



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-1140-2020 (O&M)

Date of decision: 03.12.2024

Oriental Bank of Commerce

...Petitioner

VERSUS

Permanent Lok Adalat (Public Utility Services), Karnal and another

...Respondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present :- Mr. Anil Kumar Ahuja, Advocate for the petitioner.

Mr. N.P. Bhardwaj, Advocate for respondent No.2.

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the award dated 11.11.2019 passed by the Permanent Lok Adalat (Public Utility Services), Karnal whereby the application preferred by respondent No.2-applicant under Section 22 C of the Legal Services Authorities Act, 1987 had been allowed and the petitioner-Bank had been directed to process and grant the loan sanctioned by the Bank, as per its letter dated 01.12.2016, within a period of 30 days of the date of the award, failing which the petitioner-Bank had been held liable to pay penalty @Rs.1000/- per day to be paid to respondent No.2-applicant.

2. Learned counsel appearing on behalf of the petitioner-Bank contends that a joint application dated 30.11.2016 was submitted by respondent No.2-applicant and his son-Vikash Attri to the branch of the



petitioner-Bank whereupon an overdraft facility of Rs.15 lakhs was tentatively sanctioned jointly in favour of the respondents vide letter dated 01.12.2016. The stipulation contained in the said letter of approval were to the effect:-

- (i) That the overdraft credit facility shall be safeguarded by equitable mortgage of H. No.61, Gali No.2, New Ramesh Nagar, Karnal belonging to the guarantor Smt. Bimla Devi wife of respondent No.2-applicant;
- (ii) Before the release of the aforesaid overdraft facility, all the documentation formalities shall be completed; and
- (iii) Prior to the release of the said facility, legal vetting shall be obtained from the Bank's panel Advocate(s)/Legal Retainer regarding the validity of the documents mortgaged.

3. Pursuant to the aforesaid sanction of the overdraft facility of Rs.15 lakhs and subject to the conditions specified in the sanction letter dated 01.12.2016, the proposed guarantor i.e. Smt. Bimla Devi, wife of respondent No.2-applicant, created an equitable mortgage with respect to her house H. No.61, Gali No.2, New Ramesh Nagar, Karnal with the petitioner-Bank, on the same day, by deposit of title deed of the house being sale deed registered at Sr. No.2873 on 05.07.2011 in the office of the Sub-Registrar, Karnal. The mutation of mortgage was also entered in the Jamabandi for the year 2014-15 at Sr. No.108, on 08.12.2016.

4. In terms of the general conditions of the sanction letter dated



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01.12.2016, the loan file of the petitioner was referred by the petitioner-Bank to the Advocate/Legal Retainer for vetting of documentation and to determine the legal validity and enforceability of the security documents and the equitable mortgage, before sanction of the overdraft facility. The said Legal Retainer submitted his report dated 07.01.2017 opining that the land beneath the house fell into the category of *Shamlat Deh* and the same could not be mortgaged as the State had banned the mortgage of *Shamlat Deh* vide its letter bearing memo No.3578 R-4-2010/4351 dated 15.12.2010 issued by the Financial Commissioner and Principal Secretary to Government of Haryana, Revenue and Disaster Management Department. On receipt of the aforesaid legal report from the Legal Counsel and considering the same in the light of the instruction issued by the Government of Haryana, restricting the mortgage/transfer of the *Shamlat* land and that no valid equitable mortgage could be created by the person in possession of any such land, (in the present case the same being Smt. Bimla Devi-the guarantor of the loan), the retail assets group of the petitioner-Bank, vide its letter dated 01.02.2017, advised the dispensing branch not to disburse the overdraft facility and to send an intimation to respondent No.2 in this regard and to return the documents of the equitable mortgaged property and also get the charge created thereon satisfied.

5. An intimation in this regard was immediately sent by the petitioner-Bank to respondent No.2-applicant and it was intimated that the mortgage created in favour of the Bank was not legally valid and enforceable and as such the overdraft facility could not be disbursed.



