

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

**CWP-2758-2016 (O&M)
Date of decision: 07.02.2019**

M/s Dwarkadhis Buildwell Private Limited

...Petitioner

Versus

Shri Bhagwan and another

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr. K.S. Khehar, Advocate
for the petitioner(s)

Mr. Amit Jain, Advocate
for the respondents.

JITENDRA CHAUHAN, J.

The brief facts of the case are that the petitioner M/s Dwarkadhis Projects Pvt. Ltd. is having a registered No.PD-4A, Pitampura, New Delhi and engaged in the business of real estate and has developed a residential group housing colony in the name of Aravali Heights in Sector 24, Dharuhera, District Rewari. The respondents booked flats in the said project. As per the agreement (Annexure P-1), which was signed on 1.10.2007, the possession of the flat was to be handed over to respondent No.1 within three years from the start of the construction work as per condition/ clause 11 of the agreement (Annexure P-1) but it could not be

done. Respondent No.1 approached respondent No.2, the Permanent Lok Adalat, which allowed the petition and the respondents were entitled to recover the amount from the petitioner.

Learned counsel for the petitioner submits that under Section 22C of the Legal Services Authority Act, 1987, claims filed by the respondents were not maintainable as the case does not fall under the definition of 'public utility service' as enumerated under Section 22 of the Legal Services Authority Act, 1987 (for short 'the Act'). In the absence of any compromise between the parties having been arrived at, learned PLA had no jurisdiction to decide the issue on merit and pass award. He cites **State of Punjab and another vs. Jalour Singh and others 2008 (1) RCR (Civil) 857**. Learned counsel for the petitioner(s) further submits that the application(s) moved before the learned PLA were hopelessly time barred as the agreements to sell were executed in the year 2011.

On the other hand, learned counsel for the contesting respondent(s) submit that award has been rightly passed by learned PLA. Though as per Clause 30 of the agreement (Annexure P-1), there is stipulation of arbitration but the plea of arbitration was never raised by the petitioner(s) before the Court below and as such the petitioner(s) are estopped by their own act and conduct from taking the plea of arbitration for the first time in the present petition. Since, the petitioner(s) failed to complete the construction of the flat(s) in question within agreed period, the petition(s) filed before the learned PLA cannot be said to be barred by limitation. The petitioner has approached the Court with unclean hands and it is estopped by its own conduct while raising the ground of arbitration.

Heard.

Section 22A of the Act reads thus:-

“**22A Definitions.**- In this Chapter and for the purposes of sections 22 and 23, unless the context otherwise requires,-

(a) " Permanent Lok Adalat" means a Permanent Lok Adalat established under sub- section (1) of section 22B;

(b) " public utility service" means any-

(i) transport service for the carriage of passengers or goods by air, road or water; or

(ii)postal, telegraph or telephone service; or

(iii) supply of power, light or water to the public by any establishment; or

(iv) system of public conservancy or sanitation; or

(v) service in hospital or dispensary; or

(vi)insurance service, and includes any service which the Central Government or the State Government, as the case may be, may, in the public interest, by notification, declare to be a public utility service for the purposes of this Chapter.”

The assertion of the learned counsel for the petitioner(s) that as the parties to the *lis* failed to compromise the matter, therefore, PLA has no jurisdiction to adjudicate the matter and it had gone beyond the powers conferred by Section 22C of the Act in deciding the case on merits. The assertion stands addressed by Hon'ble the Supreme Court in **Bar Council of India vs. Union of India 2012 AIR (SC) 3246**, which reads as under:-

17. Upto the above pre-litigation conciliation and settlement procedure, there is no problem or issue. The petitioner is seriously aggrieved by the provision contained in Section 22-C(8) which provides that where the parties fail to reach at an agreement under sub-section (7), the Permanent Lok Adalat shall, if the dispute does not relate to any offence, decide the dispute. This provision followed by Section 22-D which, inter- alia, provides that while deciding a dispute on merit the Permanent Lok Adalat shall not be bound by the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872 and Section 22-E which accords finality to the award of Permanent Lok Adalat under sub-section (1) and the provision made in sub-section (4) that every award made by the Permanent Lok Adalat shall be final and hence shall not be called in question in any original suit, application or execution proceedings form mainly bone of contention. Are these provisions violative of Article 14 of the Constitution of India and contrary to rule of law, fairness and even- handed justice? are the questions to be considered.

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22. It is necessary to bear in mind that the disputes relating to public utility services have been entrusted to Permanent Lok Adalats only if the process of conciliation and settlement fails. The emphasis is on settlement in respect of disputes concerning public utility services through the

medium of Permanent Lok Adalat. It is for this reason that sub- section (1) of [Section 22-C](#) states in no unambiguous terms that any party to a dispute may before the dispute is brought before any court make an application to the Permanent Lok Adalat for settlement of dispute. Thus, settlement of dispute between the parties in matters of public utility services is the main theme. However, where despite the endeavours and efforts of the Permanent Lok Adalat the settlement between the parties is not through and the parties are required to have their dispute determined and adjudicated, to avoid delay in adjudication of disputes relating to public utility services, the Parliament has intervened and conferred power of adjudication upon the Permanent Lok Adalat. Can the power conferred on Permanent Lok Adalats to adjudicate the disputes between the parties concerning public utility service upto a specific pecuniary limit, if they do not relate to any offence, as provided under [Section 22-C\(8\)](#), be said to be unconstitutional and irrational? We think not. It is settled law that an authority empowered to adjudicate the disputes between the parties and act as a tribunal may not necessarily have all the trappings of the court. What is essential is that it must be a creature of statute and should adjudicate the dispute between the parties before it after giving reasonable opportunity to them consistent with the principles of fair play and natural justice. It is not a constitutional right of any person to have the dispute adjudicated by means of a court only. Chapter VI-A has been enacted to provide for an institutional mechanism, through the establishment

