

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

104

CWP-1926-2020

Date of Decision: 25.08.2022

HARYANA URBAN DEVELOPMENT AUTHORITY & ORS.

... Petitioners

Versus

PERMANENT LOK ADALAT AND ANOTHER

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Padam Kant Dwivedi, Advocate
for the petitioners.

Mr. Saurav Verma, Addl. A.G., Punjab.

VINOD S. BHARDWAJ, J. (ORAL)

The instant petition has been filed under Articles 226/227 of the Constitution of the India raising a challenge to the Award dated 14.06.2018 (Annexure P-5) passed by the Permanent Lok Adalat, Sirsa.

Briefly summarized, the facts of the case are that the respondent No.2-applicant moved an application under Section 22-C of the Legal Services Authorities Act, 1987 espousing a grievance that he was allotted booth No.113-P for a sale consideration of Rs.75,400/- and booth No.114-P for a sale consideration of Rs.79,000/- in Commercial-II, Ellenabad, Sirsa on 05.03.1997. Possession thereof was taken by the said respondent No.2-applicant on 06.06.2011 and the DPC certificates of aforesaid booths were issued on 24.02.2012 by the petitioner- Haryana Urban Development Authority (as it was then, now Haryana Shahri Vikas Pradhikaran-HSVP). The construction on the said booths was thereafter completed.

After completion of the construction of the booths by the respondent No.2-applicant, the construction and laying down of sewerage, water line and parking was commenced by the petitioner-HSVP.

It was alleged that the level of parking constructed by the petitioner was higher than the level of the booths and that in the rainy season, the water used to accumulate in and around the booths, thus, causing damage to the floor of the booths, due to which respondent No.2-applicant suffered immense losses. It was further alleged that despite completion of all formalities, the completion certificate of the same was not issued to him.

Response to the aforesaid application was furnished by the petitioner, wherein it was stated that all the development activities in the area were completed before handing over possession to the respondent No.2-applicant on 06.06.2011 and that the possession certificate itself reveals that the respondent No.2-applicant had given an undertaking that he had seen the plot site and agreed to accept the possession. No grievance was raised by the respondent No.2-applicant at the relevant time. It was further claimed that the plinth level was rightly given to the respondent No.2-applicant as per law and that the road/parking are at the same level as the booths.

The submissions advanced by the respective parties were duly considered by the Permanent Lok Adalat and the application submitted by the respondent No.2-applicant was allowed. The petitioner herein was directed to pay a compensation to the tune of Rs.99,000/- in favour of the respondent No.2-applicant alongwith interest at the rate of 9% per annum from the date of the application till the realization of the said amount and was also directed to issue the completion certificate with regard to the said booths in favour of the respondent No.2-applicant within a period of one month from the date of passing of the said order.

Learned counsel appearing on behalf of the petitioner has vehemently argued that finding of fact recorded by the Permanent Lok Adalat to the effect that the plinth level of booth No.113-P was lower by 1'-2" whereas they have got the same inspected after the passing of the said Award and that the plinth level was found lower only by two inches and not by 1'-2". He thus contends that the finding of fact so recorded is factually incorrect and thus demolishes the very foundation of the Award passed by the Permanent Lok Adalat.

The aforesaid submission does not find much weight with this Court. The compensation has been awarded as a result of giving a wrong plinth level and this fact stands admitted on record. The degree of variation may only be a relevant factor insofar as quantification is concerned and for determination of compensation for the works to be undertaken by the allottee for rectification of the aforesaid defect. The lapse thus stands determined even as per the subsequent report so obtained by the petitioner HSVP after the passing of the Award. No satisfactory explanation has been furnished as to why a wrong plinth level was given by the petitioner to the respondent No.2-applicant. It cannot be disputed that as a result of the plinth level being demarcated at a level lower than the level of facilities provided by the petitioner HSVP, there is bound to be water logging within the commercial premises of the respondent No.2-applicant.

While allowing the aforesaid application, the Permanent Lok Adalat has recorded the following observations:

"11. After going through both the letters, referred to above, we are of the opinion that there is no substance in the contentions of the petitioner on this point. This plea of the petitioner is liable to be ignored on two counts; firstly he did not raise any objection regarding the development of the area and providing the basic

amenities by the respondents in the area when he accepted the possession of the Booths on 06.06.2011 and this fact is quite clear from the perusal of Annexures P-3 and P-4. Therefore, once the petitioner accepted the possession of the Booths without raising any objection, he cannot raise this question at this belated stage. Secondly, the petitioner cannot succeed on this ground because the respondents offered the possession of the Booths to the petitioner when he paid 25% of the sale price as envisaged in terms and condition Nos. 5 of sale by public Auction. Therefore, we have no hesitation to hold that the petitioner cannot compel the respondents to pay compensation to him for not developing the area where his Booths are situated. The petitioner also cannot restrain the respondents from charging interest and development fee of the Booths because the petitioner himself shown the interest to raise the construction on his Booths knowing fully well that the area was not properly developed by the respondents.