Respondent No.2 was also informed to take back the documents of the property offered for equitable mortgage but respondent No.2 refused to take back the title deeds related to the aforesaid property and instead submitted a complaint dated 28.02.2017 to the Deputy General Manager of the petitioner-Bank, at its controlling Regional Office at Rohtak, against the Branch Manager of the dispensing Branch for not releasing the overdraft facility. Respondent No.2-applicant thereafter filed an application under Section 22C of Legal Services Authorities Act, 1987 before the Permanent Lok Adalat (Public Utility Services) Karnal against the petitioner-Bank and its officers seeking release of the overdraft facility of Rs.15 lakhs alongwith disbursement of Rs.20,000/- allegedly spent by him on securing the documents and also a damage to the tune of Rs.50 lakhs for mental agony, hardship and loss of reputation etc.

6. The petitioner-Bank entered appearance before the Permanent Lok Adalat (Public Utility Services) and filed its written statement dated 24.08.2017 seriously contesting the application preferred by respondent No.2-applicant and pointing out that the overdraft facility almost stood sanctioned, however, the conditions required to be satisfied prior to disbursement of the overdraft facility had not been satisfied and that the validity of the documents and entitlement of respondent No.2-applicant to create an equitable mortgage was prohibited by the Government. It was also pointed out that respondent No.2-applicant had concealed the fact that the said residential house had been constructed on *Shamlat Deh* and that there was ban on transfer or creation of mortgage w.r.t. the same, as per the



instructions issued by the Financial Commissioner and Principal Secretary, Department of Revenue and Disaster Management, Govt. of Haryana.

7. The conciliation proceedings were initiated by the Permanent Lok Adalat (Public Utility Services) which failed to fructify in any acceptable settlement whereupon adjudication was undertaken by it in exercise of powers conferred under Section 22C (8) of Legal Services Authorities Act, 1987. On consideration of pleadings, evidence and the arguments, it passed the impugned award dated 11.11.2019. The operative part of the award passed by the Permanent Lok Adalat (Public Utility Services) reads thus:-

“8. The learned counsel for the petitioner argued that the petitioner has completed all the formalities and the properties have been mortgaged and mutation is also sanctioned in favour of the bank but the respondent No.1 in collusion with the other respondents intentionally denied to advance the loan on flimsy ground that the part of property mortgaged is Shamlat. The learned counsel for the petitioner further submitted that that if the property owned by the petitioner and mortgaged in favour of the bank would have been shamlat, the registration authority would have not registered the mortgage deed in favour of the bank.

9. To counter the arguments led by the learned counsel for the petitioner learned counsel for the respondent submitted that as per serial No. 6 of General Condition prior



to release of the facility, the legal vetting shall be obtained from bank panel advocate/legal retainer regarding the validity of the documents or mortgage. At the time of validity of the documents or mortgage. The legal retainer raised objection that the land falls in shamlat land and shamlat land has been totally banned and this property is not fit for creation of equitable mortgage and Cluster Head had rejected the sanction vide letter dated 01.02.2017.

10. Section 2 (g) (v) of Punjab Village Common Lands (Regulation) Act 1961 (As applicable to Haryana) states that "shamilat deh" includes:

- 1) lands described in the revenue records as 1 [Shamilat Deh or Charand] excluding abadi deh;*
- 2) shamilat tikkas;*
- 3) lands described in the revenue records as shamilat, tarafs, patties, pannas and tholas and used according to revenue records for the benefit of the village community or a part thereof or for common purposes of the village;*
- 4) lands used or reserved for the benefit of village community including streets, lanes, playgrounds, schools, drinking wells or ponds situated within the sabha area as defined in clause (mmm) of section 3 of the Punjab Gram Panchayat Act, 1952. excluding lands reserved for the common purpose of a village under*



section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the State Government under section 23-A of the aforesaid Act;[(4a) vacant land situate in abadi deh or gorah deh not owned by any person;]

