



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

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CWP-4902-2020 (O&M)

Date of decision: 24.10.2024

The Account Officer III, Chandigarh Housing Board and another
...Petitioners

VERSUS

Smt. Kala Kaur and another
...Respondents

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

Present :- Mr. Ashish Rawal, Advocate for the petitioners.

Ms. Mehak Sawhney, Advocate for respondents No.1
(Legal Aid Counsel).

VINOD S. BHARDWAJ, J. (Oral)

1. Challenge in the present petition is to the award dated 15.05.2019 passed by the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh under Section 22(C)(8) of the Legal Services Authorities Act, 1987.

2. Learned counsel appearing on behalf of the petitioners contends that respondent No.1-applicant had approached the Permanent Lok Adalat (Public Utility Services) claiming that she was resident of H. No.134, Village Fadian Chandigarh and had applied for transfer of dwelling Unit No.3310/1, Sector-47, Chandigarh in terms of order passed by the Chairman, Chandigarh Housing Board, bearing No.188 dated 04.09.2015. Respondent No.1-applicant alongwith other similarly situated persons were allowed to avail the benefit of Tatkal Service in getting the dwelling units transferred in their names where the purchase of such houses was on the basis of General



Power of Attorney. Pursuant to the said office order, respondent No.1-applicant had deposited a sum of Rs.23,600/- to avail the Tatkal Service transfer vide receipt dated 11.12.2017 and a further sum of Rs. 35,400/- was deposited towards publication charges with the Chandigarh Housing Board (hereinafter referred to as 'the CHB'). The contention of the respondent No.1-applicant was that in view of the said order, the transfer had to be completed in favour of respondent No.1-applicant within a period of five working days on completion of the requisite formalities. It was claimed that despite the needful having been done and requisite documents having been supplied by her, the transfer had not been allowed by the CHB and the same was declined.

3. Pursuant to the issuance of notice, the petitioner-CHB had entered appearance before the Permanent Lok Adalat (Public Utility Services) and raised various objections with respect to the maintainability of the proceedings. It was also contended that the prayer in the application was for transfer of the house and the same was not in the nature of a housing service and the same was not within the purview of the Permanent Lok Adalat. An objection was also taken that the said policy/decision taken by the Chairman, CHB, was valid only as one time measure to regularize transfer of properties purchased on the strength of general power of attorney/sub-general power of attorney/will. Respondent No.1-applicant, on the other hand, was seeking transfer of the property only on the strength of an agreement to sell and that she was not in possession of any general power of attorney/ sub-general power of attorney/will in her favour. It was also averred that the dwelling unit in dispute was originally allotted to one Sh.



Davinder Singh son of Sh. Iqbal Singh vide letter dated 03.03.1983 and the possession was handed over on 17.10.1983. He further sold the dwelling unit to one Sh. Kewal Krishan Narang on 05.05.1986 by executing a sale agreement as well as general power of attorney in his favour and the dwelling unit was further sold by Sh. Kewal Krishan Narang on 30.09.1987 by executing a sale agreement/sub-general power of attorney, in favour of one Sh. Shyam Saini. The said sale agreement showed that the full and final payment had been received by the seller from the purchaser. The dwelling unit was thereafter claimed to be sold further by the sub-general power of attorney holder Sh. Shyam Saini on 08.05.1990 by executing an agreement to sell dated 08.05.1990 in favor of respondent No.1-applicant. There was no record available with the CHB on the basis whereof it could be assumed that Sh. Shyam Saini had also executed any sub-general power of attorney in favour of respondent No.1-applicant.

4. The application was scrutinized and vide letter dated 12.12.2017, respondent No.1-applicant was asked to clarify about the cuttings on the sale agreement dated 30.09.1987 and May 8, 1990 and also to submit a cancellation of Sub-GPA bearing No.459 dated 03.09.1987 executed by Kewal Krishan Narang in favour of Shyam Singh so as to process the claim.

5. A reply dated 25.12.2017 was submitted by respondent No.1-applicant explaining about the cuttings on the agreement to sell and informing that the Sub-GPA of 03.09.1987 had not been executed between Kewal Krishan Narang and Shyam Saini and that no Sub-GPA was executed in her favour and only an agreement to sell had been executed.



