

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

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CWP-26908-2017 (O&M).
Date of Decision: 02.11.2023.

MUNICIPAL CORPORATION PATIALA THROUGH ITS
COMMISSIONER

...Petitioner

Versus

PERMANENT LOK ADALAT (PUBLIC UTILITY SERVICES),
PATIALA AND ANOTHER

...Respondents

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

Present: Mr. Vinish Singla, Advocate, for the petitioner.

Mr. Mohit Jaggi, Advocate, for respondent No.2.

VINOD S. BHARDWAJ. J (ORAL)

Challenge in the present petition is to the award dated 09.05.2017 (Annexure P-7) passed by the respondent No.1-Permanent Lok Adalat (Public Utility Services), Patiala, whereby the application No.772 of 2014 instituted by the respondent No.2-applicant was allowed and the petitioner has been directed to refund the difference of amount of Rs.4333/- from the year 1999-2000 to 2011-2012 along with interest @ 8% per annum.

Briefly summarized, the case of respondent No.2-applicant is that he is owner in possession of property No.7742/5-1 situated at Desi Mehmandari, Opposite Bus Stand, Patiala. The property in question was assessed to house tax @ Rs.486/- per annum which the respondent No.2-applicant paid till 1996-97. It was averred that the house tax of the property was enhanced in the year 1999-2000 to Rs.8100/- per year which was highly exaggerated and no opportunity of hearing to respondent No.2-applicant was provided in this regard by the House Tax Assessment Committee. Respondent No.2-applicant approached the authorities i.e. Municipal Corporation, Patiala by way of a representation that the property was lying vacant and was never given on rent, hence, the same was accordingly entitled to be exempted from house tax. However, the needful was not done and the respondent No.2-applicant claimed to have been pressurized to deposit the house tax. The same was deposited vide Book No.637 Receipt No. 95 dated 31.03.2007 under protest and without prejudice to his rights. He continued to deposit the same without any prejudice and raised the issue with the competent Authority. Since a huge amount was being demanded on account of wrong assessment of house tax and the illegality was not being rectified despite the requests, respondent No.2-applicant preferred an application under Section 22 C of the Legal Services Authorities Act, 1987.

Reply was filed by the petitioner-Municipal Corporation, Patiala, raising various issues and objections and it also contested the claim of respondent No.2-applicant asserting that the property in

question was assessed to house tax which was enhanced in the year 1999-2000 as per applicable rules. It was averred that at that point of time, an appeal had been preferred by the respondent No.2-applicant before the Divisional Commissioner which was also dismissed on 18.07.2006 and the above said amount was deposited thereafter.

Efforts were made to amicably resolve the dispute between the parties, however, it failed to fructify into a mutual settlement. Consequently, adjudication of the dispute under Section 22 C (8) of the Legal Services Authorities Act, 1987 was undertaken by the Permanent Lok Adalat (Public Utility Services), Patiala. The application was eventually allowed vide order dated 09.05.2017 holding that the house tax of the property in question was enhanced in the year 1999-2000 to Rs.8100/- per year without giving any opportunity of being heard to the respondent No.2-applicant and that the property in dispute was re-assessed to house tax @ Rs.3767/- per year for the year 2011-12, hence, the assessment was wrong and liable to be rectified. The respondent No.2-applicant was entitled to refund of the amount along with interest @ 8% per annum.

Aggrieved thereof, the present writ petition has been filed.

The award was impugned, *inter alia*, on the ground of maintainability of the proceedings before the Permanent Lok Adalat (Public Utility Services), Patiala, more so, when the respondent No.2 had already approached the Courts for the said relief. Further, it was also impugned on the ground that an issue of assessment of house tax was not within the jurisdiction and scope of powers vested in the Permanent Lok

Adalat (Public Utility Services), as per the Legal Services Authorities Act, 1987.

In the reply filed, the respondent No.2-applicant has relied upon the claim raised in the application itself and reiterated the said factual aspect including that there was a wrong assessment of house tax by the respondents and which such aspect having been acknowledged by them in the re-assessment of the house tax itself, the respondent No.2-applicant has been rightly held entitled to refund of the excess determination of the house tax. A prayer for dismissal of the writ petition was thus made.

