

PETITIONER:
KHAZAN SINGH

Vs.

RESPONDENT:
SHAMSHER SINGH & ORS.

DATE OF JUDGMENT: 07/04/1998

BENCH:
G.T. NANAVALI, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

THE 7TH DAY OF AUGUST, 1998

Present

Hon'ble Mr. Justice G.T. Nanavati

Hon'ble Mr. Justice S.P. Kurdukar

S.N. Mehta, Adv. for the appellant

Pallav Sisodia, Altaf Hussain, Dr. K.P.S. Dalal, Dr.K.S.

Chauhan, Advs. for the Respondents

J U D G M E N T

The following Judgment of the Court was delivered:

Nanavati, J.

Leave granted.

Heard learned counsel for the parties.

The appellant - Khazan Singh was appointed as a Lambardar by the Collector of Jind by his order dated 17.12.90. That order was challenged by one Tek Chand before the Commissioner, Hissar Division. The Commissioner without setting aside the order of the Collector remanded the matter to him for fresh consideration of merits and demerits of Khazan Singh and Tek Chand. This order of remand was challenged by Khazan Singh by filing an appeal before the Financial Commissioner, Haryana. He disposed of the appeal by declaring that the order passed by the Collector has become final and by observing that the proceedings have become infructuous as a result of death of Tek Chand.

Aggrieved by that order, Shamsheer Singh, son of Tek Chand filed a Writ Petition in the High Court of Punjab and Haryana. It disposed of the petition by remanding the case to the Collector and directing the Collector to permit Khazan Singh to continue as Lambardar till a fresh decision is taken by him as to who should be appointed as the Lambardar. The High Court also directed the Collector to invite fresh applications from other interested persons before deciding who should be appointed as the Lambardar.

Aggrieved by the order passed by the High Court, Khazan Singh has filed this appeal. It was submitted by the learned counsel for the appellant that the Collector's order appointing the appellant having become final as it was not set aside by any of the appellate authorities, no direction could have been given to the Collector to invite fresh applications and decide who should be appointed as the

lambardar. In our opinion, this contention deserves to be accepted. Even the learned counsel for the respondent conceded that so long as the appointment of Khazan Singh as Lambardar is not cancelled, it is not permissible to invite fresh applications. As the order passed by the High Court is not sustainable, it has to be set aside. We, therefore, allow this appeal, set aside the order passed by the High Court and remit the matter to the Financial Commissioner, Haryana, to decide the appeal afresh as the question whether the cause of action survived or not was required to be decided before closing the proceedings. It will be open to Shamsher Singh to apply to the Commissioner to join as a respondent in the said appeal and contend that it is open to him to challenge the appointment of Khazan Singh as Lambardar. It will be open to Khazan Singh to raise all the contentions which are permissible in law.

This appeal is allowed accordingly.

No order as to costs.