

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3401 of 2011

- =====
1. Deep Narain Prasad
 2. Kameshwar Rai
 3. Ashok Kumar Rai
 4. Dinesh Rai

All sons of Late Bindeshwari Rai, resident of village Manpura, Post office- Tarwa Mangarpal. P.S.- Dariyapur, District- Saran, presently residing at Mohalla Jadhua Pokhra, P.O.- Jadhua, P.S.- Hazipur Town, District- Vaishali.

.... Petitioner/s

Versus

1. Smt.Urmila Devi, wife of Sri Darbari Prasad Rai.
 2. Shri Darbari Prasad Rai, son of Late Bindeshwar Rai,
- Both residents of village Manpura, Post office- Tarwa Mangarpal. P.S.- Dariyapur, District- Saran, presently residing at Mohalla Jadhua Pokhra, P.O.- Jadhua, P.S.- Hazipur Town, District- Vaishali.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jashawir Singh Arora

For the Respondent/s : Mr. Hemendra Prasad Singh, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

ORAL JUDGMENT

Date: 08-09-2015

The writ application raises a legal question having broad ramifications on the working of the Lok Adalats in the State of Bihar constituted under Legal Services Authority Act, 1987.

The petitioners are four sons of Bindeshwari Rai whereas respondent no. 2 is the 5th son of Bindeshwari Rai. Respondent no. 1 is the wife of respondent no. 2. The writ application asserts that Bindeshwari Rai was 'Karta' and Manager of the joint family consisting of himself and his successors (sons) till his death. During his life time, he had purchased different properties one of them being 4 Kathas of land situated at Mauja Jadhua Pokhra, Hajipur in the



district of Vaishali. Such acquisition was made by Bindeshwari Rai through a registered sale deed dated 30.1.1973. After purchasing the land, 'khapra posh' house was constructed in which the joint family lived. Respondent no. 1 filed a pre-litigation case before the Permanent Lok Adalat, Hajipur vide Pre-litigation Case No. 97 of 2006 for passing a decree that the purchaser of sale deed dated 30.1.1973 i.e. Bindeshwari Rai was only benamidar of the applicant and the title of the applicant thereon be declared and she be declared as the real owner. The applicant (father of the writ petitioners and respondent no. 2) was only impleaded as defendant/opposite party in the said proceeding. The Presiding Officer of the Permanent Lok Adalat by order dated 24.3.2006 directed for registration of the case and later by order dated 31.3.2006 admitted the case and issued summons fixing 7.4.2006 for hearing. On 7.4.2006, a compromise is said to have been filed by both the parties of the proceeding which the Lok Adalat accepted and passed the decree/award declaring the father-in-law of the applicant as the benamidar and the applicant the real owner of the land covered by the sale deed. In some other proceeding relating to the subject land, it was revealed to the writ petitioners in 2010 that a decree/award was so passed by the Lok Adalat whereafter the present writ petition has been filed for passing an appropriate order/direction writ/writs to quash the award of the

Lok Adalat dated 7.4.2006.

No counter affidavit has been filed on behalf of the respondents.

Heard Mr. Jashawir Singh Arora for the petitioners and Mr. Hemendra Prasad Singh for the respondents.

Writ petitioners have challenged the legality of the award/decreed passed by the Lok Adalat on several grounds. He would argue that after coming into force of the Benami Transactions (Prohibition) Act, 1988 (for short 'the Benami Act'), no such proceeding can be filed, maintained and allowed by any Court. He referred in particular to Section 4(1) of the Benami Act. It is a case where a fraud has been committed on the Court (Lok Adalat) by getting an award/decreed of such a nature which is prohibited by law. The Lok Adalat completely failed to appreciate the same and merely on the basis of collusive agreement/compromise, disposed of the proceeding. The award/decreed of the Lok Adalat is a nullity in the eye of law and once the same is brought to the notice of the Court, the power of superintendence vested in the Court should be exercised to keep the Courts within the bounds of their jurisdiction which will restore the confidence of the people in the proceedings of the Court.

In contra, the senior counsel for the respondent while supporting the decree/award passed by the Lok Adalat urged that the



same need not be interfered with by this Court on the proposition that an award/decreed of the Court/Lok Adalat binds only the party thereto. The writ petitioners are not parties to the proceeding before the Lok Adalat. If they are aggrieved thereby, they may file a suit for setting aside the award/decreed of the permanent Lok Adalat. He has relied on *Radhe Shyam vs Chhabi Nath (2015) 5 SCC 423* and also on an unreported judgment of this Court.

From the rival pleadings, it is more than evident that Bindeshwari Rai had five sons. During his life time, he purchased land in his name of which the respondent no. 1 claimed in the pre-litigation proceeding to be the real owner. The father-in-law was only impleaded as the second party in the said proceeding who entered into a compromise accepting the case of the applicant/respondent that although the land stood in his name (the father-in-law) but the applicant (one of the daughters-in-law) was the real owner thereof. The provisions of Order XXIII Rule 3 of the Code of Civil Procedure (for short 'the Code') in this regard will have some relevance which provides any lawful agreement or compromise to be taken note of by the Court for the purpose of recording the same and passing a decree in accordance therewith.

