

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

208

**CWP-16928-2017
Date of Decision: 06.02.2023**

RAJENDER KUMAR

... Petitioner

VERSUS

STATE OF HARYANA AND ORS

... Respondents

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

Present: Mr. Vishwajeet, Advocate
for the petitioner.

Mr. Vivek Chauhan, AAG, Haryana.

Mr. Rajesh K. Sheoran, Advocate &
Mr. Hardeep S. Poonia, Advocate
for respondents No.2 and 3.

VINOD S. BHARDWAJ, J. (ORAL)

The present petition has been filed under Articles 226/227 of the Constitution of India, 1950 for issuance of a writ in the nature of Certiorari seeking setting aside of the order dated 03.12.2016 (Annexure P-7) passed by the Civil Judge (Senior Division), Kurukshetra whereby the Award dated 23.10.2013 passed by the Permanent Lok Adalat (Public Utility Services), Kurukshetra under Section 22-C of the Legal Services Authority, 1987 has been held as a nullity and non-executable by the Executing Court.

Briefly summarized, the facts of the case are that the petitioner purchased a built-up shop No.286 situated in Sector 10, Urban Estate, Kurukshetra in an open auction for a sum of Rs.18,25,000/-. A letter of allotment dated 14.03.2011 was also issued in his favour by the respondent-Estate Officer. An amount of Rs.2,73,750/- being 25% of the aforesaid amount was deposited by the petitioner on 11.04.2011. The possession was offered to

the petitioner at the time of allotment itself vide offer letter of possession dated 14.03.2011. Subsequent installments were also paid by the petitioner in time. However, despite depositing the installments/payments, the actual physical possession of the shop was not delivered to the petitioner. It transpired that the shop had been illegally occupied by Engg. D.K. Kaushik, S.D.E, (Elect.) HUDA. Consequently, an application under Section 22-C of the Legal Services Authority, 1987 was filed by the petitioner. It was submitted that actual and physical possession of the built-up shop has not been delivered and the respondents have illegally received excess amount on account of possession interest. However, an amount of Rs.2,11,000/- was demanded vide memo dated 21.03.2012 despite excess amount having been deposited while paying the installment. A legal notice dated 15.05.2022 was served upon respondents to hand over vacant and actual physical possession after getting it vacated from S.D.E. (Elect.) and to refund the excess amount alongwith interest.

Written statement on behalf of the respondents was also filed, wherein objections were taken by them. The objections on the grounds of locus standi; concealment of true and material facts and lack of jurisdiction were also taken. It was asserted that as per condition No.6 of the Letter of Allotment, the possession of hilt-up shop had already been delivered. Illegal and unauthorized possession of S.D.E. (Elect.) had been denied. Actual possession of applicant had been alleged. Payment of installments had been made as per terms and conditions of the letter of allotment.

Upon consideration of the respective submissions advanced by the parties, the Permanent Lok Adalat (Public Utility Services), Karnal Camp Court at Kuruskhetra allowed the aforesaid application vide Award dated 23.10.2013 in case No.21 of 2012 tilted as 'Rajender Kumar Vs. The Estate

Officer, HUDA and another'. It was directed by the Permanent Lok Adalat (Public Utility Services), Kurukshetra that the actual possession of the built-up shop be delivered to the petitioner in terms of the allotment letter. Further, a compensation of Rs.1,00,000/- was also awarded to the petitioner. The said Award attained finality.

An Execution Application was, thereafter, preferred by the petitioner before the Civil Judge (Sr. Division), Kurukshetra. Objections on behalf of the respondents were filed in the said Execution Application that Permanent Lok Adalat had no jurisdiction to adjudicate under the Legal Services Authorities Act, 1987. Vide impugned order dated 03.12.2016, the Execution Application was dismissed being not maintainable on the ground that Permanent Lok Adalat lacks jurisdiction to adjudicate the lis. It was observed by the Executing Court that the Permanent Lok Adalat has no jurisdiction or authority to decide the dispute. Aggrieved thereof, the present petition has been filed.

Written statement on behalf of the respondents No.2 and 3 has been filed, wherein the respondents have remained evasive insofar as the issue of competence of the Permanent Lok Adalat (Public Utility Services), Kurukshetra under the Legal Services Authorities Act, 1987 is concerned. Rest of the factual averments remained undisputed.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

The issue involved in the present case is legal and relates to the jurisdiction of the Permanent Lok Adalat to pass an Award in case the parties fail to arrive at an amicable resolution of the dispute.

In order to appreciate the aforesaid aspect, it is relevant to reproduce the relevant statutory provisions of the Legal Services Authorities Act, 1987. The same are extracted as under:

“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, in the public interest, by notification, declare to be a public utility service for the purposes of this Chapter. 2*

22B. Establishment of Permanent Lok Adalats.—

(1) Notwithstanding anything contained in section 19, the Central Authority or, as the case may be, every State Authority shall, by notification, establish Permanent Lok Adalats at such places and for exercising such jurisdiction in respect of one or more public utility services and for such areas as may be specified in the notification.

(2) Every Permanent Lok Adalat established for an area notified under sub-section (1) shall consist of—

- (a) a person who is, or has been, a district judge or additional district judge or has held judicial office higher in rank than*

that of a district judge, shall be the Chairman of the Permanent Lok Adalat; and

- (b) two other persons having adequate experience in public utility service to be nominated by the Central Government or, as the case may be, the State Government on the recommendation of the Central Authority or, as the case may be, the State Authority, appointed by the Central Authority or, as the case may be, the State Authority, establishing such Permanent Lok Adalat and the other terms and conditions of the appointment of the Chairman and other persons referred to in clause (b) shall be such as may be prescribed by the Central Government.*

22C. Cognizance of cases by Permanent Lok Adalat.—

(1) Any party to a dispute may, before the dispute is brought before any court, make an application to the Permanent Lok Adalat for the settlement of dispute: Provided that the Permanent Lok Adalat shall not have jurisdiction in respect of any matter relating to an offence not compoundable under any law: Provided further that the Permanent Lok Adalat shall also not have jurisdiction in the matter where the value of the property in dispute exceeds ten lakh rupees: Provided also that the Central Government, may by notification, increase the limit often lakh rupees specified in the second proviso in consultation with the Central Authority.