Learned counsel for the petitioner has argued that the Permanent Lok Adalat (Public Utility Services), Patiala had no jurisdiction to entertain the above said application. It is contended that the assessment of the property to enhanced rate of Rs.8100/- was done in the year 1999-2000 and notice under Section 101(5) of the Punjab Municipal Corporation Act, 1976 dated 23.08.1999 was sent to respondent No.2-applicant to remain present before the House Tax Assessment Committee and to submit his objections. He, however, chose not to appear before the said Committee whereafter, the Assessment Committee confirmed the House Tax. The respondent No.2-applicant, however, paid the house tax w.e.f. 1999-2000. An appeal was preferred by respondent No.2-applicant under Section 146 of the Punjab Municipal Corporation Act, 1976 before the Divisional Commissioner, Patiala against the assessment of the house tax. The said appeal was dismissed by the Divisional Commissioner on 18.07.2006 on the ground

of maintainability as well as on merits thereof. The above said order was consequently challenged by respondent No.2-applicant by means of a writ petition before this Court in which respondent No.2-applicant was directed to deposit the amount of pending house tax so that his appeal may be heard by the Divisional Commissioner on merits. Pursuant thereof, respondent No.2-applicant deposited the outstanding amount of Rs.68,040/- on 31.03.2007 under protest to avail his remedy.

It is contended on behalf of the petitioner that respondent No.2-applicant had been granted liberty to approach the Divisional Commissioner for re-hearing of the appeal after deposit of the said amount, however, instead of approaching the Divisional Commissioner, he filed the application before the Permanent Lok Adalat (Public Utility Services), Patiala. It is argued that the Permanent Lok Adalat (Public Utility Services), Patiala did not have the jurisdiction to entertain the said application in view of the specific bar contained in Section 22 C of the Legal Services Authorities Act, 1987 as the remedy before the Permanent Lok Adalat (Public Utility Services), could be availed only before approaching any other Court as defined under Section 2 (aaa) of the Legal Services Authorities Act, 1987.

It is argued that the issue of maintainability of the proceedings before the Permanent Lok Adalat (Public Utility Services), is prime and legal and hence can be raised even at this stage.

Learned counsel for the respondent No.2-applicant does not dispute the factual aspect as also the fact that the appeal before the Divisional Commissioner as well as the writ petition before this Court

had been preferred. He also fairly concedes that after the deposit of the amount, respondent No.2-applicant had never preferred any application before the Divisional Commissioner, Patiala to hear the appeal on merits and that instead the application under Section 22 C of the Legal Services Authorities Act, 1987 had been filed. He contends that the petitioner cannot be permitted to raise the objection at this stage after the issue has already been decided by the Permanent Lok Adalat (Public Utility Services), Patiala and there is apparently no prejudice caused to the petitioner Municipal Corporation since an opportunity of hearing had been duly granted to the petitioner by the Permanent Lok Adalat (Public Utility Services), Patiala, while adjudicating the issue. Still further, the factual aspects noticed by the Permanent Lok Adalat (Public Utility Services), are no more in dispute and it remains admitted that the house tax had been re-assessed at Rs.3767/- per year w.e.f. 2011-2012. Hence, the assessment at Rs.8100/- in the year 1999-2000 was clearly erroneous. The award thus does not suffer from any illegality and deserves to be upheld and the writ petition is liable to be dismissed.

I have heard the learned counsel appearing on behalf of the parties and have gone through the documents available on record with their able assistance.

Before proceeding any further matter, it is necessary to refer to certain statutory provisions of the Legal Services Authorities Act, 1987.

Section 22 A of the Legal Services Authorities Act, 1987 defines the Public Utility Services qua which the Permanent Lok Adalat is entitled to take cognizance. The same is reproduced as under:-

“22 A. 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 services for the purposes of this Chapter.

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“22 C. 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;

(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.

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‘Court’ has been defined under Section 2 (aaa) of the Legal Services Authorities Act, 1987 as under:-

2. Definitions.—In this Act, unless the context otherwise requires,—

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(aaa) “court” means a civil, criminal or revenue court and includes any tribunal or any other authority constituted under any law for the time being in force, to exercise judicial or quasi-judicial functions.”

It is evident from the perusal of the aforesaid provisions that for invoking the jurisdiction of the Permanent Lok Adalat (Public Utility Services), under the Legal Services Authorities Act, 1987, a party to a dispute is required to approach the Permanent Lok Adalat (Public Utility Services), before approaching any other Court as defined under Section 2 (aaa) of the Legal Services Authorities Act, 1987 and it includes any Tribunal or any Authority constituted under the law for the time being.

Undisputedly, respondent No.2-applicant had preferred an appeal against the order of assessment of the house tax as also a writ petition against the orders passed by the Divisional Commissioner. Hence, he had approached other Court before moving the application under Section 22 C of the Legal Services Authorities Act, 1987 before

the Permanent Lok Adalat (Public Utility Services). It is further evident from a perusal of the award passed by the Permanent Lok Adalat (Public Utility Services), Patiala that factum of having preferred an appeal before the Divisional Commissioner is duly noticed. The issue of maintainability and jurisdiction thus was required to be examined by the Permanent Lok Adalat (Public Utility Services), as it becomes a primary and fundamental question.