6. Since there was no Sub-GPA, she was asked to submit affidavits of the witnesses to the agreement and to appear before Secretary of the CHB. She appeared before CHB on 09.01.2018 and the case was forwarded after recommending subject to certain conditions, however, a circular/order dated 19.12.2017 was issued by the Chandigarh Administration directing a uniformity in transfer of dwelling units on the basis of GPA/SPA/Will. The same was adopted by the CHB on 10.01.2018. The Law Officer of the CHB thus gave his opinion against transfer of the dwelling unit in view of the circular, as adopted by CHB. The decision was accordingly informed vide letter dated 21.06.2018 which resulted in institution of proceedings before the Permanent Lok Adalat (Public Utility Services).

7. The requisite documents had thus not been supplied and the claim was not covered under the said Tatkal Scheme, as per the order passed by the Chairman of the petitioner-CHB on 03.04.2017.

8. As the efforts for an amicable settlement failed to yield any result, adjudication under Section 22C (8) of the Legal Services Authorities Act, 1987 was undertaken.

9. The parties led their respective evidence before the Permanent Lok Adalat (Public Utility Services) and upon consideration thereof, the Permanent Lok Adalat (Public Utility Services) allowed the application filed by respondent No.1-applicant by setting aside the order dated 21.06.2018 and the petitioner-CHB has been directed to issue the certificate of transfer to respondent No.1-applicant within a period of three weeks from the date of receipt of certified copy of the order. The operative part of the award



dated 15.05.2019 passed by Permanent Lok Adalat (Public Utility Services) reads thus:-

“We have heard the Learned Counsel for the parties at length and carefully gone through the pleadings of the parties and perused the documents placed on record.

Before proceeding in the matter, it would be relevant to examine the relevant provisions of Tatal Service introduced & Incorporated in 'Citizen Charter by the respondent for speedy disposal of the request of the parties for transfer of their property in their names who have purchased such property through GPA/SPA etc within the periphery of Chandigarh.

Tatal Service:

The Board is also providing Tatal Services for the Transfer of Property. To avail this service, the applicant has to deposit Tatal Fee in addition to the regular transfer fee alongwith required documents (To be deposited with the SBI, CHB.

The transfer letter subject to publication of a notice will be issued within 5 working days from the date of receipt of the application. Board will issue unconditional transfer letter under Tatal Scheme after 15 days in case if no objection/complaints received from the general public in response to the public notice.

Procedure:



4. The Public Relation Officer (PRO) shall forward the application form along with the documents to the concerned branch. The concerned dealing assistant shall process the same on the basis of principle of first come first out within 5 days. Tatkal cases will however be processed immediately. The dealing hand shall process the case as per the policy/rules and regulations of CHB and put up the same to the concerned Accounts Officer/Section Officer within 2 days. The Accounts Officer/Section Officer shall examine the case and give his/her recommendations within 2 days. In case, if there is any objection, then the same shall be intimated to the applicant, immediately. In case, there is no objection received against the said transfer, the applicant will be intimated regarding payment of transfer fee and all other charges etc. in case of consensual transfer, the No Objection Certificate shall also be issued immediately along with the intimation sent for transfer fee or charges.
5. Only in case of a legal issue/complication, the concerned branch shall obtain the legal opinion, from the Legal Branch of CHB.
6. On completion of all the required formalities, as intimated, the concerned Dealing Assistant shall prepare the file for the approval by the competent authority in the form of a detailed note incorporating all the essential facts of the case. The concerned branch shall process the case on the basis of



the Bank Receipts submitted by the applicant and shall verify the payments separately, on monthly basis. The said file will be forwarded to the Section Officer/Accounts Officer and the chief Accounts Officer. They shall examine the case and recommend for transfer of the Property in question. The Chief Accounts Officer shall forward the file to the competent authority i.e. Chief Executive Officer, directly.

