

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

221

**CWP-26512-2018
Date of decision: 22.02.2023**

DIWAKAR SARASWAT

... Petitioner

VERSUS

THE CHAIRMAN PERMANENT LOK ADALAT (PUBLIC UTILITY
SERVICES) AND ORS.

...Respondents

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

Present: Mr.R.K. Sharma, Advocate
for the petitioner.

Mr. Shobit Phutela, Advocate
for respondent No.2.

Mr. Aman Sharma, Advocate
for respondent No.3.

VINOD S. BHARDWAJ, J. (Oral)

The instant petition has been filed for seeking quashing of the order dated 20.08.2018 (Annexure P-6) passed by the respondent-Permanent Lok Adalat (Public Utility Services) S.A.S. Nagar, Mohali.

2. Briefly summarized the facts of the present case are that the respondent No.2-M/s Taneja Developers & Infrastructure Ltd. (hereinafter referred to as “Developers”) issued an advertisement for launch of a residential project under the name and style of TDI City, Mohali in the year 2008 wherein Nitish Jain, Nilabh Jain and Ajay Pathak jointly booked one commercial plot (subsequently numbered plot No. 139) in the said project and paid a sum of Rs. 10.00 lacs vide draft No. 026946 & 026947 dated

07.05.2008 as per receipt No. MCP-2-10018 dated 23.05.2008. Similarly, one Harsh Kumar Bhalla had also booked one plot No. 140 with an initial deposit of Rs. 10 lacs vide receipt No. MCP-2-10027 of even date. The abovesaid plots were further purchased by the petitioner-applicant from the abovesaid allottees. The same were duly transferred in favour of the petitioner-applicant on 01.08.2009. It is averred that the respondent No.2-Developers had applied for change of land use of 115.79 acres of land for the Mega Housing Project in Sector 110-111, Mohali and the same was granted on 13.02.2009. One of the conditions of the Change of the Land Use was that the Respondent No.2-Developers would not launch booking of plots prior to the final approval from the competent authority. It is averred that the respondent No.2 had however, already sold out certain properties prior to grant of approval for sale. The petitioner further deposited a sum of Rs. 10 lacs in respect of the plot through draft No. 847806 dated 29.07.2009. Hence, an amount of Rs. 30 lacs had thus been deposited by the petitioner in respect of the above said two properties even before the grant of approvals from the competent authority. The petitioner claims that he had sought for refund of the amount deposited by him suspecting the delivery of project by respondent No.2-Developer. No lay out plan; payment schedule; allotment letter or the terms and conditions of the allotment had been furnished to him and that in the absence of any such terms and conditions, it was not possible for the petitioner to remit the subsequent payments. No formal agreement was also executed between the parties so that the terms and conditions of the allotment including mode of payment could be defined. No refund was however made. A complaint was therefore submitted by the petitioner to the police authorities whereupon FIR No. 163 dated 02.09.2013 was registered under Section 406, 420, 465, 467,

468, 120-B and 34 of the IPC was registered against the respondent No.2-Developer. A complaint was also submitted by the petitioner with the Police Station S.A.S. Nagar, Mohali in October, 2015 which was inquired into by SHO, Police Station Sohna and a report dated 18.10.2015 submitted wherein it was averred that as per the inquiry; the allotment in question had already been cancelled and that the petitioner could get the payment only after depositing the original receipts with the respondent No.2-Developer. A copy of the aforesaid report dated 18.10.2015 submitted by the SHO, Police Station, S.A.S, Nagar is attached as Annexure P-3. The petitioner-applicant thereafter approached respondent No.2-Developer for the refund of the amount of Rs. 30 lacs as deposited with the respondent No.2-Developer alongwith the original receipts, however, the respondent No.2-Developer failed to refund the deposited amount despite production of the original receipts issued by respondent No.2-Developer. A legal notice was thereafter issued by the petitioner on 21.04.2017 through his counsel for seeking refund of the entire amount alongwith interest @ 10% per annum. Failing to receive a response from the respondents, an application under Section 22 (C) of the Legal Services Authorities Act, 1987 was preferred before the Permanent Lok Adalat (Public Utility Services) S.A.S. Nagar, Mohali.

3. Notice of the aforesaid application was issued to the respondents who appeared before the Permanent Lok Adalat (Public Utility Services) S.A.S. Nagar, Mohali and submitted that the petitioner-applicant had failed to follow the payment schedule and despite numerous demand letters and intimation, he failed to pay the balance consideration. Accordingly, a cancellation letter dated 03.08.2011 was issued to him. Despite receipt of the aforesaid cancellation letter, he preferred to file the application before the

Legal Service Authority only in the year 2017. The payments in question were however acknowledged. It is further averred that the various demand letters were issued to the petitioner-applicant on 09.09.2010; 27.10.2010; 16.02.2011; 15.04.2011; 28.04.2011 as well as 11.07.2011. The petitioner, however, failed to respond to the above said letters or to deposit the amount as demanded. Similar letters were also sent with regard to Plot No. 140. All such communications have been brought on record before the Permanent Lok Adalat (Public Utility Services) S.A.S. Nagar, Mohali.