In the writ petition, it has been asserted that father of the writ petitioners and respondent no. 2 was 'Karta' and Manager of the joint

family who died leaving behind five sons. The contesting respondent has not controverted the same. This Court, for the purpose of disposal of the writ petition, would consider the said fact not in controversy. If that be so then how the 'Karta' of the family on his own can enter into such a compromise with the wife of one of his sons only and that too in the teeth of the statutory prohibition to such plea being raised in a Court of law. Before proceeding further, this Court would deem it appropriate to extract hereinbelow Section 4(1) of the Benami Act:-

“4. Prohibition of the right to recover property held benami.-

(1) No suit, claim or action to enforce any right in respect of any property held benami against the person in whose name the property is held or against any other person shall lie by or on behalf of a person claiming to be the real owner of such property.

(2) xxxxxxxx

(3) xxxxxxxx”

In *Srinivas Rai vs Mahendra Rai 2014 (1) P.L.J.R. 478*, a

Division Bench of this Court noticed in detail the power and jurisdiction of the Lok Adalat with reference to the Regulation(s) framed under the Act and quashed the award on the ground that procedure prescribed for a prelitigation reference to Lok Adalat was not adhered to. The award was held to have been obtained by fraud.

The scope of writ jurisdiction of this Court in such matter was considered in *Kokkanda B. Poondacha vs. K.D. Ganapathi AIR 2011 SC 1353*. The Apex Court dealt with the contours of the jurisdiction of the High Court under Article 226 and 227 of the Constitution of

India and held as under in paragraph 9 of the report:

“9. In *Shalini Shyam Shetty v. Rajendra Shankar Patil* (supra) (2010 AIR SCW 6387), the Court again examined the scope of the High Court’s power under Article 227 of the Constitution and laid down the following proposition:

“Article 227 can be invoked by the High Court suo motu as a custodian of justice. An improper and a frequent exercise of this power will be counterproductive and will divest this extraordinary power of its strength and vitality. The power is discretionary and has to be exercised very sparingly on equitable principle. This reserve and exceptional power of judicial intervention is not to be exercised just for grant of relief in individual cases but should be directed for promotion of public confidence in the administration in the larger public interest whereas Article 226 is meant for protection of individual grievances. Therefore, the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline. The object of superintendence under Article 227, both administrative and judicial, is to maintain efficiency, smooth and orderly functioning of the entire machinery of justice in such a way as it does not bring it into any disrepute. The power of interference under Article 227 is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court.”

Again this Court had an occasion to consider the legality of the award/decreed passed by the Lok Adalat in *Kasi Nath Pandey versus State of Bihar 2013 (4)PLJR 829*. In paragraph no. 4 of the report noted that Permanent Lok Adalat are being used by all kinds of dishonest litigants to obtain fraudulent and illegal kind of award by keeping the interest of others at bay This is being done as an award

passed by such forum cannot be assailed. Having held so, in paragraph 5 thereof, this Court held as under:-

“5. The law on the issue is well established by the Hon’ble Apex Court in the case of *State of Punjab & another v. Jalour Singh & others*, reported in AIR 2008 SC 1209 and in the case of *United India Insurance Co. Limited v. Ajay Sinha & another*, reported in AIR 2008 SC 2398 as well as a Bench of this Court in the case of *Divisional Manager, National Insurance Co. Limited v. State of Bihar & others*, which is CWJC No.9222 of 2009. If an order of such kind is passed which is beyond jurisdiction and that too has been obtained by suppression and misrepresentation merely because two parties agree and file an application on the basis of compromise to overcome certain difficulty, the award becomes vulnerable and is assailable.”

It would be unfair on the part of the Court to escape consideration of the submissions of Mr. Singh. He has submitted that the Writ Court should not interfere with the award as remedy is available to the person aggrieved by the award. The petitioner is not party to the proceeding before the Permanent Lok Adalat and as such, the award/decreed shall not bind them. He relied on *Radhey Shyam vs. Chhabi Nath (2015) 5 SCC 424* for the proposition that judicial orders of the Civil Court are not amenable to writ jurisdiction. On perusal, it appears the judgment relates to the jurisdiction of the Court under Article 226 and not under Article 227 of the Constitution of India. The Supreme Court held that power of superintendence under Article 226 of the Constitution remains unaffected despite curtailment of revisional jurisdiction under Section 115 of the Code. It does not

result in expanding power of superintendence vested in the High Court but provides a tool to ensure that Courts within its jurisdiction function according to established procedure of law so that the people may have faith in the adjudicatory system.

As a consideration made above, this Court finds sufficient ground to interfere with the award/decreed passed by the Permanent Lok Adalat which is held to be wholly unsustainable in law and, in fact, a classic example of abuse of the process of the Court.

The writ application is allowed. The award/decreed dated 07.04.2006 passed by the Permanent Lok Adalat in Pre-litigation Partition Suit No. 97 of 2006 is quashed and set aside.

There shall be no order as to costs.

(Kishore Kumar Mandal, J)

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