On careful perusal of the Tatkal Service Incorporated in the Citizen Charter, it is found that this Charter was framed to ensure prompt and courteous redressal of grievances of the citizens and Tatkal Service was incorporated for transfer of property within five days to those applicants whose check list is found to be in order. One of the condition precedent under Tatkal Service is that applicant has to deposit Tatkal fee in addition to the regular transfer fee along with required documents. The transfer letter is also held to be subject to publication of a notice to the general public which is also to be issued within five working days from the date of receipt of the application and Board would issue unconditional transfer letter under Tatkal Scheme after 15 days in case, if no objection/complaints received from the general public in response to the public notice.

The procedure provided under Tatkal Scheme is that the Public Relation Officer shall forward the application form along with the documents to the concerned branch. The



concerned dealing assistant shall process the same on the basis of principle of first come first out within 5 days. Tatkal cases would, however, be processed immediately. The dealing hand shall process the case as per the policy/rules and regulations of CHB and put up the same to the concerned Accounts Officer/Section Officer within 2 days.

Bare perusal of this Tatkal Service shows that once the applicant deposited Tatkal fee in addition to the regular transfer fee along with required documents his/her case has to be completed within 5 days from the date of receipt of application and unconditional transfer letter under this scheme has to be issued after 15 days in case no action is received from the general public in response to the public notice.

The case in hand shows that the applicant has placed on record all the requested documents as provided under the check list on 11.12.2017. She has also deposited Tatkal fee processing and publication fees, copy of allotment letter, affidavit, bond with ID, original GPA/SPA, Sub GPA and three agreement to sell, three specimen signature and Adhaar Card as ID proof and the case file was marked to dealing hand Smt. Kusum on 11.12.2017. These documents are also filed by the respondent which clearly shows that applicant has fulfilled the basic conditions of submission of relevant documents along with her application and it seems from these



documents that there was no objection with regard to Incompletion of her application along with documents in any manner. Had it been so, her application would have been returned to her to do the needful by placing on record other documents. There is no remark on Check List that applicant's documents were incomplete in any manner.

The respondent has not at all placed on record as to whether the public notice was issued within prescribed period or not, though matter was sent to the concerned authority for publication of notice.

It is also seen from the record that the respondent has not given effect to this scheme within 5 days or 15 days from the date of Issuance of public notice, if any, and matter was shuttling between concerned authorities and also sent for legal opinion without assigning any reason or legal complication. The respondent has also delayed the matter without any reason while writing to the election authorities for supply of voter list, though the applicant has already placed on record voter list and also completed all other formalities of filing documents after appearing for interview before the competent authority.

There is no iota of documentary or oral evidence placed on record by the respondents that the case of the applicant was processed by giving effect to this Tatkal Scheme within five days, as the said period expired on 16.12.2017. The



respondent has taken shelter of the judgment passed by the Hon'ble High Court and Supreme Court (supra) while rejecting the case of the applicant on 21.06.2018.

It is relevant to mention here that the judgment of the Hon'ble Supreme Court was passed on 11.10.2011 and it was very much in the knowledge of the respondent that this judgment was delivered on this date. It is evidently clear from the Circular dated 19.12.2017 issued by Finance Department Estate Branch of Chandigarh Administration relating to transfer of property by way of GPA/SPA/Will (copy thereof also forwarded to Chairman, Chandigarh Housing Board, Chandigarh) that this circular was issued in pursuance of judgment of the Hon'ble Supreme Court in Suraj Lamps (supra) case, particularly paras 18 and 19 of the judgment to regulate the transactions of those properties which were purchased by the genuine buyers through SPA/GPA/WILL before 11.10.2011. Relevant paras of this circular issued by the Chandigarh Housing Board is quoted herein below:-

Subject: Transfer of property by way of GPA/SPA/Will:-

The matter related to transfer of immovable properties by way of SPA/GPA/Will has been seeking the attention of the Chandigarh Administration as well as Hon'ble Courts. The Estate Officer and different development



agencies follow different practices and procedures to regulate the SPA/GPA/Will transactions, therefore, it is felt that instructions are required to be issued so that all the agencies of Chandigarh Administration follow a uniform practice/procedure to regulate such transactions. In a Landmark judgment dated 11.10.2011 passed in the case of Suraj Lamp & Industries Pvt. Ltd. Vs State of Haryana & Anr: the Hon'ble Supreme Court had observed as under:-