of Permanent Lok Adalats for settlement of disputes concerning public utility service before the matter is brought to the court and in the event of failure to reach any settlement, empowering the Permanent Lok Adalat to adjudicate such dispute if it does not relate to any offence.”

Similar are the observations by a Division Bench of this Court in **Tata Teleservices Limited Vs. Kulwinder Singh, 2016 (5) R.C.R. (Civil) 220**, wherein it has been held as under:-

“12. The PLA is an innovative mechanism. While ordinary Lok Adalats decide the matters on the basis of compromise or settlement between the parties, the PLA has additional powers. Sub-section (8) of Section 22C of the 1987 Act stipulates that where the parties fail to reach an agreement/settlement, the PLA shall, if dispute does not relate to any offence, decide the dispute on merit. Obviously, while conducting conciliation proceedings or deciding a dispute on merit the PLA is expected to be guided by the principles of natural justice, objectivity, fair play and equity.

13. Like any other Lok Adalat, the Award passed by the PLA either in terms of settlement or on merits, is final and binding on all the parties and is deemed to be a decree of a Civil Court.

14. X X X

15. From the above, it comes out that power to adjudicate the disputes relating to public utility services have been entrusted to the PLA only if the process of conciliation and settlement fails. The emphasis is on settlement in respect of disputes concerning public utility services through the medium of the PLA. It is for this reason that sub-section (1) of Section 22C of the 1987 Act states in no unambiguous terms that any party to a dispute may,

before the dispute is brought before any court, make an application to the PLA for settlement of dispute. Thus, settlement of dispute between the parties in matters of public utility services is the main theme. However, where despite the endeavours and efforts of the PLA, with the aid and assistance of the parties, the settlement between the parties is not through and the parties are required to have their dispute determined and adjudicated, to avoid delay in adjudication of disputes relating to public utility services, the PLA has power to adjudicate the dispute and once the parties approach the PLA, they are precluded from raising the same dispute before any other forum. That being the scheme and object of the statute, acceptance of the appellant's plea that the parties having failed to reach a compromise or settlement, the PLA should not have decided the case on merits and, instead, ought to have let the parties to have recourse to other remedies available to them, would forfeit the very purpose of establishment of the PLA, besides being contrary to the spirit of the 1987 Act and, therefore, cannot be countenanced.

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| 16. | X | X | X | |
| 17. | | X | X | X |
| 18. | X | X | X | |
| 19. | | X | X | X |

20. It may be hastily added that in **State of Punjab v. Jalour Singh & ors.** (supra) the Hon'ble Supreme Court was dealing with the jurisdiction of a Lok Adalat under Section 20 of the 1987 Act and not with that of the PLA under Section 22 C of the 1987 Act. Therefore, reference to this case does not fit in the context of the controversy herein involved.”

(emphasis supplied)

In the instant case, the petitioner is a licence holder to build up

and provide the houses to the public. The services being rendered by the the petitioner would, therefore, come under the definition of public utility services.

The petitioner has approached the Court with unclean hands because an identical application bearing No. 1032 dated 15.11.2013 titled as “Shri Bhagwan vs. M/s Dwarkadhish Buildwell Pvt. Ltd.” was filed under Section 22(C) of the Legal Services Authority Act, 1987 for settlement of dispute and the said application was dismissed by PLA. The same has attained finality. Thus, the petitioner cannot raise the plea of arbitration.

From the perusal of the above, there remains no ambiguity with regard to the fact that the PLA was well within its jurisdiction to decide the case on merits in the absence of compromise/settlement between the parties. The plea raised by the petitioner(s) with regard to limitation is not tenable as it is a case of continuous cause of action. Learned PLA has rightly held in the impugned award that the construction was not completed even after expiry of about 6 years from the date of agreement dated 1.10.2007.

Accordingly, the petition fails and is hereby dismissed.

CM-2029-CWP-2019

Prayer in this application is for placing on record Annexures P-5 to P-8.

Learned counsel for the applicant-petitioner refers to offer letters (Annexure P-6 (Colly)) to contend that the petitioner is ready to offer plot to respondent No.1 on deposit of outstanding dues. He further submits that in case respondent No.1 is not interested in taking possession of the plot, the petitioner is also ready to refund the booking amount.

On the other hand, learned counsel for the respondents states that he has instructions not to accept the offer made by the petitioner.

The identical issues already stand adjudicated by this Court vide judgment of even date passed in CWP-4656-2016. The Court is satisfied that the offer made is an attempt to gain time and frustrate the claim of the respondent(s)/allottees at this belated stage.

In view of the above, there is no merit in the application and the same is hereby dismissed.

07.02.2019

ps-I

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No