IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

*101*

**CWP No.20040 of 2019 (O&M)**
**DATE OF DECISION: 04th APRIL, 2022**

**Chairman, Chandigarh Housing Board**

…. **Petitioner**

**Versus**

**Alka Singh and another**

…. **Respondents**

**CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT**

Present : Mr. Gagandeep Singh Wasu, Advocate and
Mr. Ashish Rawal, Advocate,
Senior Standing Counsel,
for the petitioner.

Mr. H.S. Bedi, Advocate
for respondent No.1.

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**RAJBIR SEHRAWAT, J. (Oral)**

This is a petition filed under Article 226 of the Constitution of India seeking issuance of a writ of Certiorari for quashing the award dated 13.03.2018 (Annexure P-1), passed by respondent No.2-Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh under Section 22 (C)(8) of the Legal Services Authorities Act, 1987.

The brief facts of the case are that; respondent No.1 was allotted a Booth No.8, Mini Market, Sector-48-A, Chandigarh in an auction held on 30.10.2002; at a premium/price of Rs.15,30,000/- on lease hold basis. The initial bid money, i.e. 25% of the total price was deposited by respondent No.1. Subsequent three annual installments were to be deposited by respondent No.1 on 01.12.2003, 01.12.2004 and

01.12.2005. However, none of these installments was deposited by the respondent No.1. Although as per the terms of the auction, the allotment could have been cancelled by the petitioner-Board, however, behaving strangely the petitioner-Board continued the allotment and, instead, calculated liability for the penal interest at the rate of 24% per annum. The petitioner-Board had calculated the amount as Rs.20,71,850/- on 10.02.2008 to be payable upto 30.09.2008. This amount had increased to Rs.26.00 Lacs later on. Accordingly, respondent No.1, through the General Power of Attorney had deposited an amount of Rs.26.00 Lacs on 06.02.2010. As has come on record, thereafter, the General Power of Attorney prayed for transfer of the said booth in his name on 21.04.2017. Accordingly, the said property stands transferred on lease hold basis in favour of the above said subsequent purchaser on 18.05.2017. However, the interest at the rate of 24% was wrongly charged by the petitioner, whereas, it was chargeable only at the rate of 20%, therefore, in the meantime, on 02.05.2017, respondent No.1 had filed a petition before the Permanent Lok Adalat for refund of the excess interest amount, which stood deposited by her with the petitioner-Board. The Permanent Lok Adalat has passed the order on merits on the said petition. It is the said order passed by the Permanent Lok Adalat, which has been challenged in the present petition.

While arguing the case, the counsel for the petitioner has submitted that as per the mandate of the Section 22 (C) (3) to (7) of the Legal Services Authorities Act, 1987, the first step on the part of the Permanent Lok Adalat should have been to attempt reconciliation between the parties. Although the said process was initiated as well, however, subsequently; the Permanent Lok Adalat diverted the proceedings and never resorted to re-conciliation proceedings. Instead, Permanent Lok Adalat has passed the final order on merits. Hence, the order passed by the Permanent Lok Adalat is in contravention of the statutory provisions. Therefore, the impugned order deserves to be set aside. It is further submitted that; if at all the refund of the money was to be applied for, it should have been by the subsequent purchaser, who had deposited the money. Still further respondent No.1 is estopped by her own conduct in raising an issue with the petitioner-Board because she had included a recital in the deed of her power of attorney to the effect that thenceforth the GPA holder shall step into the shoes of respondent No.1 in dealing with the petitioner-Board. Another argument of the counsel for the petitioner is that although the money was deposited way back in February 2010, however, respondent No.1 approached the petitioner-Board only in August, 2015 by way of representation. Even, the application before the Permanent Lok Adalat was filed only in the year 2017. Hence, the claim of respondent No.1 was time barred. However, the counsel for the petitioner has not disputed the fact that, had the Permanent Lok Adalat undertaken the process of conciliation and had the conciliation proceedings failed, then the Permanent Lok Adalat would have the power to pass the order on merits, determining the issue between the parties, as well.

On the other hand, the counsel for respondent No.1 has submitted that the order has rightly been passed by the Permanent Lok Adalat. The Permanent Lok Adalat had undertaken the conciliation proceedings. However, the petitioner had refused to come to any conciliatory stand. On the contrary, the petitioner contested the claim of respondent No.1 by filing written statement; and then even filed the additional documents by way of contest of the claim. Hence, there was no scope for conciliation proceedings. Therefore, the Permanent Lok Adalat has rightly resorted to taking up the matter on merits and has passed the order, which has wrongly been impugned in the present petition. The counsel has further submitted that even before this Court the effort was made by a co-ordinate Bench of this Court; by giving an opportunity to the petitioner-Board to reconcile the matter. However, the petitioner-Board did not show any interest in the same. On the contrary, the case is being contested here as well. Therefore, the respondent No.1 was forced to file an execution petition, which is still pending because of the interim stay order passed by this Court. However, during the pendency of these proceedings, the petitioner-Board themselves have acceded to the claim of respondent No.1 and they had issued and sent her the cheque for the principal amount awarded by the Permanent Lok Adalat. But the said cheque could not be encashed by respondent No.1 because, being absent on the day when the cheque reached the address of respondent No.1, she could not get the same. However, the fact remains that the petitioner has conceded the claim of respondent No.1. Hence, it is submitted that there is absolutely nothing wrong with the order as such. The counsel has further submitted that even the necessary notification was issued by the petitioner-Board saying that for the allotment letters issued between 05.06.2002 and 06.12.2007, the interest shall be charged at the rate of 20% and not at the rate of 24% per annum. Hence, the action of the petitioner-Board itself has been rendered totally illegal; in view of its own notification. Still further, the respondent No.1 obtained information under the Right to Information Act, from the petitioner-Board and it was found that the refund was already allowed by the competent authority on 25.05.2016, i.e. even before filing of the petition by respondent No.1. Still the same was not paid by the petitioner. Accordingly, it is submitted that the petitioner itself has been taking undue advantage of its status as a statutory body; to cause harm to respondent No.1.