15. Therefore, a SA/GPA/Will transaction does not convey any title nor create any interest in an immovable property. The observations by the Delhi High Court in Asha M.Jain V. Canara Bank-94(2001) DLT 841, that the "concept of power of attorney sales have been recognized as a mode of transaction" when dealing with transactions by way of SA/GPA/Will are unwarranted and not justified, unintendedly misleading the general public into thinking that SA/GPA/Will transactions are some kind of a recognized or accepted mode of transfer and that it can be a valid substitute for a sale deed. Such decisions to the extent they recognize or accept Sa/GPA/Will transactions as concluded transfers, as contrasted from an agreement to transfer, are not a good law.

16. We therefore reiterate immovable property can e legally and lawfully transferred/conveyed only by a registered deed of



conveyance. Transactions of the nature of 'GPA sales' or SA/GPA/Will transfer' do not convey title and do not amount to transfer, nor can they be recognized or valid mode of transfer of immovable property. The Courts will not treat as they neither convey title nor create any interest in an immovable property. They cannot be recognized as deeds of title, except to the limited extent of Section 53A of the TP Act. Such transactions cannot be relied upon or made the basis for mutations in Municipal or Revenue Records. What is stated above will apply not only to deeds of conveyance in regard to free hold property but also to transfer of old property. A lease can be validly transferred only under a registered Assignment of Lease. It is time that an end is put to the pernicious practice of SA/GPA/Will transactions known as GPA sales.

17. It has been submitted that making declaration that GPA sales and SA/GPA/Will transfers are not legally valid modes of transfer is likely to create hardship to a large number of persons who have entered into such transactions and they should be given sufficient time to regularize the transactions by obtaining deeds of conveyance. It is also submitted that this decision should be made applicable prospectively to avoid hardship.

18. We have merely drawn attention to and reiterated the well settled legal position that SA/GPA/WILL transactions are



not 'transfers' or 'sales' and that such transactions cannot be treated as complete transfers or conveyances. They can continue to be treated as existing agreement of sale. Nothing prevents affected parties from getting registered Deeds of conveyance to complete their title. The said 'SA/GPA/WILL transactions' may also be used to obtain specific performance or to defend possession under Section 53A of TP Act. If they are entered before this day, they may be relied upon to apply for regularization of allotments/leases by Development Authorities. We make it clear that if the documents relating to 'SA/GPA/Will transactions' has been accepted acted upon by DDA or other developmental authorities or by the Municipal or revenue authorities to effect mutation, they need not be disturbed, merely on account of this decision.

19 We make it clear that our observations are not intended to in any way affect the validity of sale agreement and powers of attorney executed in genuine transactions. For example, a person may give a power of attorney to his spouse, son, daughter, brother, sister or a relatives to manage his affairs or to execute a deed of conveyance. A person may enter into a development agreement with a land developer or builder for developing the land either by forming plots or by constructing apartment buildings and in that behalf execute an agreement of sale and grant a Power of Attorney empowering the developer to execute agreements of sale or conveyances in



regard to individuals plots of land or undivided shares in the land relating to apartments in favour of prospective purchasers. In several States, the execution of such development agreements and powers of attorney are already regulated by law and subjected to specific stamp duty. Our observations regarding 'SA/GPA/WILL transactions' are not intended to apply to such bonafide/genuine transactions.

Therefore, in pursuance of the above directions of the Hon'ble Supreme Court in Suraj Lamp's case and as well as order dated 29.08.2017 in IOIN-CRM-M-19874 of 2017 'Avneet Kaur Vs. State of Punjab' the following guidelines are hereby issued for regulating the transactions on the basis of SPA/GPA/Will by the concerned offices i.e. Estate Office, Chandigarh Housing Board & Municipal Corporation, Chandigarh and the same shall be observed meticulously while handling such cases:-

- (i) The GPA/SPA cannot be treated as instrument of transfer of title as per the Transfer of Property Act. Therefore, no transfer of title or mutation shall be carried out merely on the basis of GPA/SPA. The Wills executed along with such GPA/SPA shall also not be considered for effecting mutation.
- (ii) These instruments (GPA/SPA/Will) can be used for getting the conveyance of title deed executed/registered and only on the basis of such conveyance deeds



executed by the GPA directly or by an order of a Court, the mutation shall be carried out. In case of leasehold properties also, mutation shall be affected only on the basis of a registered Transfer Deed of leasehold rights.

