide* judgment dated 03.08.2011, passed in CMPMO No.206 of 2011 and the appeal was directed to be heard and decided by Divisional Commissioner, Mandi.

7. In compliance, the Divisional Commissioner, Mandi *vide* order dated 12.12.2011 dismissed the appeal of Kamal Singh and affirmed the order dated 30.05.2008 passed by the District Collector, Una.

8. Kamal Singh further assailed the order of Divisional Commissioner, Mandi, before the Financial Commissioner (Appeals), Himachal Pradesh by filing Revision Petition under Section 17 of the Act. Learned Financial Commissioner (Appeals) *vide* impugned order dated 11.12.2012 has allowed the Revision Petition of Kamal Singh and has affirming the order of District Collector, Una dated 29.01.2004 approving the appointment of

Kamal Singh as Lambardar of village Jankaur, hence, this petition.

9. I have heard Mr. Ajay Kumar, learned Senior Advocate, representing the petitioner, Mr. N.K. Thakur, learned Senior Advocate, representing private respondent and Mr. Pratyush Sharma, learned Additional Advocate General, representing the State and have also gone through the record carefully.

10. This Court has been called upon to exercise the writ jurisdiction against an order of the statutory authority under the Act. The power of judicial review is a limited jurisdiction. What can be looked into by this Court is the decision-making process and not the merit of the decision.

11. The Financial Commissioner (Appeals) has exercised the jurisdiction under Section 17 of the Act, which empowers the said authority to call for records of any case pending before or disposed of by any Revenue Officer subordinate to him and thereafter pass such order as he thinks fit, subject to the condition that no order reversing or modifying any proceeding or order of a subordinate Revenue Officer and effecting any question of right between private persons can be passed without giving those person(s) an opportunity of being heard.

12. Though, the revisional power of Financial Commissioner under the Act appears to be unbridled subject to exception as noticed above, however, keeping in view the scheme of the things under the Act, the revisional power of Financial Commissioner has to prescribe to the basic tenets of revisional power under the general law, which encompasses satisfaction of Revisional Authority as to legality and propriety of the order of subordinate authority. The revisional power are meant to be used to subserve the interest of justice by eliminating the element of illegality or perversity in the orders of subordinate authorities.

13. Under the Act, the Revenue Officers exercise original, appellate and revisional jurisdiction besides being vested with the power of review. The hierarchical scheme provided under the Act connotes that while exercising Appellate or Revisional jurisdiction, the Appellate or Revisional authorities shall make adjudication on the strictures prescribed for deciding Appeal and Revision and not as the court of original jurisdiction.

14. In the facts of instant case, the Financial Commissioner has formed opinion after comparative analysis of different orders passed by the District Collector, Una and Divisional Commissioners, Una and Mandi and accordingly, he

has found the order dated 29.01.2004 passed by District Collector, Una to be more prudent.

15. The question arises whether the Financial Commissioner (Appeals) could have looked into the contents of order dated 29.01.2004, which had been set aside by the Divisional Commissioner, Kangra *vide* order dated 22.11.2006?

16. Indisputably, the order of Divisional Commissioner, Kangra dated 22.11.2006 was not challenged further and as such had attained finality. In his said order, Divisional Commissioner, Kangra had disagreed with the reasons assigned by the District Collector Kangra for giving the preference to Kamal Singh for appointment as Lambardar. The Divisional Commissioner had specifically held that Kamal Singh was so distantly related to deceased Lambardar Joginder Singh that his hereditary claim was of no consequence and had further observed that the hereditary claim of Kamal Singh could not be rated any better than that of Sanjay Kumar. In such manner, one of the parameters that was taken into consideration by District Collector, Una in favour of Kamal Singh was nullified.

17. The District Collector, Una had also found the claim of Sanjay Kumar to be weaker *vis a vis* the claim of Kamal Singh by holding that Sanjay Kumar was not original resident of village Jankaur and was only owning property in the estate. The

Divisional Commissioner, Kangra had disagreed with such reason of District Collector also by specifically holding that it was not the requirement of Rule 15 of Punjab Land Revenue Rules that the candidate for the post of Lambardar should necessarily be original resident of the village, As per the Divisional Commissioner, what was relevant was that such candidate owned the property in the estate.

18. By way of impugned order, the Financial Commissioner (Appeals) has overturned and set aside the findings recorded by Divisional Commissioner, Kangra, which, as noticed above, had attained finality.

19. The subsequent order dated 30.05.2008 passed by the District Collector, Kangra was in sequel to the order dated 22.11.2006 of the Divisional Commissioner, Kangra. Once, the order passed by the Divisional commissioner, Kangra in exercise of Appellate jurisdiction had attained finality, the order of District Collector, Una dated 29.01.2004 had lost relevance. Rather, the findings returned by the District Collector *vide* aforesaid order had merged with the findings returned by Divisional Commissioner.

20. In the subsequent order dated 30.05.2008 of District Collector, Una, the scales were found weighing in favour of Sanjay Kumar. The District Collector came to the conclusion that both the candidates were educated and both were distantly

related to deceased Lambardar Joginder Singh. The factor that weighed in favour of Sanjay Kumar was that he had been working as "Sarbarah Lambardar" since 11.03.1992 and was experienced enough to discharge the duties of Lambardar of village Jankaur.

21. The District Collector had also observed that there was an allegation of encroachment on Government land against Kamal Singh. He found that Kamal Singh had not been able to rebut the allegation and, in this way, also the claim of Kamal Singh was found to be inferior to that of Sanjay Kumar.

