

THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9435 of 2012

Gaya Thakur @ Ganga Thakur S/o late Madho Thakur, resident of village
Siswa Maldhia, P.O. Siswa Bazar, P.S. Paharpur, Dist East Champaran.

.... Petitioner/s

Versus

1. Krishna Thakur
2. Surendra Thakur
3. Madan Thakur
4. Ramnath Thakur

All sons of late Ganesh Thakur and residents of Village Siswa Maldhia,
P.O. Siswa Bazar, P.S. Paharpur Dist. East Champaran

.... Respondent 1st set.

5. Hiralal Thakur S/o late Ganesh Thakur, resident of village Siswa
Maldhia, P.O. Siswa Bazar, P.S. Paharpur, Dist. East Champaran

.... Respondent 2nd set

6. The Bihar Legal Services Authority, Bihar, Patna
7. The District Legal Services Authority, East Champaran, Motihari

.... Respondents

Appearance :

For the Petitioner/s : Mr. S.S. Dwivedi, Sr. Advocate

For the Respondent/s : Mr. Manoj Kumar No.1, Advocate.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT

Date: 14-12-2015

Aggrieved by the award dated 10.8.2011 passed by the permanent Lok Adala, East Champaran, Motihari in case no. 156 of 2011 (Annexure-1), the writ application has been filed for setting aside the said award. The petitioner has also prayed for quashing of the order dated 04.03.2012 passed in Misc. case no. 01 of 2012 (Annexure-2) filed for setting aside the award and rejected by the Lok Adalat.

Both parties to the writ petition are the descendants of common ancestor. Partition suit no. 24 of 1965 between the descendants of Langer Thakur and Parmeshwar Thakur ended in



compromise by which separate properties were allowed to the descendants of Sadhu Thakur and to the descendants of Parmeshwar Thakur. The Court accepted the said compromise under order dated 07.02.1970. Descendants of late Ganesh Thakur filed a Pre Litigation Partition case directly before the permanent Lok Adalat vide case no. 156 of 2011. Along with the petition some affidavit, compromise petition and copies of identity card(s) were also filed. The permanent Lok Adalat registered the case under order dated 12.7.2011 and fixed for hearing of the matter under order dated 10.08.2011. The case was disposed of in the light of compromise and the award was directed to be prepared. The copy of the award has been enclosed. A Misc. case was filed by the petitioner before the Lok Adalat vide case no. 1 of 2012 for annulling the award which was considered and rejected by the Lok Adalat by order dated 4.3.2012. The award and the order dated 04.03.2012 passed by the Lok Adalat, are under challenge in this writ petition.

I have heard the counsel for the petitioner as well as the private respondent. Indisputably, the proceeding was filed as Pre Litigation matter directly before the Lok Adalat and not before a competent Court. The contention of the petitioner is that the procedure prescribed under Regulation 33 of the Bihar State Legal Services Authority Regulations 1998 (for short 'the Regulations

1998) was never followed. No procedure prescribed in Section 20 of the Act was ever followed. The Lok Adalat, therefore, could not have exercised the jurisdiction. The order is non est and without authority of law. A fraud was committed on the Lok Adalat in obtaining the award.

Mr. Kumar appearing for the contesting private respondent has, however, supported the impugned order contending that it was on the basis of a compromise and agreement reached between the parties the award was passed. Whether fraud was committed or not is an issue which cannot be gone into by the writ Court. The remedy lies in filing a suit and prove the same by cogent evidence.

There is no quarrel to the proposition of law that whether fraud has been committed or not is essentially a question of fact and the writ jurisdiction under Articles 226 or 227 of the Constitution of India cannot be exercised. The petitioner has also not rested his claim on that ground.

Regulation 33 of the Regulations 1998 provide as under:-

“33. Lok Adalat at the Pre-Litigation Stage.-(1) On receipt of an application by the Secretary of the District Authority/Committee or the Chairman of the Taluka Legal Services Committee, as the case may be, for settlement of a dispute at pre-litigation stage, he shall examine the matter and if he deems it fit to refer the matter for pre-litigation settlement, he shall

issue a notice alongwith copy of the application and documents, if any, to the opposite party for appearing before him.

(2)The Secretary of the District Authority/Chairman or Taluka Legal Services Committee, as the case may be, after hearing the parties, if he thinks proper to refer the matter to the Lok Adalat, he shall direct the parties to appear before the Lok Adalat for pre-litigation settlement on the date fixed for the Lok Adalat.

