

**209+211+212 IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**(1) CWP No. 26058 of 2018.
Date of Decision: 04.04.2019**

J.B.B. Everest Buildtech Pvt. Ltd. And others

.....Petitioners

Versus

Permanent Lok Adalat and others

.....Respondents

(2) CWP No.28584 of 2018 (O&M)

J.B.B. Everest Buildtech and others

...Petitioners

Versus

Permanent Lok Adalat (Public Utility Services), Sonipat and others

...Respondents

(3) CWP No.29506 of 2018 (O&M)

J.B.B. Everest Buildtech and others

...Petitioners

Versus

Permanent Lok Adalat (Public Utility Services), Sonipat and others

(4) CWP No.29508 of 2018 (O&M)

J.B.B. Everest Buildtech and others

...Petitioners

Versus

Permanent Lok Adalat (Public Utility Services), Sonipat and others

(5) CWP No.29507 of 2018 (O&M)

J.B.B. Everest Buildtech and others

...Petitioners

Versus

Permanent Lok Adalat (Public Utility Services), Sonipat and others

...Respondents

(6) CWP No.28585 of 2018 (O&M)

J.B.B. Everest Buildtech and others ...Petitioners

Versus

Permanent Lok Adalat (Public Utility Services), Sonipat and others

...Respondents

(7) CWP No.28586 of 2018 (O&M)

J.B.B. Everest Buildtech and others ...Petitioners

Versus

Permanent Lok Adalat (Public Utility Services), Sonipat and others

(8) CWP No.28587 of 2018 (O&M)

J.B.B. Everest Buildtech and others ...Petitioners

Versus

Permanent Lok Adalat (Public Utility Services), Sonipat and others

(9) CWP No.28588 of 2018 (O&M)

J.B.B. Everest Buildtech and others ...Petitioners

Versus

Permanent Lok Adalat (Public Utility Services), Sonipat and others

(10) CWP No.28589 of 2018 (O&M)

J.B.B. Everest Buildtech and others ...Petitioners

Versus

Permanent Lok Adalat (Public Utility Services), Sonipat and others

...Respondents

(11) CWP No.28590 of 2018 (O&M)

J.B.B. Everest Buildtech and others

...Petitioners

Versus

Permanent Lok Adalat (Public Utility Services), Sonipat and others

...Respondents

(12)

CWP No.28591 of 2018 (O&M)

J.B.B. Everest Buildtech and others

...Petitioners

Versus

Permanent Lok Adalat (Public Utility Services), Sonipat and others

(13)

CWP No.28592 of 2018 (O&M)

J.B.B. Everest Buildtech and others

...Petitioners

Versus

Permanent Lok Adalat (Public Utility Services), Sonipat and others

...Respondents

(14)

CWP No.28593 of 2018 (O&M)

J.B.B. Everest Buildtech and others

...Petitioners

Versus

Permanent Lok Adalat (Public Utility Services), Sonipat and others

...Respondents

(15)

CWP No.28594 of 2018 (O&M)

J.B.B. Everest Buildtech and others

...Petitioners

Versus

Permanent Lok Adalat (Public Utility Services), Sonipat and others

...Respondents

(16)

CWP No.28595 of 2018 (O&M)

J.B.B. Everest Buildtech and others

...Petitioners

Versus

Permanent Lok Adalat (Public Utility Services), Sonipat and others

...Respondents

(17)

CWP No.28596 of 2018 (O&M)

J.B.B. Everest Buildtech and others

...Petitioners

Versus

Permanent Lok Adalat (Public Utility Services), Sonipat and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present:- Mr. Chetan Mittal, Sr. Advocate with
Mr. Mayank Aggarwal, Advocate,
for the petitioners in CWP-26058-2018.

Mr. Indresh Kumar, Advocate and
Mr. Navdeep Monga, Advocate for
Mr. Manoj Vashistha, Advocate
for the petitioners in the remaining petitions.

Mr. Munish Gupta, Advocate,
for the caveator-respondents in all cases.

JITENDRA CHAUHAN J.

This judgment shall dispose of aforementioned 17 writ
petitions as common questions of facts and law are involved therein.

The facts are being taken from C.W.P. No. 26058 of 2018.

The petitioners have sought quashing of order dated 07.08.2018

(Annexure P-9) passed by respondent No.1 vide which the petitioners

were directed to refund the entire deposited amount to respondent No.2

i.e. Rs.35,04,261/- along with interest @ 10% per annum from the date

of deposit till actual payment.

The petitioner No.1 is a company registered under the provisions of Companies Act, 1956. Petitioner Nos. 2 & 3 are the directors of petitioner No.1-company. The petitioners are developing a residential society under the name of 'Grand Square' spread over 10.18 acres of land situated at Kundli near village Nangal Kalan, District Sonapat, Haryana. The said project is being developed by the petitioners and as of now, they have already completed construction of 514 build up apartments. As on date, conveyance deeds are being executed in the name of respective allottee/purchasers who have complied with or have been complying with the terms of the payments. Apart from this, proper water connection and electricity supply is in place and full housekeeping and maintenance services are being provided.