22. The Divisional Commissioner, Mandi also affirmed the findings of the District Collector and dismissed the appeal of Kamal Singh.

23. What has weighed with the Financial Commissioner (appeals), in finding the candidature of Kamal Singh more suitable, were the findings recorded by District Collector, Una, vide order dated 29.01.20204. The findings of District Collector, Una, which have been taken into consideration by the Financial Commissioner (Appeals), are as under:

- (a) Sanjay Kumar was not original inhabitant of village Jankaur and his residence is based on an inherited property through a Will.
- (b) Sanjay Kumar did not have hereditary claim to the office of Lambardar.

(c) Kamal Singh was proved to be not encroacher on Government land.

24. Thereafter, the Financial Commissioner (Appeals) has held that the duties of Lambardar were basically related to revenue matters and identification of persons during settlement, consolidation, mutation and registration etc. For the proper fulfillment of such duties, it is appropriate that an original inhabitant residing in the village on a permanent basis be appointed as Lambardar, rather than a resident who is not permanently based in Jankaur and has been conferred ownership of land by way of Will. The Financial Commissioner (Appeals) also found that the inheritance of property by Sanjay Kumar under a Will was to be viewed as a violation of Section 118 of H.P. Tenancy and Land Reforms Act.

25. Thus, the opinion of Financial Commissioner (Appeals) has been based on the findings of District Collector, Una dated 29.01.2004 which had not only lost relevance but had been rendered non-existent after merger in the findings of the Divisional Commissioner, Kangra.

26. As regards the opinion formed by the Financial Commissioner (Appeals) regarding the applicability of Section 118 of HP. Tenancy and Land Reforms Act, 1975 as an impediment in acquisition of ownership of land by Sanjay Kumar,

it can be safely said that such an observation appears to be without any material on record. Thus, the Financial Commissioner (Appeals) could not have considered a fictional circumstance against Sanjay Kumar.

27. Further it can be seen that the District Collector had the jurisdiction to appoint Lambardar on the basis of parameters and criteria prescribed by Rule 15 of the Punjab Land Revenue Rules. The District Collector *vide* order dated 30.05.2008 had found both the candidates to be equally balanced and thereafter for preferring Sanjay Kumar to the office of Lambardar he gave credit to the long service rendered by Sanjay Kumar as "Sarbarah Lambardar".

28. The Financial Commissioner (Appeals) in the impugned order has not disagreed with such findings of fact. The view taken by the District Collector has also not been held to be perverse. The Financial Commissioner (Appeals) by comparing the orders passed by the District Collector on 29.01.2004 and 30.05.2008 has simply found the reasons in order dated 29.01.2004 to be more plausible. As noticed above, the order dated 29.01.2004 having merged with the order dated 22.11.2006, passed by the Divisional Commissioner, Kangra, could not have been the relevant material on which the Financial Commissioner (Appeals) could have placed reliance.

29. In **Harsharan Singh vs. Financial Commissioner Appeal, 2009(1) RCR (Civil) 909**, Hon'ble Punjab and Haryana High Court has held as under:

"6. The order passed by the Collector is perused. The view taken by the Collector that an agriculturist would be available in the village compared to a person who is a practising Advocate appears reasonable, just and proper. Respondent was also a Sarpanch of a village which could have kept him busy in performing his responsibilities as Sarpanch and an added disadvantage for the post of Lambardar. The choice which was exercised by the Collector does not appear to be suffering from any perversity, which could have been interfered with by Commissioner and Financial Commissioner. A view is well settled that the choice exercised by the Collector can be interfered only when it is found to be exercised arbitrary, capricious or is perverse. Nothing is urged before me to show any arbitrariness in the order passed by the Collector. There is no such finding by Commissioner and Financial Commissioner to arrive at different finding.

7. Precedent if any can be had in the form of *Jog Dhian versus Financial Commissioner, Haryana and others* 2005 (2) PLR 306 to say that the choice of the Collector is final and that the Financial Commissioner while partially touching the merits of the case has violated the settled law that inter se merits of the candidates cannot be reconsidered by the Appellate or the Revisional Authorities. The counsel would also refer to the case of *Sarwan Singh versus The Financial Commissioner Appeals-*

I, Punjab, 2002 (2) RCR (Civil) 520. In this case also it is observed that choice of the Collector for appointment of Lambardar cannot be substituted by the Commissioner merely observing that other candidates was better candidate. While observing about the scope of interference by writ Court it is held in this case that if the order of the competent authority does not suffer from any jurisdictional infirmity or patent legal error warranting issuance of a writ, the writ Court cannot interfere. The proposition of law that the choice of the Collector is not to be interfered with is fairly well settled. Reference here may be made to the case of Ujagar Singh versus State of Punjab 2008 (3) RCR (Civil) 28 and Gurlal Singh versus Financial Commissioner (Revenue) Punjab and others 2008 (4) RCR (Civil) 792 that the choice of the Collector is final except where the order discloses a lack of jurisdiction or an error of fact so palpable, as to render his order arbitrary, capricious or unreasonable.”

30. Thus, the Financial Commissioner (appeals) while passing the impugned order has exceeded his jurisdiction by basing his opinion on irrelevant and non-existence material and also by interfering with the order of District Collector without declaring it to be illegal or perverse.

31. In result, the petition is allowed. Order dated 11.12.2012, passed by Financial Commissioner (Appeals) in Case No.10 of 2012 is quashed and set aside.

32. Petition is accordingly disposed of along with pending application(s), if any.

(Satyen Vaidya)
Judge

July 25, 2025
(vt)

High Court of HP