(iii) The GPA transactions entered on or before 11.10.2011 shall be considered only for regularization of title/ownership in respect of any immovable property by executing deeds of conveyance. The mutation already entered before 11.10.2011 on the basis of GPA/SPA/Will shall not be disturbed or unsettled in any way due to issuance of these instructions, (Underlined emphasized).

(iv) The GPA/SPA executed in favour of family members/relatives or any other person for valid purposes for management of properties or to execute deed of conveyance or a land developer or builder for developing the land or any other similar purposes shall not be affected by these instructions. (Underlined emphasized)

Thus, it is evidently clear from the circular dated 19.12.2017 that the respondent had issued the Citizen Charter incorporating the Tatkal Scheme for transfer of property in the name of genuine purchasers by the Chandigarh Housing Board, who developed the land to allot it to genuine buyers. It is also seen from the record that the draft submitted by the



applicant as relevant fees became invalidate at one point of time and the respondent got it revalidated from the applicant despite the fact that this judgment was already in operation from 2011. Therefore, now the respondents are estopped to reject the case of the applicant on flimsy grounds. The respondents have not even refunded the prescribed fees deposited by the applicant along with publication fee to avail the benefit of Tatkal Service till date.

The applicant undisputedly is in possession of dwelling unit since 1990 and she has placed on record relevant proof to that effect, therefore, it is evident on the face of the record that delay is on the part of the respondent as the publication of notice to the general public was required to be issued within 15 days time for inviting objections to the proposed transfer and notice was to be published within 7 days from the receipt of the application. The respondent has not placed on record any proof that the public notice was issued within 7 days from the receipt of the application. Though the prescribed fee for publication was also deposited by the applicant and that too has not been refunded to the applicant till date.

It is also seen from the record that in the Chandigarh periphery, it was a general practice of transfer of property through GPA/Sub GPA and the respondent has taken a policy decision to transfer these properties in the name of genuine



owners/purchasers, who are in physical possession of the property purchased by them through, GPA or Sub GPA and policy decision was taken by publishing Citizens' Charter to transfer the property to these owners as Hon'ble Supreme Court has held that GPA/Sub GPA/will cannot be treated as a valid registered deed of conveyance as GPA/Sub GPA/will, transactions does not convey any title nor create any interest in an immovable property under various provisions of Transfer of Property Act. Therefore, it is evidently clear that the aforesaid circular and charter was issued to issue Transfer Certificate to genuine buyers as one time settlement.

The respondent has also not placed on record any document that after this judgment passed by the Hon'ble Supreme Court (supra) on 11.10.2011, they have not at all issued any certificate of transfer in favour of the persons who have purchased their property through GPA/Sub GPA/Will etc. from Housing Board or otherwise.

It is also seen from the record that in the Minutes of the meeting held on 09.01.2018 in the presence of the applicant, it was resolved that her case for transfer of property in her favour was found to be in order and committee has also recommended her case on the basis of fulfillment of furnishing the specific indemnity bond, penal charges, as the case may be as per order issued by the Chairman under Order No. 91 dated 03.04.2017.



Be that it may be, the respondent's only plea for rejection of her case is on the basis of judgment of the Hon'ble Supreme Court & High Court. In our considered opinion, the case of the applicant squarely covered under Paras 18 & 19 of the judgment of Hon'ble Supreme Court in Suraj Lamp case (supra). Relevant paras thereof were also quoted by the respondent in their circular dated 19.12.2017 which is quoted hereinabove in preceding paras (supra).

The observations of the Hon'ble Supreme Court in relevant paras 18 & 19 are self explanatory, when it is held that if SPA/GPA/WILL transactions are entered before this day (i.e. 11.10.2011), they may be relied upon to apply for requisition of allotment/list by development authority and if these documents relating to SA/GPA/WILL transaction has been accepted or acted upon though by DA or other development authority or by the municipal or Revenue Authorities to effect mutation, they need not be disturbed merely on account of this decision. This fact was also incorporated in aforesaid circular dated 19.12.2017.

