

**IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH**

CWP No.15546 of 2014 (O&M)

Date of Decision.02.02.2017

Estate Officer Union Territory, Chandigarh

.....Petitioner

Vs

Sajender Kumar and another

.....Respondents

Present: Mr. Parminder Singh Kanwar, Advocate
for the petitioner.

Mr. Rajinder Ghai, Advocate
for respondent No.1.

CORAM:HON'BLE MR. JUSTICE AMIT RAWAL

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AMIT RAWAL J. (ORAL)

C.M. No.16491 of 2016

With the consent of both the parties, the hearing of the main case is preponed and taken on board today itself.

The application is allowed.

CWP No.15546 of 2014

The Estate Officer is aggrieved of the impugned order dated 18.05.2012 rendered by the Lok Adalat by entertaining the application (Annexure P-4) whereby the respondent No.1 had invoked the jurisdiction of the Permanent Lok Adalat under the provisions of Section 22-C of the Legal Services Authority Act, 1987.

The prayer in the application was for issuance of direction to the respondents to consider the petitioner for rehabilitation and allotment of alternative site in lieu of Jhuggi No.791, C-Block, Lal Bahadur Colony, Palsora, Sector 56, Chandigarh. The occasion for moving the aforementioned application arose as the Chandigarh Administration, on the

Notification dated 06.11.2006 by promulgating the scheme called the Chandigarh Small Flat Scheme, 2006 and as per the definition of family in Section 3(c) "family" would mean a family consisting of a person, his or her spouse, children and parents residing with him including earning sons and daughters but excluding the married and earning son above the age of eighteen by prescribing that it shall be considered as a separate unit.

Mr. Parminder Singh Kanwar, learned counsel appearing for the petitioner refers to the aforementioned provision which reads as under:-

"3 (c) "Family" means a family consisting of a person, his or her spouse, children and parents residing with him and it includes earning sons and daughters. Married and earning son above the age of eighteen, shall be considered as a separate family unit provided that such a person was living in a separate habitation as identified during the Bio Metric Survey."

He submits that in survey conducted, the information provided by respondent No.1 was that he was married and his wife was missing, in essence, he failed to place on record his status of marriage on the date of survey. It has also been brought to the notice of this Court vide Annexure P-8 that father of respondent No.1 has been allotted a flat on licence basis under the aforementioned scheme vide allotment letter dated 23.12.2013/07.03.2014. The Permanent Lok Adalat did not have the jurisdiction to entertain and try the proceedings under the aforementioned provisions of Act as there were no conciliation proceedings. The reference of initiation of conciliation proceeding is nothing but a farcical exercise whereas there are no separate orders whereby any exercise purported to have been undertaken.

rendered by Co-ordinate Bench of this Court in CWP No.11542 of 2015 on 05.08.2016 titled “**Vijay Pal Verma Vs. Permanent Lok Adalat and others**” wherein while holding that unless and until such exercise of conciliation proceedings is not undertaken, there is no adherence to the provisions of sub-section 7 and 8 of Section 22C of the Act, this Court had given the following directions:-

“.....At this stage, I would like to add that since there is no provision of appeal provided in the Act against the award passed by the Lok Adalat under Sections 22C (7) and (8) of the Act and the only remedy provided is to invoke extraordinary jurisdiction of this Court under Article 226/227 of the Constitution, it is all the more reason for the Lok Adalat to deal with the application filed before it first as a conciliator and then as an adjudicator. The another factor for providing conciliation proceedings before the adjudicatory role to be exercised by the Lok Adalat is that the Lok Adalat was conceived in order to provide succor to a litigant, who has no financial capacity to take recourse to the regular Courts, by deciding their disputes by way of a settlement on the basis of conciliation which is found to be more expeditious and cost-effective.

In the case of National Insurance Company Ltd. vs. Om Parkash, 2012(4) Law Herald 3310, this Court had observed that the Lok Adalat did not record in its zimni orders that it had, at any stage, formed an opinion that there existed elements of a settlement which could be acceptable to the parties nor the terms of such possible settlement of dispute were formulated and given to the parties for their consideration and without complying with these requirements, the case was decided on merits, as a consequence thereof, the order of the Lok Adalat was set aside and remanded back to it.

Is it not the wastage of time of the Lok Adalat and of the High Court if the cases are remanded back to the Lok Adalat on this issue

alone and is it not an unnecessary burden upon the poor litigant who takes up his remedy of approaching the Lok Adalat knowing fully well that the decision of the Lok Adalat on that dispute shall be final and binding upon the parties and the applicant would not have any right of appeal as it is provided only in case of a decision rendered by the regular Civil Court in which the unsuccessful party can file an appeal under Section 96 of the CPC for re-appreciation of evidence by the higher Court?

This unnecessary litigation can easily be avoided if the Lok Adalat, dealing with an application filed under Section 22C of the Act, is sensitized to comply with the provisions of Section 22C(3) to (7) of the Act and reflect the said proceedings meticulously in its zimni orders so that in case of failure of conciliation and adjudication on merits by the Lok Adalat in terms of Section 22C(8) of the Act, the High Court, dealing with the order/award of the Lok Adalat, may concentrate only on the issue decided on merits on the appreciation of evidence as in the writ petition again, the party aggrieved against the award of the Lok Adalat used to challenge the award of the Lok Adalat not only on the legal grounds but also on the grounds of misreading and mis-appreciation of evidence.