Respondent No.2 approached the petitioners for provisional residential apartment in the said project by submitting an application in September, 2011 (Annexure P-1). Respondent No.2 was allotted an apartment bearing No.T-3C-301 measuring 1430 sq. ft. and had agreed to pay a sum of Rs.33,71,150/- along with other charges as per the agreement dated 01.10.2011 (Annexure P-1 and P-2). As per the agreement, the petitioners endeavoured to give possession of the flat within three years from the date of execution of said agreement. The petitioners have completed the construction in the year 2014 as per the sanctioned plan and the finishing work as well as installation of

power back up, fire fighting, sewage STP etc. have also been initiated. Respondent No.2 was requested to clear his charges vide letter dated 04.04.2014 but he defaulted in clearing the dues. The project was completed in phases and accordingly an application (Annexure P-3) for grant of Occupation Certificate for the said phase was filed on 25.11.2016 with the Director General, Town and Country Planning Department, Haryana. Since the application for grant of occupation certificate was pending with the department since 25.11.2016, respondent No.2 was offered the Fit out possession on 10.01.2017 (Annexure P-4) so that he could carry out the interior work or fit out work till the time occupation certificate is granted by the department. The petitioners received the occupation certificate (Annexure P-5) with regard to seven towers of the project from the competent authority on 03.10.2017. Respondent No.2 instead of claiming possession of the flat from the petitioners, invoked the jurisdiction of Permanent Lok Adalat, Sonipat (for short “the Permanent Lok Adalat”) by filing an application No.1059 of 2017 on 09.11.2017 (Annexure P-6) under Section 22(C) of the Legal Services Authority (Public Utility Services) Act, 1987 (for short “the Act”).

It is contended that respondent No.2 instead of claiming the possession of the flat has opted to ask for the refund of the money by approaching the Permanent Lok Adalat which shows the *mala fide* on the part of respondent No.2. It is further contended that the Permanent Lok Adalat has no jurisdiction to try the matter. It is

further contended that the judgment relied upon by the Permanent Lok Adalat in *M/s Taneja Developers and Infrastrcuture Ltd. vs. Deepak Kumar and another 2016(3) RCR (Civil) 971* is no longer a good law.

It is further contended that clause 50 of the agreement provided for referring the matter to Sole Arbitrator, therefore, the jurisdiction of the Permanent Lok Adalat is barred. It is further contended that the order of refund could not have been passed as the petitioners had occupation certificate and the project is, therefore, complete.

On the other hand, the learned counsel for the respondents refers to *(i) Bar Council of India vs. Union of India 2012 AIR (SC) 3246 and; (ii) Tata Tele Services Ltd. vs. Kulwinder Singh and another, 2016(5) RCR (Civil) 220* to contend that Permanent Lok Adalat after adopting the process of conciliation, if comes to the conclusion that no settlement is possible, has to proceed to decide the matter on merits. It is further contended that existence of arbitration clause is not disputed. However, the provisions of arbitration can be invoked in view of Section 8 of the Arbitration Act only prior to filing of first statement of defence before the Court, where the matter is pending. In the instant case, no application under Section 8 of the Act was filed by the petitioner, therefore, the right of the petitioners to seek reference of the matter to arbitration stands forfeited. It is further contended that neither in the defence nor while leading evidence, the occupation certificate, now appended with the writ petition, was produced.

Heard.

In *Bar Council of India's case (supra)*, it was held 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 Civil Procedure Code, 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.

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.”

Further in Tata Teleservices Limited's case

(supra), it was held as under:-

“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.”

In view of above, it is evidently clear that Permanent

Lok Adalat has jurisdiction to try the matter.

So far as the argument regarding arbitration clause is

concerned, reference can be made to Vijay Kumar Sondhi versus The Zira Cooperative Sugar Mills Ltd., Zira 2012(4) PLR 446

wherein it was held in paragraph No.8 as under:-

“I have carefully considered the rival contentions. The defendant did not move any application under Section 8 of the Act stipulates that such an application has to be moved before filing of written statement. Objection regarding arbitration clause taken in the written statement does not meet the requirement of Section 8 of the Act. On the contrary, according to Section 8 of the Act, the defendant before submitting his written statement should have filed application under Section 8 of the Act for referring the dispute to the Arbitrator. However, it was not so done. Consequently, the plaintiff cannot be non-suited on this ground.”

In view of above, the argument of the learned counsel for the petitioners regarding invoking the provisions of arbitration clause is hereby repelled.

As regards the arguments that refund of the amount could not have been ordered by the Permanent Lok Adalat, Hon'ble the Supreme Court in Pioneer Urban Land and Infrastructure Limited Vs. Govindan Raghavan passed in Civil Appeal No.12238 of 2018, decided on 2.4.2019, has held as under: -

“We see no illegality in the Impugned Order dated 23.10.2018 passed by the National Commission. The Appellant – Builder failed to fulfill his contractual obligation of obtaining the Occupancy Certificate

and offering possession of the flat to the Respondent – Purchaser within the time stipulated in the Agreement, or within a reasonable time thereafter. The Respondent – Flat Purchaser could not be compelled to take possession of the flat, even though it was offered almost 2 years after the grace period under the Agreement expired. During this period, the Respondent – Flat Purchaser had to service a loan that he had obtained for purchasing the flat, by paying Interest @10% to the Bank. In the meanwhile, the Respondent – Flat Purchaser also located an alternate property in Gurugram. In these circumstances, the 22 Respondent – Flat Purchaser was entitled to be granted the relief prayed for i.e. refund of the entire amount deposited by him with Interest.”

In this case, the construction of flat was to be completed within a period of three years from the date of execution of the agreement. The petitioners have alleged delay on the part of respondent No.2 but they have failed to prove the allegations of delay. It is the petitioners who are liable for delay in completion of project as they were unable to offer possession before obtaining occupation certificate from the competent authority. The buyer cannot be left on the mercy of the builder especially when the buyer has well proved the deficiency in service. In view of above, the present civil writ petitions are dismissed. The impugned orders are upheld. The Permanent Lok Adalat has rightly passed the Award ordering refund of the amount along with interest.

Photocopy of this order be placed on the files of
other connected case(s).

04.04.2019.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No