

IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH

213-1 CWP-4492-2019

HARJINDER SINGH BILLING AND ANOTHER ... Petitioners

VERSUS

CHARANJIT KAUR AND OTHERS ... Respondents

A N D

213-2 CWP-6027-2019
Date of Decision: 20.02.2024

MANJIT SINGH SHAHPUR ... Petitioner

VERSUS

CHARANJIT KAUR AND OTHERS ... Respondents

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

Present: Mr. Chanchal K. Singla, Mr. Aditya Partap and
Mr. Sumit Moni, Advocates for the petitioner(s)
in CWP-6027-2019.

Mr. Ajay Sharma, Advocate for the petitioner(s)
in CWP-4492-2019.

Ms. Samridhi Sareen, Advocate (Legal Aid Counsel)
for respondents No.1 and 2 in CWP-4492-2019 and
for respondents No.2 and 3 in CWP-6027-2019.

VINOD S. BHARDWAJ, J. (ORAL)

Since common question arises in both these writ petitions, hence
the same are being decided by a common judgment with the consent of the
parties. The facts are, however, extracted from CWP-6027-2019 titled as

'Manjit Singh Shahpur Versus The Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar (Mohali) and others.'

Challenge in this petition is to the Award dated 08.10.2018 (Annexure P-6) passed by the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar (Mohali), whereby the application preferred by the respondents No.2 and 3-applicants has been allowed and the respondent therein (petitioner herein) has been directed to refund the amount deposited by the respondents No.2 and 3-applicants alongwith interest @ 6% per annum. An additional compensation of Rs.1,50,000/- for mental agony, harassment and litigation expenses of Rs.8,000/- have also been awarded.

The facts of the present case as unfolded are that the respondents No.2 and 3-applicants had approached the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar (Mohali) averring that Harjinder Singh Billing (petitioner in CWP No.4492-2019) had formed a society under the name and style of "IA and AD Employees and Other Rural Cooperative House Building Society Ltd. S.A.S. Nagar (Mohali)" (hereinafter referred to as "IA and AD Housing Society") for allotment of plots to its members on a promise that the same would be allotted at the rate less than the prevailing market price at the said time. It was also assured that the abovesaid society had been formed for rehabilitation/welfare of the residents of 50 U.T. Villages of Punjab Capital Project, Chandigarh. The respondents No.2 and 3-applicants – Charanjit Kaur and Satwant Kaur had applied for 25 marla plot each and Charanjit Kaur had deposited a sum of Rs.5,00,000/- vide separate receipts dated 06.11.2007 and 15.11.2007 of Rs.2,50,000/- each with Tafe Security Pvt. Ltd., which was a joint venture of the IA and AD Housing Society. The applicant-respondent

No.3-Satwant Kaur had also deposited a sum of Rs.2,50,000/- with Tafe Security Pvt. Ltd. against receipt dated 08.11.2007. Hence, a total amount of Rs.7,50,000/- had been deposited by the respondents No.2 and 3-applicants. However, despite lapse of a period of nearly 8 years, neither any allotment had been made by the IA and AD Housing Society nor was the amount refunded to the respondents No.2 and 3-applicants. The IA and AD Housing Society communicated incorrect position to the respondents No.2 and 3-applicants in relation to the allotment of plots; which led the respondents No.2 and 3-applicants to suspect foul play. A complaint was hence submitted by them to the police and an FIR No.124 dated 13.10.2011 was registered under Sections 406, 420 and 120-B of IPC at Police Station Mataur, District Mohali. The IA and AD Housing Society still chose not to return the money collected by its office bearers and also failed to provide the plots to the respondents No.2 and 3-applicants. Even though the possession of the plot was promised to be delivered within a period of two years but the needful was not done, thus compelling the respondents No.2 and 3-applicants to approach the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar (Mohali) under Section 22-C of the Legal Services Authorities Act, 1987.

Notice of the application was issued to the IA and AD Housing Society as well as its office bearers, who entered appearance and filed their reply. Respondent No.2 (therein)- Varinder Singh had taken an objection that the application was not maintainable since the parallel criminal proceedings had already been initiated and were pending before the Judicial Magistrate Ist Class, Mohali, between the same parties on the same cause of action and that there is a discrepancy in the stand adopted by the respondents No.2 and 3-applicants. It

was further averred that Varinder Singh was not linked with any money transaction at any stage as alleged and he did not induce or had any direct or indirect dealing with the respondents No.2 and 3-applicants relating to the money transaction; and such fact is claimed to have been also acknowledged by Charanjit Kaur and Jasmer Singh (Special Power of Attorney) in the abovesaid FIR. A further plea was taken that the application was time barred and deserved to be dismissed since the FIR in question was registered in the year 2011 and the proceedings had been initiated in the year 2015. The respondents No.2 and 3-applicants ought to have preferred the application within a period of three years from the date of registration of the FIR after realizing that they had been defrauded. Further an objection was raised that the transaction in question was apparently a benami transaction and the receipts pertained to one Tafe Security Pvt. Ltd. and IA and AD Housing Society. It was also stated that the respondent having initiated criminal proceedings, he could not be forced to disclose his defence and the matter ought to be decided first by a criminal Court. It was also further averred that the application in question was filed with an ulterior motive and was an afterthought as the applicants remained silent for a period of eight years and had no grievance with respect to the said project or its pace of development.