- 5) *lands in any village described as banjar qadim and used for common purposes of the village according to revenue records;*

*[*****]*

But does not include land which

- (i) *Becomes or has become shamilat deh due to river action or has been reserved as shamilat in villages subject to river action except shamilat deh entered as pasture, pond or playground in the revenue records;*
- (ii) *Has been allotted on quasi-permanent basis to a displaced person; 5 [(ii-a) was shamilat deh, but has been allotted to any person by the Rehabilitation Department of the State Government, after the commencement of this Act, but on or before the 9th day of july. 1985;]*
- (iii) *Has been partitioned and brought under cultivation by individual land holders before the 26th January, 1950:*
- (iv) *Having been before the 26th January, 1950, by a person*



by or in exchange for proprietary land from a cosharper in the shamillat deh is so recorded in the jamabandi or is supported by a valid deed:

- (v) *Is described the revenue records as shamilat taraf, pattis, pannas and thola and used according to revenue records for the benefit of the village community or a part thereof for common purposes of the village.*
- (vi) *Lies outside the abadi deh and was being used as girwar, bara, manure pit, house or for cottage industry, immediately before the commencement of this act;*
- (vii) *Was shamilat deh, was assessed to land revenue and has been in the individual cultivating possession of co-shares not being in excess of their respective shares in such shamilat deh on or before the 26th January, 1950; or*
- (viii) *Is used as a place of worship or for purposes subservient thereto: 3 [(6) lands reserved for the common purposes of a village under section 18 of the East Punjab Holdings (Consolidation and Prevention of Fragmentation) Act, 1948 (East Punjab Act 50 of 1948), the management and control whereof vests in the Gram Panchayat under section 23- A of the aforesaid Act.*

Explanation- Lands entered in the column of ownership of



record of rights as Jumla Malkan 'Wa Digar Haqdaran Arazi Hassab Rashad', 'Jumla Malkar' or Mushtarka Malkan' shall be shamilat deh without the meaning of this section].

11. As per record available on the case file, Jamabandi (Ex. C-X) indicating the applicant as owner and lien of the bank is also marked; the intkal number 38612 is also entered in the intakal register (Ex. C-Y) in favour of the applicant Smt. Bimla Devi. The petitioner produced the title deed (Ex R-6) and mutation in favour of the respondent bank (Ex. R-7). If the land in question is shamlat, no sale deed or mutation in favour of the applicant and the respondent bank was possible in view of the letter of the Financial Commissioner and Principal Secretary, Govt. of Haryana, dated 15.12.2010 (Ex.R-4). Further as per section 2 (g) (v) of Punjab Village Common Lands (Regulation) Act 1961 (as applicable to Haryana) "shamilat deh" does not include land which is described in the revenue records as shaamilat, taraf, pattis, pannas anas and thola and used according to revenue records for the benefit of the village community or a part thereof for common purposes of the village; Moreover, the panel advocate of the respondent opined that the land in question free from all encumbrance before sanctioning the over draft limit and the Revenue Authority also mark the lieu of the respondent bank in revenue reports so the term of settlement



is decided in favour of the petitioner and against the respondents. Therefore, under the facts and circumstances of the case, we allow the petition moved by the petitioner under Section 22C of the Act and apass an award directing the respondents to process the loan sanctioned by the respondent No. 1 as per letter dated 01.12.2016 as per rule and regulation within 30 days from the date of this award failing which the respondents shall be liable to a penalty of RS>1,000/- per day to be paid to the petitioner for the extended period.

12. Under the provisions of the Act contained in Section 22E (1) and (4), the award made by this forum is final and shall not be called in question in any original suit, Petition etc.”

