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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-20539-2016 (O&M)
Date of decision : 07.02.2017

Rajinder Singh

... Petitioner

Versus

Permanent Lok Adalat and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Rajesh Arora, Advocate
for the petitioner.

Mr. P.S. Poonia, Advocate
for respondent No.2.

Mr. Sandeep Singh Moudgil, Advocate
for respondent No.3.

Mr. Deepak Sabharwal, Advocate
for respondent No.4.

AMIT RAWAL, J. (ORAL)

CM-1603-CWP-2017

For the reason stated in the application which is duly supported by an affidavit, the application is allowed and the rejoinder filed on behalf of the petitioner(s) is taken on record subject to all just exceptions.

CM stands disposed of.

CWP-20539-2016 (O&M)

Mr. Sandeep Singh Moudgil, learned counsel appearing on behalf of respondent No.3/Municipal Corporation, Faridabad on instructions from his client submits that order dated 23.06.2016 (Annexure P-9)

apparently does not appear to be in compliance with the provisions of Section 408-A of the Haryana Municipal Corporation Act, 1994, in view of the fact that in the proceedings initiated under Section 22 (c) (6) of the Legal Services Authorities Act, 1987, the Corporation had taken volte-face by protecting the possession of the petitioner(s) instead of allotting him the possession of the tube-well. The relevant paragraph of the reply reads thus:-

“That a Tubewell No.5, Sector-17, Faridabad with a chamber room is located in the corner of Hira Singh Park in Sector-17, Faridabad. Said Tubewell, Park and Chamber room is the property of respondent No.1 and meant for the Helper WPO. Said Chamber Room was allotted by respondent No.1 to Sh. Rajinder Singh, Helper WPO, vide order MCF/E-7/2016/361 dated 04.06.2016. Till then Sh. Rajinder Singh is occupying said Chamber Room. The petitioner has no concern with said chamber room. Hence the present petition is not maintainable”

In view of the statement made by Mr. Moudgil, order dated 23.06.2016 (Annexure P-9) which is purported to have been passed in compliance of the directions given in the impugned order i.e. order of the Lok Adalat, is ordered to be withdrawn/set aside.

As regards the aforementioned order, I am of the view that though vide notification dated 19.05.2009, the housing has been brought within the embrace of the Public Utility Services, but the manner and mode in which the complaint has been entertained by the Permanent Lok Adalat is not appreciable as the dispute between the Municipal Corporation and the petitioner. The complainant was nothing, but trying to act as a whistleblower by taking the benefit of senior citizen, but the law of land is that nobody can be dispossessed except in due course of law.

The aforementioned findings of mine is fortified by the *ratio decidendi* culled out by the Hon'ble Supreme Court in **“Rame Gowda (D) by LRs V/s Mr. Varadappa Naidu (D) by LRs and another” 2004 (1) SCC 769.**

An attempt was made to become a party in the aforementioned proceedings which was declined. The impugned order of declining the application and culminating into final order, in my view, is *ex facie* not only erroneous, but against the principles of natural justice, much less, *audi alteram partem*. Once there is a clear cut pleadings with regard to having given the possession of tube-well, as extracted above, the presence of the petitioner was essential and necessary for adjudication of the *lis*, if the Permanent Lok Adalat had *prima facie* formed an opinion that it had the jurisdiction. The *zimini* orders or any other order do not reveal that any effort of reconciliation as per the provisions of sub-Section 22 (c) (6) of the 2007 Act was made.

In this regard, reference has been made to the judgment 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.”

Despite having given a general direction to all Lok Adalat, it appears that the Lok Adalat is not adhering to the aforementioned directions.

Without commenting further, I am of the view that the observation of this Court and as well as the direction, aforementioned, is

sufficient for the authority to pay due regard and apply the same in letter and spirit in order to prevent further ire of this Court.

The scope of interference in Section 22 (c) of the Act in respect of such disputes that to at the back of the affected persons has already been debated upon by the learned Single Bench of this Court and by the Hon'ble Supreme Court in *“Bar Council of India V/s Union of India” 2012 (4) RCR (Civil) 262.*

The impugned order does not suffice the requirement of law as held in the aforementioned judgments, resultantly the same is hereby set aside.

Liberty is granted to the Municipal Corporation to take the remedy as per the statement suffered by Mr. Moudgil in accordance with law.

With the aforesaid observations, the present writ petition stands disposed of.

07.02.2017

Yogesh Sharma

**(AMIT RAWAL)
JUDGE**

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**