

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

CWP No.8244 of 2016 (O&M)

Date of Decision:28.11.2019

M/s BPS Developers (P) Limited

... Petitioner

Versus

Permanent Lok Adalat, Palwal and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Sanjiv Kumar Aggarwal, Advocate for the petitioner

Mr.Harish Goyal, Advocate for Respondent no.2

RAJIV NARAIN RAINA, J. (Oral)

1. The petitioner has approached this Court against the order dated 21.4.2016 passed by the Permanent Lok Adalat (Public Utility Services), Palwal in case of Ms.Sapna Verma wife of Jugal Kishore vs. M/s B.P.S. Developers (P) Limited and M/s Crown Builders and Promoters. The respondent-Sapna Verma filed an application under Section 22 C (1) of the Legal Services Authority Act, 1987 praying for a direction to the Builder-respondent no.1 to give possession of Shop No.G-9, near Bus Stand, Palwal with completion certificate, after receiving the balance sale consideration, as per the terms of the builder-buyer agreement. In the alternative, the petitioner sought the refund of the amount paid by her.

2. The builder who is the present petitioner filed an application under Section 8 of the Arbitration and Conciliation Act, 1996 before the Permanent Lok Adalat contending that there was an

arbitration Clause and the dispute can only be resolved through arbitrator and not by the Court.

3. The second objection taken in the application under Section 8 was that the Permanent Lok Adalat at Palwal has no territorial jurisdiction and it is only the Permanent Lok Adalat situated in Faridabad that would have jurisdiction to decide the dispute, if any, since the contract was signed there. These two objections have been sustained by the Permanent Lok Adalat, Palwal and the application under Section 8 has been dismissed, without expressing any opinion on the merits of the case.

4. Learned counsel for the petitioner does not dispute the jurisdiction part of the order since the buyer-builder agreement was signed in Faridabad and Clause 27 of that agreement confers jurisdiction on Forum in Faridabad. Therefore, Permanent Lok Adalat, Faridabad would have jurisdiction to decide the case.

5. I have heard learned counsel for the parties and find the impugned order to be proper. However, the Permanent Lok Adalat at Palwal should have returned the application to the petitioner for filing it in the proper Forum at Faridabad as it could not itself transfer the case to another Permanent Lok Adalat unlike the jurisdiction exercised by this Court empowered by Article 226 of the Constitution of India and Section 24 of the CPC, 1908.

6. This petition was filed in this court in 2016 and prolonging this petition any further will serve no purpose. The suggestion of the learned counsel for the petitioner to admit the case to be heard with CWP Nos.8208, 8209, 8300 and 8303 of 2016 which were admitted by a coordinate bench of this court on 15.10.2018 by

relying on the decision of this Court in CR No.694 of 2015 (Emaar MGF Land Ltd. vs. Sarita Garg and others decided on 8.2.2018), would not serve any useful purpose. Change in the legal position has been brought about with the pronouncement of the judgment by this Court in **Magma HDI General Insurance Co. Ltd. and another vs. Ashok Kumar and another, 2016 (1) PLR 42** wherein this Court held that in the cases relating to Public Utility Services, if the parties fail to arrive at any settlement before the Permanent Lok Adalat, it is empowered under Section 22C (8) of the Act to pass appropriate orders on merits while deciding the dispute between the parties after giving reasonable opportunities of hearing to both the parties, albeit, the said power is to be exercised after affording an opportunity to conduct reconciliation proceedings between the parties in the manner as it deems fit. By relying on the aforesaid judgment, this Court in **M/s Piyus Buildwell India Ltd. vs. Permanent Lok Adalat, Faridabad and others** (CWP No.18436-2015 decided on 15.1.2019) has observed as under:-

“11.In view thereof, the objection of the petitioner-Company that the power of the Permanent Lok Adalat is confined only to mediation proceedings is not sustainable. The power to refer the parties to mediation proceedings in any case, is not mandatory but merely directory in nature. Failure of one or any of the party to not participate in the mediation or refusal to participate, does not disentitle the other to proceeding with its case on merits.

12.As regards the third objection, the same also lacks any substance or merit. The word `estate` has been included in definition clause of Public Utility Services under the Legal Services Authority Act. The meaning of word `estate` would clearly cover the disputes between flat buyers/consumers in respect of the services rendered/to be rendered by the developers.

13.The respondent/flat buyer, therefore, was fully justified in approaching the Permanent Lok Adalat to seek mitigation of his grievance under the Legal Services Authority Act.”

7. In the present case, there is arbitration clause in the builder-buyer contract, and therefore, Permanent Lok Adalat shall have jurisdiction to entertain and decide the dispute both by mediation proceedings and in case of failure of mediation, then on merits. Accordingly, admitting this case would bring more misery to the respondent than the petitioner can imagine or the respondent had visualized. Thus, the dispute deserves to be settled on merits by the competent forum being Permanent Lok Adalat (Public Utility Services), Faridabad which jurisdiction has been admitted by the learned counsel for the petitioner very fairly.

8. In view of these facts and circumstances, in exercise of power to transfer, the disposed of file of the case is ordered to be transferred from the record of the Permanent Lok Adalat (Public Utility Services), Palwal to the Permanent Lok Adalat (Public Utility Services), Faridabad. The Presiding Officer/Chairman of Permanent Lok Adalat (Public Utility Services), Palwal is requested to send the

file to the Permanent Lok Adalat (Public Utility Services), Faridabad. He would also assess the expenses to be incurred while sending the file which will be borne by the petitioner. The Permanent Lok Adalat (Public Utility Services), Faridabad is directed to take up the case and decide the same, preferably within six months from the date when the file comes on its board and when the Forum is seized of the file. The parties to appear before the Permanent Lok Adalat (Public Utility Services), Faridabad on 29.1.2019 for further proceedings.

9. The writ petition is partially allowed and is disposed of accordingly.

28.11.2019
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No