4. Efforts for amicable resolution of the said dispute were made in terms of the provisions of Section 22 (C) (4-7) of the Legal Service Authorities Act, 1987. However, the same failed to yield any result. Resultantly, the adjudication of the aforesaid dispute in terms of the Section 22 (C) (8) of the Legal Service Authorities Act, 1987 was undertaken by the Permanent Lok Adalat (Public Utility Services) S.A.S. Nagar, Mohali.

5. The parties led evidences in respect of their respective claims wherein the exhibits in support of the receipts, transfer, notification as well as copies of letters alongwith the police investigation and FIR as well as the Legal Notice were exhibited. The respondent also produced as many as 23 exhibits to substantiate its repeated requests for the demand of the balance sale consideration for each of the properties and the final cancellation on 03.08.2011.

6. Upon consideration of the respective submissions advanced by the parties and upon examination of the evidence brought on record, Permanent Lok Adalat (Public Utility Services) S.A.S. Nagar, Mohali dismissed the application filed by the petitioner on the ground of the same being barred by limitation. Hence the present petition.

7. Learned counsel for the petitioner has submitted that the booking in question was done illegally and in violation of the terms and conditions of the change of the land use. The sale of property could not have been undertaken without the requisite sanction and approval from the competent authority as per the terms and conditions of the license. He has further submitted that the notices in question had not been served upon him and that he came to know about the cancellation only when the status report was submitted by the SHO, Police Station, Sohana on 31.10.2015 and intimating that the respondent No.2-Developer would refund the amount on production of the original receipts. He further contends that the respondent No.2-Developer had not disputed the fact that an amount of Rs. 30 lacs had been duly deposited by the petitioner and the amount in question ought to have been refunded to the petitioner without any delay especially when the petitioner had approached the respondents alongwith the original receipts. They thus acknowledged their liability & obligation to refund. There was no reason or occasion for the respondent No.2-Developer to thereafter to not return the amount in question.

8. The respondent No.2-Developer have on the other side submitted in their written statement that the petitioner was duly aware of the payment schedule and multiple reminders were sent to him. A final opportunity to clear all pending dues was also accorded, however, the petitioner chose not to respond to the same. The details of various demand letters and intimation letters issued by the respondent are tabulated as under:

Details pertaining to Unit No. 139

Sr. No.	Particulars	Date	Annexure No.
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1.	Demand Letter intimating dues payment of Rs. 8,30,800/-	09.09.2010	Annexure R-6
2.	Intimation Letter intimating the petitioner regarding discount of Rs. 2,10,000/- on timely payment of Rs. 8,30,000/-.	27.10.2010	Annexure R-7
3.	Demand Letter intimating dues payment of Rs. 13, 51,000/-	16.02.2011	Annexure R-8
4.	Demand Letter as last and final opportunity of Rs. 13, 51,000/-	15.04.2011	Annexure R-9
5.	Demand Letter intimating dues payment of Rs. 19,96,200/-	28.04..2011	Annexure R-10
6.	Demand Letter intimating dues payment of Rs. 28,71,045/-	11.07.2011	Annexure R-11

Details pertaining to Unit No. 140

Sr. No.	Particulars	Date	Annexure No.
1.	Demand Letter intimating dues payment of Rs. 8,30,800/-	09.09.2010	Annexure R-12
2.	Intimation Letter intimating the petitioner regarding discount of Rs. 2,10,000/- on timely payment of Rs. 8,30,000/-.	27.10.2010	Annexure R-13
3.	Demand Letter intimating dues payment of Rs. 13, 51,000/-	16.02.2011	Annexure R-14
4.	Demand Letter as last and final opportunity of Rs. 13, 51,000/-	15.04.2011	Annexure R-15
5.	Demand Letter intimating dues payment of Rs. 19,96,200/-	28.04..2011	Annexure R-16
6.	Demand Letter intimating dues payment of Rs. 28,71,045/-	11.07.2011	Annexure R-17

9. He submits that the petitioner himself being in breach of the terms and conditions of the allotment and having failed to meet his obligations to make payment to the respondent No.2-Developer cannot turn back and plead victimization by the respondent-company. He further submits that there is no irregularity, impropriety or perversity in the award passed by the Permanent Lok Adalat (Public Utility Services) S.A.S. Nagar, Mohali. It is submitted that the allotment in question was cancelled on 03.08.2011 and that the application was submitted by the petitioner-applicant in the year

2017 i.e. after lapse of nearly 06 years of the incident. The claim in question is thus hopelessly time barred and even though the petitioner may have a subsisting right, however, he has no remedy to seek enforcement of any such right. He submits that the present petition that has been filed raises a challenge to the above said award and unless any illegality, impropriety, perversity or mis-appreciation of evidence in the impugned award is noticed by this Court, such an order would not be ordinarily interfered with.