8. Aggrieved thereof, the instant petition has been filed.
9. Learned counsel appearing on behalf of the petitioner has argued that respondent No.2-applicant had submitted the documents with respect to his title including the sale-deed but the verification obtained through the panel counsel revealed that the property in question was a *Shamlat* property and that mutation sanctioned in his favour also showed the *Shamlat* to be the owner. Hence, guarantor-Smt. Bimla Devi-wife of respondent No.2-applicant had sought to create an equitable mortgage without having any title over the land. Since, the pre-requisite conditions of the sanction order had not been satisfied, hence, the petitioner-Bank had declined disbursement of over-draft facility in favour of respondent No.2-



applicant. He has drawn attention of this Court to the *jamabandi* as well as to the Mutation No.135612 sanctioned in favour of the petitioner-Bank as well and as per which only the name of the cultivators/person in possession had been changed and the property continued to be reflected under the ownership of *Shamlat*. The issuance of instructions by the Government of Haryana about barring creation of equitable mortgage/transfer of the *Shamlat* property has also not been disputed or denied.

10. Learned counsel appearing on behalf respondent No.2-applicant on the other hand has contended that respondent No.2-applicant had submitted all the requisite documents for release of the overdraft facility which was duly sanctioned. He further contends that the petitioner-Bank had also sanctioned loans/overdraft facility to the property adjacent to the property of respondent No.2-applicant and there was no valid reason for declining the overdraft facility to him. He contends that the Permanent Lok Adalat (Public Utility Services) has specifically recorded in its award that the property was not in the nature of *Shamlat* land and hence, there was no prohibition against issuance of overdraft facility and the same has been wrongly declined. The award thus passed by the Permanent Lok Adalat (Public Utility Services) does not suffer from any illegality, perversity or failure to appreciate the facts and circumstances of the present case. He prays that respondent No.2-applicant may nonetheless be awarded some compensation since the petitioner-Bank had assured about the loan being processed and to be released to them and they had taken efforts to collect the papers for preparation of equitable mortgage and seeking disbursement of



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the overdraft facility from the petitioner-Bank.

11. Neither any other argument has been raised nor any judgment has been cited by the respective parties.

12. I have heard the learned counsel for the respective parties and have gone through the documents appended with the present writ petition with their able assistance.

13. It is evident from a perusal of the documents appended with the present petition as also from the arguments advanced by the learned counsel for the respective parties, that even though the overdraft facility was duly sanctioned by the petitioner-Bank in favour of respondent No.2-applicant, however, the same was subject to certain stipulations prescribed thereunder. The same also included legal vetting of the documents as on essential pre-requisite of creating an equitable mortgage. Even though the sale deed has been executed in favour of the guarantor i.e. Smt. Bimla Devi-wife of respondent No.2-applicant, however, *jamabandies* as well as the mutation(s) appended by the petitioner-Bank and not disputed by respondent No.2-applicant clearly establish that the property in question was reflected in the revenue record as a *Shamlat* property and only the possession thereof had been transferred to Smt. Bimla Devi-the guarantor of the overdraft facility. Notwithstanding the recitation made in the sale deed, the documents cannot transfer any title better than what is conferred with the vendor. If a *Shamlat* property has been transferred by virtue of a sale deed, the same can only be read to the extent of the right that have been conferred upon the vendor i.e. a mere possession. In order to create an equitable



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mortgage over the property, the title must vest with the person who is creating an equitable mortgage. There is no such document on record on the basis whereof it may be ascertained that the vendor/guarantor of respondent No.2-applicant (his wife Smt. Bimla Devi) had any sole, exclusive and unhindered title over the property.

14. The Permanent Lok Adalat (Public Utility Services) went further and to an extent of recording a finding that the property in question is not a *Shamlat* property. While holding that the property is not a *Shamlat*; the Permanent Lok Adalat (Public Utility Services) has relied upon the proviso as per which the property is used for common purposes or for the benefit of village community. The Permanent Lok Adalat (Public Utility Services) relied on the said proviso without even referring to any material or evidence on the basis whereof such a finding could be strengthened. Any concession of *Shamlat* property for own use cannot be said to be a use for common purposes or for the benefit of village community. Any such finding can be recorded only by a Court competent in law to rule on the same.