In the present case, it is an admitted fact that the original General Power of Attorney was made between the original owner/allottee and Chandigarh Housing Board which is a public authority under the control of Chandigarh Administration and subsequent three GPA/Sub GPA were executed prior to decision of the Hon'ble Supreme Court i.e.



11.10.2011 and it is not the case of respondents that these GPA etc. were not genuine.

Therefore, in our considered opinion, the case of the applicant falls under observations made by Hon'ble Apex Court in Paras 18 and 19 of the Judgment (supra). It is an admitted fact that in Chandigarh Periphery, sale & purchase of property through execution of such Power of Attorneys was in practice in general subject to payment of specified stamp duty and in order to regulate these genuine transactions, the respondents have introduced this Citizen Charter with Tatkal Scheme. Since, it is not the case of respondent that GPAs/Sub GPA submitted by the applicant relating to aforesaid dwelling unit are not genuine, therefore, it is held that these are genuine transactions being made between the Chandigarh Housing Board and the purchasers prior to pronouncement of judgment by Hon'ble Apex Court on 11.10.2011 (supra).

Therefore, after careful consideration of the matter, we are of the opinion that the respondents have wrongly rejected the case of the applicant by not issuing the certificate of transfer of dwelling unit No. 3310/1, Sector-47D, Chandigarh in favour of the applicant by not giving effect to the Tatkal Scheme formulated by the respondent that too after the judgment passed by the Hon'ble Supreme Court in aforesaid case on 11.10.2011. Otherwise also, in terms of provisions of Tatkal Scheme the transfer of property is impliedly being done



once the respondent failed to complete the process of issuance of certificate of transfer within 5 days.

Therefore, impugned orders dated 21.06.2018 Annexure-6 hereby quashed and set aside and respondents are directed to issue certificate of transfer to the applicant within a period of three weeks from the date of receipt of copy of this order. However, it is also directed that other formalities, if any, are required to be completed by the applicant, she is also directed to do the needful within aforesaid period to enable the respondents to issue the relevant certificate for transfer of said Dwelling unit.

In the given facts and circumstances of the case & in the interest of justice, we are also of the opinion that the applicant has unnecessarily been harassed by the respondent by wrongly taking shelter of the judgment of the Hon'ble Supreme Court, though Circular dated 19.12.2017 was issued in view of observations made by the Hon'ble Apex Court in Paras 17 to 19 (supra). Respondent also mis-construed the relevant provisions of the Tatkal Service by not regulating transfers of genuine buyers in view of this judgment only & also despite the fact that the requisite fees was paid by the applicant and was not refunded to her and matter kept on hanging with the respondent for no fault of her, therefore, she is also held entitled for Rs. 10,000/- for mental agony and harassment & Rs. 10,000/- for litigation charges.”



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10. Aggrieved thereof, the present writ petition has been filed.
11. Learned counsel for petitioner has argued that the award dated 15.05.2019 suffers from gross mis-appreciation of the evidence led by them. The Permanent Lok Adalat (Public Utility Services) has been persuaded too much by the Tatkal Service and to hold that the petitioner has been in default in providing the said service notwithstanding that the requisite conditions were required to be fulfilled by an applicant before seeking benefit under the said scheme. It is further submitted that the proceedings were not maintainable but the said objection was not even considered by the Permanent Lok Adalat (Public Utility Services), UT Chandigarh. He refers to the prayer made by respondent No.1-applicant in the application preferred before the Permanent Lok Adalat (Public Utility Services) which reads thus:-

“8. It is therefore most respectfully prayed that the respondents be directed to

(a) to transfer the DU 3310/1, Sector 47-D, Chandigarh in the name of petitioner as per terms and conditions of Tatkal Scheme.

(b) the operation of order issued vide letter HB/CAO/AO-1/2018/7143 dated 21.06.2018 be stayed till pendency of the Application.

(c) Allow the compensation on account of harassment and mental torture due to inordinate delay in transfer, and

(d) Any other relief which this Court deems fit in the circumstances explained above.”