Having heard the counsel for the parties, this Court finds that the arguments of the counsel for the petitioner appears to be right to the extent that the conciliated proceedings, as required under the Act, has not been conducted by the Permanent Lok Adalat in the right earnest. However, the said issue is no more relevant. As argued by the counsel for the petitioner, it is not even in dispute that had the conciliation proceedings failed, the Permanent Lok Adalat could have passed the order on merits. So far as the merits of the case are concerned, the counsel for the petitioner has raised a very limited objection to the extent that the refund has been ordered to be made to respondent No.1, instead of the subsequent purchaser. To substantiate this aspect, the counsel has referred to the General Power of Attorney and agreement to sell allegedly executed by respondent No.1. However, in the considered opinion of this Court, these are not the concerns of the petitioner-Board. Even as per the record of the petitioner-Board, as on the date when the excess money was deposited, the respondent No.1 was the owner. Hence, whosoever had deposited the money on behalf of respondent No.1, in case of requirement of refund; the same has to be returned to respondent No.1 only. If the subsequent purchaser has any dispute with the respondent

No.1, it would be a contractual aspect between the two. However, the petitioner, as a statutory body, is least concerned about their inter-se dispute. So far as the entitlement of respondent No.1 is concerned, it is not even in dispute that the petitioner-Board itself had calculated the amount of interest at the rate of 24% instead of chargeable rate of 20%. Therefore, it was obvious to the petitioner-Board on the date when it was accepting that deposit itself, that it was having excess money from respondent No.1. Therefore, being a public body, it was expected from them not to illegally charge the excess money, and if so charged and accepted; then to refund the said amount immediately, instead of retaining the same. Since, the petitioner-Board itself was required to refund the excess amount charged by it, therefore, it is denuded of entitlement to raise any objection qua the claim of respondent No.1, being delayed or time barred. The petitioner cannot be permitted undue enrichment by taking advantage of its own wrong.

Moreover, it is not even in dispute that the petitioner-Board itself had issued the cheque to respondent No.1 qua refund of the amount of her entitlement. Although the counsel for the petitioner has submitted that the said cheque was issued to respondent No.1 under pressure of execution proceedings, however, even this argument is not supported by any order on record. Therefore, in the opinion of this Court, the respondent No.1 is duly entitled to get the principal amount of Rs.3,50,861/-, as has been awarded by the Permanent Lok Adalat.

So far as the award of interest by Permanent Lok Adalat is concerned, this Court finds substance in the argument of the counsel for the petitioner that the rate of interest awarded by the impugned order is excessive. As per the prevalent market rate, the contemporary rate of interest has been near about 6%; with a small variation on either side depending upon the nature of the deposits. Therefore, this Court finds that the interest at the rate of 6% for the period as awarded by the Permanent Lok Adalat would be the appropriate rate of interest. Hence, while upholding the order passed by the Permanent Lok Adalat qua grant of principal amount, the said order is modified to the extent of variation of the rate of interest; as mentioned above. Hence, respondent No.1 is held entitled to the amount of Rs.3,50,861/- plus the interest at the rate of 6% per annum on the said amount; as per the dates specified by the Permanent Lok Adalat.

Since, this Court itself has found that the conciliation proceedings have not been conducted by the Permanent Lok Adalat in the right earnest and straightway the order on merits has been passed, therefore, in ordinary course, the case would have been remanded to the Permanent Lok Adalat for consideration afresh. However, this Court has resorted to final decision of the case here itself; in exercise of powers under Article 226 of the Constitution of India; for the reason that the remand of the case; at this stage; and after this much time; would not be in the interest of justice, particularly, when the counsel for the petitioner has not even disputed that the Permanent Lok Adalat could have passed the order on merits, as well. Hence, to lend a quietus to the entire dispute between the parties, this extra ordinary power under Article 226 of the Constitution of India has been exercised by this Court. Therefore, as an ancillary, it is also ordered that this order shall not be taken as a precedent for any other matter on the similar aspect.

In view of the above, the present writ petition is disposed of in the terms mentioned hereinabove.

All pending miscellaneous applications, if any, are also disposed of as such.

**04th APRIL, 2022** **(RAJBIR SEHRAWAT)**
*'sandeep'* **JUDGE**

*Whether speaking/reasoned:* *Yes* *No*

*Whether Reportable:* *Yes* *No*