15. I am of the opinion that such a declaration cannot be given by the Permanent Lok Adalat (Public Utility Services) and the power thereof vests only with the revenue authorities under the Punjab Village Common Lands (Regulation) Act, 1961 as applicable to the State of Haryana. Any such finding recorded by the Permanent Lok Adalat (Public Utility Services) hence travels beyond the powers vested in the Permanent Lok Adalat (Public Utility Services) as it has got no domain to adjudicate upon the *Shamlat* land since the same does not fall within the scope of “Public Utility Services”.



Hence, the very foundation of the award was misconceived and was founded upon assuming jurisdiction over a subject matter for which the statute has not conferred any such power. Validating an award founded on a declaration of the property not being a *Shamlat* would amount to approving an illegality committed by the Permanent Lok Adalat (Public Utility Services).

16. In so far as the contention of the respondent, that other person in the adjacent area/neighborhood have been granted the concession of loan/overdraft facility by the petitioner-Bank itself is concerned, even though the contention as raised in application was denied by the respondents but nonetheless, considering the same to be true for the sake of arguments, the same cannot be the basis of directing grant/sanction of an overdraft facility. The Court of law is required to see as to whether the decision taken by the competent authority is based upon the contractual arrangements and statutory provisions applicable amongst the parties. A wrong decision in granting loan to somebody else, who was not entitled to, cannot be the basis for a Court to hold that there is an arbitrary discrimination that has been extended by the petitioner-Bank and that loan must be released to the applicant as well. Such negative parity cannot be accepted. A decision has to be seen on the basis of the parameters and the requirements of the law in each specific case. Once a decision taken is as per the mandate of law, the said decision cannot be held to be invalid merely because certain other wrong decisions have been taken by the same authority, that are not in consonance with the requirement of law.



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17. Under the given circumstances, it cannot be said that the said property which was being submitted as an equitable mortgage could have been lawfully mortgaged with the petitioner-Bank. A commercial decision taken by a Bank, in order to mitigate risk of the loan being non-performing cannot be said to be an illegal decision. Such a decision thus cannot be over-turned by the Permanent Lok Adalat (Public Utility Services) and thereafter direct the petitioner-Bank that the loan must in any case be extended even if the equitable mortgage/security offered by the loanee cannot be considered as a legally valid and liquid security.

18. Adverting to the next argument of the respondent-applicant for grant of compensation for the efforts made by him for securing the document and processing the loan application, I find that such a plea cannot be accepted at this juncture. The petitioner-Bank being in the business of lending of money would have been equally interested in advancing the loan but subject to the terms & conditions contained in the sanction document. There was a lapse/error on the part of the respondent-applicant in providing a sufficient surety with a clear title. It thus cannot be said that the respondent-applicant has been prejudiced in any way while indulging in arrangement of documents for submission of the loan application form. The petitioner-Bank would have also incurred certain expenses in carrying out a due diligence. Thus, the facts of the present case do not warrant award of any compensation. The action of the bank not being illegal, it cannot be held liable to compensate the respondent for his discomfort.

19. I find that the award passed by the Permanent Lok Adalat



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(Public Utility Services) lacks appreciation of law and facts that arose in the present petition and it exercised an authority under the Punjab Village Common Lands (Regulation) Act, 1961 in giving a declaration as to land, not being *Shamlat*, which it was not competent to do so. The same thus suffers from an illegality, impropriety and mis-appreciation of evidence available on record. The present writ petition is accordingly **allowed** and the award dated 11.11.2019 passed by the Permanent Lok Adalat (Public Utility Services), Karnal is set aside.

20. No order as to costs.

21. The petitioner-Bank is directed to return all the original documents furnished by respondent No.2-applicant to him within a period of 04 weeks of receipt of a certified copy of this order.

(VINOD S. BHARDWAJ)
JUDGE

03.12.2024

Mangal Singh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No