12. Relying on the same, he contends that the prayer made was for seeking transfer of the dwelling unit in favour of the respondent No.1-applicant and that the dispute in question did not involve the issue of service and was rather the issue of transfer of ownership of an immovable property solely on the strength of an agreement to sell. He contends that such a transfer of title could not have been sought for in a proceeding executed under the Legal Services Authorities Act, 1987 and that a separate suit for declaration as owner or for specific performance of the agreement to sell under the Specific Relief Act was required to be instituted before the Civil Court. The Permanent Lok Adalat (Public Utility Services) had no jurisdiction to examine the said issue or to pass an award which is more in the nature of a declaration as an owner. He has further argued that the Tatkal Service only entitled an expeditious processing of an application and not that the transfer be executed in favour of the applicant notwithstanding the requirements and eligibility prescribed thereunder. The conditions that were specifically prescribed in the scheme had to be nonetheless fulfilled. It is argued that pursuant to the directions issued by the Hon'ble Supreme Court in the matter of 'Suraj Lamps and Industries Ltd. Vs. State of Haryana and others' reported as (2012) 1 SCC 656, the petitioner had framed a policy to grant one time concession for transfer of the ownership in favour of the purchasers on the strength of the documents that had been executed in their favour. General power of attorney as a valid document for seeking a transfer of the dwelling unit was accepted. He contends that respondent No.1-applicant had applied for transfer of the dwelling unit solely on the strength of an agreement to sell executed in her favour. There



was no sub-general power of attorney in her favour. The Permanent Lok Adalat (Public Utility Services) however proceeded on an assumption that since there was a valid transfer in favour of her vendors, through the general power of attorney(s), respondent No.1-applicant would be deemed to have drawn a valid title. It is submitted that the document eventually submitted was only in the nature of an agreement to sell and was not a document that can be used as a document for transfer of the title in favour of respondent No.1-applicant and in the absence of any valid deed establishing transfer of title, the CHB could not have allowed the transfer of the dwelling unit in favour of respondent No.1-applicant. It is argued that considering from any of the perspectives, the application was not maintainable before the Permanent Lok Adalat (Public Utility Services) and deserved to be dismissed.

13. Respondent No.1-applicant, however, chose not to appear in the present case despite service. The defence of respondent No.1-applicant was accordingly struck off vide order dated 15.11.2023 passed by this Court. Nonetheless, to assist this Court on behalf of respondent No.1-applicant, a Legal Aid Counsel was appointed by this Court so that the case of respondent No.1-applicant may still be argued and the Court be fairly assisted. The matter was still adjourned on two occasions even thereafter so as to await appearance on behalf of respondent No.1-applicant but there has been no representation or attempt by respondent No.1-applicant to appear before this Court despite the operation of the award being stayed by this Court vide order dated 17.04.2023. Further wait would not be justified. Respondent No.1-applicant is accordingly ordered to be proceeded against



ex-parte in the matter.

14. Learned Legal Aid Counsel appearing on behalf of respondent No.1-applicant has, however, vehemently argued before this Court that initial application preferred by respondent No.1-applicant before the Permanent Lok Adalat (Public Utility Services) was to issue a direction to the CHB to consider her claim as per the Tatkal Service/Scheme notified by them but the needful was not done. She further contends that the Committee constituted by the office of CHB had also recommended her claim and that it would not be justified in rejecting the transfer of dwelling unit in favour of respondent No.1-applicant. It is also contended that question of title would largely fall within the definition of housing services. The action of CHB in denying the existence of title in favour of respondent No.1-applicant would be a deficiency of service on the part of the CHB and the same is amenable to the jurisdiction of Permanent Lok Adalat (Public Utility Services).

15. No other argument has been raised or judgment referred to by the parties.

16. I have heard the learned counsel appearing on behalf of the respective parties and have gone through the documents available on record as well as the award passed by the Permanent Lok Adalat (Public Utility Services).