It has been held that the defect of jurisdiction is basic and cannot be violated. If a jurisdiction has not been conferred upon an authority by the Statute, the exercise of such a jurisdiction would be vitiated rendering orders and awards passed liable to be set aside. The relevant part of the judgment in the matter of **Balwant N. Vishwamitra and others Vs. Yadav Sadashiv Mule and others, reported as 2004 SCC Online SC 811** is extracted as under:-

“9. The main question which arises for our consideration is whether the decree passed by the trial court can be said to be "null" and "void". In our opinion, the law on the point is well settled. The distinction between a decree which is void and a decree which is wrong, incorrect, irregular or not in accordance with law cannot be overlooked or ignored. Where a court lacks inherent jurisdiction in passing a decree or making an order, a decree or order passed by such court would be without jurisdiction, non est and void ab initio. A defect of jurisdiction of the court goes to the root of the matter and strikes at the very authority of the court to pass a decree or make an order. Such defect has always been treated as basic and fundamental and a decree or order passed by a court or an authority having no jurisdiction is a nullity. Validity of such decree or order can

be challenged at any stage, even in execution or collateral proceedings.

10. Five decades ago, in *Kiran Singh v. Chaman Paswan* this Court declared: (SCR p. 121) "It is a fundamental principle well established that a decree passed by a court without jurisdiction is a nullity, and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties."

(Emphasis supplied)

11. The said principle was reiterated by this Court in *Hiralal Patni v. Kali Nath*. The Court said: (SCR pp 75152) "Competence of a court to try a case goes to the very root of the jurisdiction, and where it is lacking, it is a case of inherent lack of jurisdiction."

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14. Suffice it to say that recently a Bench of two Judges of this Court has considered the distinction between null and void decree and illegal decree in a **Rafique Bibi v. Sayed Waliuddin**. One of us (R.C. Lahoti, J., as His Lordship then was), quoting with approval the law laid down in *Vasudev Dhanjibhai Modi*³ stated: (SCC pp. 291-92, paras 6-8)

"6. What is 'void' has to be clearly understood. A decree can be said to be without jurisdiction, and hence a nullity, if the court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in nullity. The lack of jurisdiction in the court passing the decree must be patent on its face in order to enable the executing

court to take cognisance of such a nullity based on want of jurisdiction, else the normal rule that an executing court cannot go behind the decree must prevail.

7. Two things must be clearly borne in mind. Firstly, 'the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be "a nullity" and "void" but these terms have no absolute sense their meaning is relative, depending upon the court's willingness to grant relief in any particular situation. If this principle of illegal relativity is borne in mind, the law can be made to operate justly and reasonably in cases where the doctrine of ultra vires, rigidly applied, would produce, unacceptable results. (Administrative Law, Wade and Forsyth, 8th Edn., 2000 p308.) Secondly, there is a distinction between mere administrative orders and the decrees of courts, especially a superior court. 'The order of a superior court such as the High Court, must always be obeyed no matter what flaws it may be thought to contain. Thus a party who disobeys a High Court injunction is punishable for contempt of court even though it was granted in proceedings deemed to have been irrevocably abandoned owing to the expiry of a time-limit.' (ibid. p. 312)

8. A distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely illegal or not passed in accordance with the procedure laid down by law. A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable by the executing court; the remedy of a person aggrieved by such a decree is to have it set aside

in duly constituted legal proceedings or by a superior court failing which he must obey the command of the decree. A decree passed by a court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings."

(emphasis supplied)

The issue of jurisdiction being an incurable defect, exercise of any such power that has not been so conferred upon an authority would vitiate the award and also all the consequential proceedings arising therefrom.

Hence, I find that the issue of maintainability on the issue of jurisdiction of the Permanent Lok Adalat (Public Utility Services), being a question of law, can be raised even before the High Court at the first stage. In the present case although the said aspect had been duly pleaded before the Permanent Lok Adalat (Public Utility Services), Patiala, it was incumbent upon the Court to have examined the said issue before exercising the jurisdiction in the matter. The award having been passed without jurisdiction is thus bad and would suffer from an illegality and perversity. The present writ petition is accordingly allowed. The order/award dated 09.05.2017 (Annexure P-7) passed by the respondent No.1-Permanent Lok Adalat (Public Utility Services), Patiala, is set aside.

Since the petition is being allowed and the award is being set aside on the ground of maintainability, other issues are not being adverted to lest it may prejudice either party.

The setting aside of the Award shall, however, not operate as a bar against respondent No.2-applicant for pursuing the appropriate remedy as per law.

Pending, misc. application(s), if any shall also stand(s) disposed of accordingly.

November 02, 2023
raj arora

(VINOD S. BHARDWAJ)
JUDGE

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