(2) After an application is made under sub-section(1) to the Permanent Lok Adalat, no party to that application shall invoke jurisdiction of any court in the same dispute.

(3) Where an application is made to a Permanent Lok Adalat under sub-section(1), it—

- (a) shall direct each party to the application to file before it a written statement, stating therein the facts and nature of dispute under the application, points or issues in such dispute and grounds relied in support of, or in opposition*

to, such points or issues, as the case may be, and such party may supplement such statement with any document and other evidence which such party deems appropriate in proof of such facts and grounds and shall send a copy of such statement together with a copy of such document and other evidence, if any, to each of the parties to the application;

(b) may require any party to the application to file additional statement before it at any stage of the conciliation proceedings; 15 (c) shall communicate any document or statement received by it from any party to the application to the other party, to enable such other party to present reply thereto.

(4) When statement, additional statement and reply, if any, have been filed under sub-section (3), to the satisfaction of the Permanent Lok Adalat, it shall conduct conciliation proceedings between the parties to the application in such manner as it thinks appropriate taking into account the circumstances of the dispute.

(5) The Permanent Lok Adalat shall, during conduct of conciliation proceedings under sub-section(4), assist the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner.

(6) It shall be the duty of the every party to the application to cooperate in good faith with the Permanent Lok Adalat in conciliation of the dispute relating to the application and to comply with the direction of the Permanent Lok Adalat to produce evidence and other related documents before it.

(7) When a Permanent Lok Adalat, in the aforesaid conciliation proceedings, is of opinion that there exist elements of settlement in such proceedings which may be acceptable to the parties, it may formulate the terms of a possible settlement of the dispute and give to the parties concerned for their observations and in case the parties reach at an agreement on the settlement of the dispute, they shall sign the settlement agreement and the

Permanent Lok Adalat shall pass an award in terms thereof and furnish a copy of the same to each of the parties concerned.

(8) 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.

22D. Procedure of Permanent Lok Adalat.—

The Permanent Lok Adalat shall, while conducting conciliation proceedings or deciding a dispute on merit under this Act, be guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice, and shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) and the Indian Evidence Act, 1872 (1 of 1872).

22E. Award of Permanent Lok Adalat to be final.—

(1) Every award of the Permanent Lok Adalat under this Act made either on merit or in terms of a settlement agreement shall be final and binding on all the parties thereto and on persons claiming under them.

(2) Every award of the Permanent Lok Adalat under this Act shall be deemed to be a decree of a civil court.

(3) The award made by the Permanent Lok Adalat under this Act shall be by a majority of the persons constituting the Permanent Lok Adalat.

(4) Every award made by the Permanent Lok Adalat under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding.

(5) The Permanent Lok Adalat may transmit any award made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that Court.”

Perusal of the aforesaid statutory provisions shows that Section 22-C (4) of the Legal Services Authorities Act, 1987 necessitates that Permanent Lok Adalat initiates conciliation proceedings between the parties

for an amicable resolution of the dispute. Where the parties fail to reach an amicable settlement, the Permanent Lok Adalat has been vested with the power to adjudicate upon the dispute under Section 22-C (8) of the Legal Services Authorities Act, 1987.

Further, Section 22-D of the Legal Services Authorities Act, 1987 provides that Permanent Lok Adalat shall be governed by the said principles during conciliation or adjudication proceedings. Section 22-E also takes into consideration the finality of the Award passed on settlement or on merit. Hence, not only does the Act of 1987 stipulate adjudication on merits upon failure of conciliation, it also stipulates the principles to be kept in mind while passing an Award and also given finality to the Award passed on merits.

Invariably, the aforesaid aspect has not been taken into consideration by the Executing Court. It is also not the case set up by the respondents that the activity undertaken by the respondents does not fall within the definition of “Public Utility Services” as defined under the Legal Services Authorities Act, 1987 as amended upto date. In any case, merit of the Award was not a subject matter of challenge.

Learned counsel appearing on behalf of the respondents fairly submits that the notification/amendments carried out by the State of Haryana would cover the Real Estate Sector within the domain of Permanent Lok Adalat (Public Utility Services), Act and as such, the order the order in question could not be stated to be passed without jurisdiction

Taking into consideration the fair stand adopted by the learned counsel for the respondents No.2 and 3 as well as the fact that there was an error on the part of the Executing Court in dismissing the Execution Application on the ground of jurisdictional error notwithstanding that Section

22-C (8) of the Legal Services Authorities Act, 1987 confers a jurisdiction on the Permanent Lok Adalat to adjudicate a dispute in the event of failure to amicably resolve the issue and the fact that the conciliation proceedings were initiated by the Permanent Lok Adalat (Public Utility Services) on various dates as noticed in paragraph No.6 of the aforesaid Award. The exercise of the adjudicatory jurisdiction under section 22-C(8) cannot be held to be bad in law.

The present petition is accordingly allowed. The order dated 03.12.2016 passed by the Executing Court in Execution Application No.04 of 2014 is set aside and the matter is remanded to the Executing Court for fresh adjudication. The parties shall appear before the Executing Court on 01.03.2023, whereupon the Executing Court shall proceed ahead with the matter in accordance with law.

Petition stands allowed accordingly.

06.02.2023.

rajender

(VINOD S. BHARDWAJ)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No