Respondent No.4- Harjinder Singh Billing i.e. the petitioner in CWP-4492-2019 filed a separate reply taking an objection as regards the maintainability of the application before the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar (Mohali). It is averred that there was suppression of material facts and that the claim in question was barred by limitation from the date of accrual of cause of action i.e. in the year 2007. It was

further pointed out that the said respondent was not the President of the IA and AD Housing Society in the year 2007 and was hence not authorized signatory of Tafe Security Pvt. Ltd. Hence, he is not liable to refund any amount. Reference was also made to the cross-examination of respondent No.2-applicant Charanjit Kaur in FIR No.124 dated 13.10.2011 to the effect that she has received Rs.12,00,000/- from the IA and AD Housing Society and as such, the application is barred by estoppel. The respondent No.4 further stated that the respondents No.2 and 3-applicants have already received the amount claimed to have been deposited by them.

A separate reply was filed by respondents No.5 to 9, wherein they all have taken similar objections as regards the maintainability of the claim and that in the absence of privity of contract, the same could not be enforced against them. It was also stated by the said respondents that they had not received any amount and that the deposit was in favour of Tafe Security Pvt. Ltd. and/or the IA and AD Housing Society. Hence, the liability could not be fastened upon them merely on account of they being the office bearers of the said Society.

Respondent No.1 i.e. IA and AD Housing Society as well as Tafe Security Pvt. Ltd. did not choose to file any separate reply and no evidence was led by the said respondents.

As the efforts for amicable resolution of the dispute failed in futility, adjudication was initiated by the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar (Mohali) in terms of Section 22-C(8) of the Legal Services Authorities Act, 1987.

The parties led their respective evidences. Upon consideration of the rival submissions, the Permanent Lok Adalat (Public Utility Services),

S.A.S. Nagar (Mohali) recorded a finding against the respondents therein and directed that the respondents No.1, 2, 4, 6 and 9 are liable to refund the amount already deposited by respondents No.2 and 3-applicants alongwith interest from the date of deposit till the actual realization and also to pay an amount of Rs.1,50,000/- towards compensation on account of mental agony and harassment and a sum of Rs.8,000/- towards litigation expenses. The proceedings against respondents No.3, 5, 7 and 8 were dismissed. Aggrieved thereof, the present writ petitions have been filed.

Notices were issued to the respondents, however, the respondents chose not to appear before this Court despite being duly served in CWP-6027 of 2019. The cases in hand relate to year 2019 and has already remained pending for a period of nearly five years, hence, the matter is heard on merits by seeking and of the legal aid counsel and proceeding *ex-parte* against them.

Counsel for the petitioners contend that notwithstanding the other grounds of challenge, the criminal case, which was got registered at the instance of respondents No.2 and 3-Applicants, has already been finalized. The respondent No.2-Applicant appeared as a witness in the said criminal trial and it was acknowledged by her that she had received a sum of Rs.12,00,000/- by way of cheque No.669334 dated 15.02.2011 drawn on HDFC Bank, Sector 17, Chandigarh for an amount of Rs.12,00,000/-. They contend that the abovesaid cheque was issued in the name of IA and AD Housing Society and that she having received an amount of Rs.12,00,000/- in the year 2011 as against a total amount of Rs.7,50,000/- deposited by them, there was no subsisting grievance.

The Legal Aid Counsel, however, contends that as per the statement recorded before the trial Court, the said cheque had not been

encashed. She is, however, not in a position to substantiate as to whether the amount in question was encashed later in point of time or not and is also not in a position to verify the said aspect. It is, however, not disputed by her that the abovesaid criminal trial resulted in acquittal of the petitioners herein.

Apparently, the specific case of the petitioners herein is that the amount in question was already received and that the respondents No.2 and 3-Applicants would be estopped from instituting any other proceedings after a lapse of nearly 8 years, however, respondents No.2 and 3-Applicants have chosen to abstain from proceedings and to respond as to whether she had received the said amount or not. The specific contention and argument advanced on behalf of the petitioners thus remains undisputed and uncontroverted. It is also not in dispute that the criminal proceedings initiated against the petitioners, amongst others, ended up in acquittal, after noticing that the amount of Rs.12,00,000/- had been received by respondent No.2-Charanjit Kaur from the IA and AD Housing Society and that even though it was claimed by her that it was from other Society, however, she had failed to produced any record that the Society from whom the amount in question had been received by her was a different entity other than IA and AD Housing Society.

Counsel for the petitioners further point out that there was stay granted by this Court at the time of challenging the Award and that they are not served of any Execution Proceedings so far.

Without proceeding any further in the matter and noticing that the specific stand of the petitioners being that the amount of Rs.12,00,000/- had been refunded way back in February 2011, which fact has not been noticed by the Permanent Lok Adalat and it has also not taken into consideration the fact

that the criminal proceedings initiated against the petitioners herein have ended up in acquittal, the present writ petitions deserve to be allowed.

Accordingly, the impugned Award dated 08.10.2018 (Annexure P-6) passed by the Permanent Lok Adalat (Public Utility Services), S.A.S. Nagar (Mohali) is hereby set aside, against the petitioners, at this stage. Liberty is, however, granted to the respondents No.2 and 3-Applicants to seek revival of the present petition in the event the aforesaid factual aspect is found to be incorrect.

Petitions stand allowed accordingly.

Photocopy of this order be placed on the file of another connected case.

FEBRUARY 20, 2024
rajender

(VINOD S. BHARDWAJ)
JUDGE

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