17. It remains un-controverted that the prayers, as extracted, above were the prayers that were sought for by the respondent No.1-applicant from the Permanent Lok Adalat (Public Utility Services). Transfer of ownership of dwelling unit No.3310/1, Sector-47, Chandigarh was amongst the primary prayers alongwith seeking setting aside of the order dated 21.06.2018



whereby the claim of respondent No.1-applicant for transfer of ownership was declined. There is also no denial to the specific argument raised by the learned counsel for the petitioner that no sub-general power of attorney was produced by respondent No.1-applicant or ever claimed to having been executed in her favour by the earlier general power of attorney. Only an agreement to sell is claimed to have been executed in her favour. It is thus apparently a case where title was sought to be transferred on the strength of an agreement to sell. Said document *ipso facto* cannot be deemed as a valid document for assuming a transfer of title and that in the event of the vendor not executing a transfer document/deed despite an agreement to sell, the remedy available with the vendee is to seek specific performance of such an agreement so that his title could be got effected. Instead of taking recourse to an appropriate remedy for seeking relief of specific performance under the Specific Relief Act, 1963, the application had been filed before the Permanent Lok Adalat (Public Utility Services) under Section 22-C of the Legal Services Authorities Act, 1987 with a direction to the petitioner to transfer ownership in favour of respondent No.1-applicant despite there being no sale deed having or a general power of attorney/sub-general power of attorney/special power of attorney/will.

18. An agreement to sell cannot be hailed as a document of transfer of title or conferring any title on the holder of an agreement and to seek transfer of ownership in his/her favour merely on the strength thereof. In essence, the proceeding substantially amounts to a relief of specific performance, under the garb of seeking transfer of ownership, in her favour in the record of the petitioner-CHB. It is a settled position in law that what



cannot be done directly cannot be done indirectly. Once the agreement to sell is not admissible in law, as a document of transfer of title and that a vendee is required to seek a specific performance of the contract under the Specific Relief Act, 1963, the same cannot be saddled with such a presumption by the Permanent Lok Adalat (Public Utility Services). The ownership dispute, thus, could not have been adjudicated upon by the Permanent Lok Adalat (Public Utility Services).

19. I am further strengthened in my view by the judgment dated 07.09.2021 of the Hon'ble Supreme Court passed in Civil Appeal No.4965 of 2021 titled as **Estate Officer and another Vs. Charanjit Kaur**. The relevant extract of the said judgment reads thus:

“24. Since the respondents are already in possession of the sites as lessee on 99 years basis, it cannot be said that the appellant was deficient in providing any service, which even if used in a liberal sense would not include transfer of title in an immovable property. Thus, the consumer fora under the Act would not have jurisdiction to entertain the consumer complaints on the ground of deficiency in service related to transfer of title of the immovable property.”

20. Even though the issue in the said case before the Hon'ble Supreme Court arose out of the proceedings of the Consumer Forum/Commission, however, the aspect of the deficiency of service viz a viz dispute pertaining to transfer of title was examined and it was held that the dispute related to transfer of title of the immovable property cannot be entertained in a consumer complaint on the ground of deficiency in service. Since, the scope of powers with the Permanent Lok Adalat (Public Utility Services) is in relation to the Service to be offered by Public Utilities, hence,



the dispute of transfer of title could not be deemed as a deficiency related to any service required to be offered by the petitioner-CHB to the allottee. The same is in the nature of recognition of rights of an individual and a specific statutory duty being performed for which binding declaratory decree is ordinarily required.

21. Under the given circumstances, I find that there was a failure on the part of the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh in appreciating the real nature of the controversy in the present case and it failed to determine that the dispute is actually a title dispute under the garb of a housing dispute and the same is not amenable to the jurisdiction of Permanent Lok Adalat (Public Utility Services).

22. Since the writ is being allowed on the grounds of maintainability of proceedings before the Permanent Lok Adalat (Public Utility Services), other aspects and merits are not being gone into lest it may prejudice rights of the respective parties.

23. The present writ petition is accordingly **allowed** and the award dated 15.05.2019 passed by the Permanent Lok Adalat (Public Utility Services), U.T. Chandigarh is set aside.

24. Respondent No.1-applicant shall, however, be at liberty to take recourse to her alternative remedies available to her in accordance with law and the period spent in pursuing this remedy shall be considered to determine the limitation.

(VINOD S. BHARDWAJ)
JUDGE

24.10.2024

Mangal Singh

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