Thus, I need not to delve more into it as the question, which I am deciding herein, has already been decided by the other Courts as well but it is high time that the Lok Adalat(s) in the States of Punjab, Haryana and Union Territory, Chandigarh are to be advised by way of this judicial pronouncement to seriously resort to the conciliation proceedings before becoming an adjudicator on merits.

Thus, keeping in view the aforesaid discussion, the present writ petition are hereby allowed, award of the Lok Adalat is set aside and the cases are remanded back to the Lok Adalat to decide it again, strictly in accordance with law, as I have discussed here-in-above, i.e. resorting to its role of a conciliator before becoming an adjudicator. The parties are

directed to appear before the Lok Adalat on 05.09.2016.

The Registry of this Court is also directed to circulate copy of this order to all the Lok Adalat(s) in the States of Punjab, Haryana and Union Territory, Chandigarh, for compliance.”

The attention has also been drawn to an affidavit furnished by respondent No.1 in pursuance of the order passed by this Court on 09.12.2016 and as per the contents of evidence, photographs of marriage performed with Savita have been produced on record, in essence, respondent No.1 has not placed on record in evidence any marriage certificate that he was married with Savita. The attempt was made to place on record death certificate to show that Savita wrongly referred as Sita in the application by the officials of Chandigarh Administration. According to the counsel appearing for respondent No.1, she died on 06.11.2008 and to corroborate the same, death certificate issued by Registrar, Birth and Death, Gram Panchayat Development Officer has also been placed on record vide Annexure P-3. Thereafter, respondent No.1 remarried to one Sangeeta on 09.11.2011.

It has also been stated that the petitioner had taken a specific stand regarding non-fulfilment of conditions of scheme but having not adverted to the aforementioned fact, the Lok Adalat in a cursory manner allowed the application, thus, urges this Court for setting aside the order.

Mr. Rajender Ghai, learned counsel appearing on behalf of respondent No.1 has brought to the notice of this Court a notification issued by Haryana Government, Administration of Justice Department on 19.05.2009 whereby invoking the provisions of Section 22A of the 1987 Act, housing has also been brought within the embrace of definition of public utility, thus, submits that the Permanent Lok Adalat had jurisdiction.

The same reads as under:-

“In exercise of the powers conferred by clause (b) of Section 22A of the Legal Services Authorities Act, 1987 (Act 39 of 1987), the Governor of Haryana in public interest hereby declares the following services to be public utility services in the State of Haryana for the purposes of Chapter VI A, namely:-

(i) Housing and Estates

(ii) Banking and Finance”

It was an open and shut case. No evidence was required to be proved as the Bio Metric Survey is not disputed. The wife of respondent No.1 was not available and had gone to her matrimonial home and it was a sudden survey and therefore, respondent No.1 could not furnish particulars at the relevant point of time. However, the factum of respondent No.1 being married has not been rebutted or objected to in the reply Annexure P-5.

He also submits that respondent No.1, who is a poor slum dweller, does not know the intricacies of law and could not be thrown out on this technical point, thus, urges this Court for upholding the order under challenge.

I have heard learned counsel for the parties and appraised the paper book. Shown of the facts noticed above, the question which arises for adjudication is whether in view of such disputed question of fact, the Permanent Lok Adalat would have jurisdiction to decide the case in the absence of any separate order being brought to the notice of this Court of having undertaken the conciliation or not, as it is mandatory requirement of law that as and when any application is made in respect of the notice to the

opposite side i.e. public utility as defined under Section 22A of the 1987 Act, such exercise was to be done. Mere reference in the impugned order of having undertaken the exercise does not suffice the requirement of law and the direction *ibid* given by this Court. Not only this, the jurisdiction of the Civil Court had also come to be debated upon in the judgment rendered by Hon'ble Supreme Court in **Bar Council of India Vs. Union of India 2012 (8) SCC 243** and in the judgment of this Court in **Reliance General Insurance Company Limited Vs. Vijay Kumar and another 2013(5) RCR (Civil) 226.**

As and when any disputed question of fact arises with regard to fulfilling the terms and conditions of the scheme, in my view, the Permanent Lok Adalat did not have jurisdiction to entertain and decide the claim, rather should have relegated the parties to a Civil Court. It is a fit case where respondent No.1 should have knocked the door of Civil Court by giving direct and cogent reasons to prove the factum of his marriage at the time of conducting of Bio Metric Survey, much less, by oral and documentary evidence. Unless and until, the aforementioned requirement of law is not sufficed or complied with, in my view, the eligibility of respondent No.1 would always be at stake. This fact has not been taken into consideration, much less, the terms and conditions of the scheme reflected in the reply. Even the order of Permanent Lok Adalat, in my view, is not sustainable in the eyes of law. Resultantly the same is hereby set aside with an observation that in case respondent No.1 is aggrieved by any action of the petitioner, he shall be at liberty to seek vindication of his grievance in Civil Court. In case, the suit is filed accompanied by application under Section 14 of the Limitation Act seeking condonation of delay, the same can

be considered sympathetically in view of the observations made here-in-above.

The writ petition stands allowed but with the aforementioned observations.

(AMIT RAWAL)
JUDGE

February 02, 2017
Pankaj*

Whether reasoned/speaking	Yes
Whether reportable	No