10. I have learned counsel appearing on behalf of the respective parties and have gone through the documents appended alongwith the present petition.

11. So far as the first contention of the petitioner that the property in question had been sold by the respondent No.2-Developer even before grant of license is concerned, the said argument is noted only to be rejected since the petitioner is a subsequent purchaser when all permissions had already been granted. At the same time, the grievance relates to the purported violations of the terms and conditions of the license which could be raised before the competent authority of the Department of the Town Country and Planning. He has never chosen to approach the department for the alleged violation of the terms & conditions of the license. The submission is thus merely an after-thought.

12. While adverting to the other argument as to whether the petitioner is entitled to the refund of the aforesaid amount, it is noticed that the counsel for the petitioner has laid heavy emphasis on a submission that the notices in question had not been served upon him and that he was also not apprised of the order of cancellation. Resultantly, the period of limitation will not apply as it commences from the date of knowledge.

13. Per contra, Counsel for the respondents has heavily relied reliance upon the various demand notices including the final demand notice. Last and final opportunity was granted to the petitioner for payment of the due amount vide letter dated 15.04.2011. He further contends that the address given on the aforesaid demand notices including the last and final opportunity happens to be the same address as has been mentioned by the petitioner in the present petition as well. It was argued that the communication in question having been sent in due course of business, there was *per se* admissibility of such record, hence no occasion as to why such record ought to be disbelieved.

14. Reference is also made to the terms and conditions of allotment of commercial plots in the aforesaid project to contend that as per Clause 9 thereof, an amount of 20% for the sale price would form earnest money that would be forfeited upon cancellation thereof. The aforesaid terms and conditions had been sent alongwith letter of allotment dated 06.04.2010 and as such the petitioner was fully aware of the same. He further submits that the communication dated 03.08.2011 also intimated that the petitioner may produce his original receipts whereupon the amount, as is refundable to the petitioner, shall be refunded in consonance with the terms and conditions of the allotment.

15. A specific question had been raised to the counsel for the respondent No.2-Developer as to what was the mode whereby the aforesaid communication had been sent to which he pleads ignorance. No such proof of dispatch of the aforesaid letters to establish communication thereof has been appended. The presumption qua the communication cannot be drawn. It is required to be established if its consequence is to take away any person's

remedy. The person taking a plea of claim being barred by limitation ought to establish the knowledge. In the absence of proof of dispatch of communication, knowledge of demand or cancellation cannot be inferred. The first admission of information & not communication by the petitioner is at the time when the report was submitted by the SHO, Police Station, Sohana on 31.10.2015 wherein it was informed that the allotment in question had been cancelled on 03.08.2011. The petitioner further avers that he had approached the respondent No.2-Developer for refund of the aforesaid money after coming to know of the same in October, 2015, but no amount was refunded. So much so, even as per the said report, the developer had agreed to refund the money on production of receipts. Hence, the liability to refund was acknowledged.

16. It can thus at best be construed that the information qua the cancellation came to knowledge of the petitioner only at the time of submission of the report on 30.10.2015, hence, the period of limitation would commence from the said date. Thus, institution of the complaint with the Permanent Lok Adalat (Public Utility Services) S.A.S. Nagar, Mohali has to be construed as within the period of limitation having been preferred in the year 2017 itself.

17. Further, the respondent No.2-Developer had itself acknowledged in the aforesaid report, which is not denied or disputed, that the petitioner would be entitled to refund of the amount in terms of the company policy, there was no occasion or reason for the respondents to have retained the money even after the petitioner approached the respondents in the year 2015. Even on the pointed query raised to the counsel for the respondent, he fairly agreed to refund of the amount as per law.

18. The present petition is accordingly allowed and the order passed by Permanent Lok Adalat (Public Utility Services) S.A.S. Nagar, Mohali is set aside. The admissible refund after forfeiture permissible under law be released within a period of 06 weeks from the date of receipt of a certified copy of this Court alongwith interest @ 6% per annum. w.e.f. November, 2015 till its actual disbursement.

(VINOD S. BHARDWAJ)
JUDGE

FEBRUARY 22, 2023

Vishal sharma

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No