(3)The matter so referred, if not settled at the pre-litigation stage by the Lok Adalat, the Secretary/Chairman of the District Authority/Taluka Committee, as the case may be, shall keep the record of the papers and shall advise the parties for seeking remedy in a Court. And if any of the parties is entitled to get legal aid, he shall direct the same to apply for legal aid to the proper authority.

(4)In cases which are referred to the Lok Adalat at the pre-litigation stage, the version of the parties and other documents submitted by them alongwith the original Award of the Lok Adalat shall form part of judicial record.

(5)After Lok Adalat is over, the record of the cases of pre-litigation stage, shall remain in the custody of the Secretary/Chairman of the District Authority/Taluka Committee, as the case may be.”

The Lok Adalat could have exercised the jurisdiction if there was such reference by the authority/committee or the Chairman of the Taluka Legal Services Committee for settlement. If there was a substantive proceeding filed before the Regular Court the matter could have also been referred to the Lok Adalat for amicable resolution of the dispute. None of the two situations exist in the

present case. Regulation 12 of the National Legal Services Authority (Lok Adalat) Regulations, 2009 formulated by the National Legal Services Authority provides as under:-

“12. Pre-Litigation matters-(1) in a pre litigation matter it may be insured that the Court for which a Lok Adalat is organized has territorial jurisdiction to adjudicate in the matter.

(2) Before referring a pre-litigation matter to Lok Adalat the Authority concerned or Committee, as the case may be, shall give a reasonable hearing to the parties concerned:

Provided that the version of each party, shall be obtained by the Authority concerned or, as the case may be, the Committee for placing it before the Lok Adalat.

(3) An Award based on settlement between the parties can be challenged only on violation of procedure prescribed in Section 20 of the Act by filing a petition under Articles 226 and 227 of the Constitution of India.”

A Division Bench of this Court in **Srinivas Rai vs. Mahendra Rai & Ors.**[2014(1) PLJR 476] having noticed the relevant provisions of the Act and the Regulations framed held in para 11 (at page 479 of the report) as under:-

“11. The Division Bench did not bar pre-litigation reference to Lok Adalat by the parties. But such settlement has to be in accordance with the statutory provisions. Due care and caution has to be exercised before referring the matter to the Lok Adalat. In contradistinction the reference made by the Court carries inherent procedural safeguards. Any Settlement Award by a Lok Adalat contrary to the statutory provisions arising from a pre-litigation reference will obviously attract application of

directions in (Nawal Kishore Prasad Singh).”

Similar is the conclusion on appraisal of the relevant Rule provisions by the learned Single Judge in **Mohan Jee Pathak vs. The State of Bihar through the Registrar, Civil Court, Buxar & Ors. [2014(2)PLJR 107]** when it was held as under at paragraph no.14:-

“14.It is evident that in so far as the present matter is concerned, the Lok Adalat of Buxar was not certainly functioning as Permanent Lok Adalat as no matter relating to a public utility service was there before it rather a dispute between the two private parties relating to a sale deed was involved. Such matter cannot come within the jurisdiction of Permanent Lok Adalat rather they would be only within the purview of Lok Adalat established under section 19 of the Act. Such Lok Adalat cannot directly entertain a case or an application unless the matter in question is referred to the Lok Adalat either by the Court or by the Legal Services Authority or Committee organizing the Lok Adalat in terms of Sections 20(1) and (2) of the Legal Services Authorities Act. It is , thus, evident that the very institution of Pre-litigation Case No. 121/2005 by the respondent no.2 before the Lok Adalat, Buxar was uncalled for and the direction by the Lok Adalat to initiate, register and admit the case was completely without jurisdiction. Thus any further action taken by the Lok Adalat including the final order passed would also be without jurisdiction.”

This Court, in view of the attending facts which are not much in dispute and the position in law discussed above holds that

the proceeding before the permanent Lok Adalat was not maintainable as there was neither a reference to it by the Court under the provisions of the Act nor by the Legal Services Authority under the relevant Regulation. The Lok Adalat unauthorizedly usurped the jurisdiction and passed the order/award. When the application was filed for setting aside or review of the award, the same was also illegally dismissed under order dated 04.03.2012.

For these reasons, I am satisfied that the award passed by the Lok Adalat as well as the order dated 04.03.2012, passed in Misc. case No. 01 of 2012, are fit to be set aside. I order accordingly.

The writ application is allowed.

(Kishore Kumar Mandal, J)

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