12. It is an admitted fact that the petitioner commenced the construction work and informed the respondents when the construction was raised upto plinth level. The authorized person of the respondent inspected the site and issued DPC certificates, copies of which are Annexures P-7 and P-8. It is relevant to mention here that the respondents to give plinth level of the buildings to the allottees with reference to the approved level of the roads constructed or to be constructed. These certificates are issued by the authorities of HUDA to the allottees keeping in view the approved level of roads, parkings, footpaths etc. This step is taken by the authorities of the respondents so that the level of the buildings/Booths of all the allottees may remain the same and any of the allottee may not suffer due to the stagnation of water etc. in his premises. In the present case, the petitioner raised the construction of his Booths by observing the plinth level given by the competent authority of the respondents and at that time the roads and parkings in front of the Booths allotted to the petitioner were not constructed. The respondents constructed the roads and parkings after the completion of the

construction of his Booths by the petitioner. While constructing the roads and parkings in front of Booth No.114-P the respondents followed the plinth level already given by them to the petitioner and the petitioner is not adversely affected by the construction of the roads and parkings in front of Booth No.114-P. But while constructing the road and parking in front of Booth No.113-P, the respondent did not follow the plinth level already given by them to the petitioner. The respondents raised the construction of the road and the parking on some higher level. Consequently, the floor level of Booth No.113-P remained low than the level of the road and parking Resultantly, the rainy water entered in the low lying Booth No 113-P of the petitioner during the rainy season and in that manner the petitioner suffered mental agony, financial losses and harassment. Once it is held that the petitioner raised the construction of Booth No. 113-P after following the plinth level given to him by the respondents, it was the duty of the respondents to follow that plinth level while constructing the road etc. But they did not follow this norm and violated the terms and conditions of the allotment and allowed the petitioner to suffer. There is momentum of force in the submissions of Ld. Counsel for the petitioner and there is no modicum of merit in the submission of Ld. Counsel for the respondent. Therefore, the petitioner has rightly blamed the respondents for their ill-act in the present petition. Thus the petitioner deserves to be compensated by the respondents on this count.

13. Though the petitioner has claimed the compensation qua his Booth Nos.113-P and 114-P, but it is clear from the statement of the petitioner that no loss has been caused with regard to his Booth No.114-P because the level of Booth No.114-P is above the road level. He suffered losses due to stagnation of water with regard to his Booth No.113-P, which is low lying and the same is clear from his statement coupled with his supporting documents.

14. In order to assess the losses of the petitioner, this Adalat vide its order, dated 25.04.2013 appointed an approved valuer

with the consent of the parties to inspect the premises and to assess the cost of the improvement to be done in the Booths of the petitioner to bring them to the required level. Sh Bharat Bhushan Gera, an approved Valuer inspected the site and submitted his report Annexure P-16 vide which he assessed the cost of raising the level of both the Booths by 3 feet, whereas raising of only one Booth i.e. Booth No.113-P is required and that too by 1'-2". Therefore, the report of the Value cannot be accepted in toto but can be taken into consideration for assessing the loss qua Booth No. 113-P. We also agree with the losses as assessed and discussed in para no. 10 of the earlier judgment of this Adalat, dated 25.06.2013 as the same is reasonable in the interest of justice. In view of the report of the value, we can safely hold that the petitioner suffered a loss of Rs.85,085/- qua Booth No 113-P and the round figure becomes Rs.85,000/-. Besides this costs of improvement to be carried out in the shop, the petitioner is entitled for some compensation on account of mental agony and harassment suffered by him at the hands of the concerned Authority of HUDA, who provided wrong plinth level to him. Therefore, in our opinion, a sum of Rs 10,000/- is an appropriate compensation on this count along with Rs.4000/- as the paid to the Approved valuer by the petitioner. In this way, the total amount to be charged by the petitioner from the respondents in this petition on account of costs of the improvement of his Booth, compensation for mental agony and harassment and fee of the approved Valuer, comes to Rs.99,000/-.

15. The petitioner further added that after the completion of the construction of his Booths, he applied for issuance of completion certificates in the office of the respondents and completed all the requirements. But the respondents did not issue the completion certificates. The respondents have not given any satisfactory reply for not issuing the completion certificates. Therefore, it is clear that the respondents have withheld the completion certificates of the Booths of the petitioner without any valid reason."

No satisfactory explanation has been tendered by the petitioner HSVP as to how the said finding of fact recorded by the Permanent Lok Adalat is factually incorrect or is not substantiated or supported by the evidence on record. Any fresh evidence/report obtained by the petitioner cannot be the basis for impugning the said order. It seems that a disputed question of fact is now being raised by the petitioner to dispel a finding of fact recorded by the Permanent Lok Adalat. There is no reason given by the petitioner-HSVP that as to why it did not seek the determination of the aforesaid fact at the time when the matter was under consideration before the Permanent Lok Adalat. Any such attempt to cover up the lapses and to make an attempt at capitalizing on the said wrong cannot be accepted by the High Court. There is no illegality, perversity or impropriety pointed out by the learned counsel for the petitioner in the impugned Award. In the absence of finding any of the aforesaid defects, there is no reason that as to why the High Court should substitute its opinion to that of the Permanent Lok Adalat.

The present petition is accordingly dismissed.

25.08.2022
rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No