
(2016) 02 P&H CK 0379

In the Punjab And Haryana At Chandigarh

Case No : CWP No. 10809 of 2014 (O&M)

Executive Officer-Cum-Secretary and Others

APPELLANT

Vs

Permanent Lok Adalat and Others

RESPONDENT

Date of Decision : 01-02-2016

Acts Referred:

Legal Services Authorities Act, 1987 — Section 22, Section 22-A, Section 22A(b),
Section 22B, Section 23

Citation : (2016) 2 RCRCivil 857

Hon'ble Judges : Rajesh Bindal, J.

Bench : Single Bench

Advocate : Prateek Mahajan, Rishi Pal, Advocates for Partap Singh and C.S. Singh, Advocates for G.S. Hooda, Advocate, for the Appellant;

Final Decision : Disposed off

Judgement

Rajesh Bindal, J.—1. This order will dispose CWP Nos. 10809, 10826, 10991, 11232 of 2014, 13515, 13516, 6972, 6975, 6979, 6990, 6991, 7066, 7694, 13424, 13434, 13435, 13503, 13504, 13517, 13634, 14839, 14855, 14856 of 2015, as common questions of law and facts are involved therein.

2. For convenience, the facts are being taken from CWP No. 10809 of 2014.

3. Challenge in the writ petition is to the award dated 9.7.2013 passed by the Permanent Lok Adalat (Public Utility Services), Sirsa (hereinafter to be referred as "the Lok Adalat"), allowing the petition filed by respondent no.2.

4. Respondent no.2 herein was allotted Plot No. 23, measuring 12"x27"6" situated in New Grain and Cotton Market, N. G.M. Malekan, N.G.M. Nathusari Chopta, District Sirsa, vide allotment order No. Regd. 3451 dated 12.7.2006 for a total sale consideration of Rs. 10,10,000/-, being the highest bidder in auction sale. 25% of the bid money i.e. Rs. 2,52,500/- was to be deposited at the fall of the hammer. As per the terms of allotment letter, the allottee was to pay the balance 75% of the amount either within 30 days from the date of allotment or

in six half yearly instalments with interest @ 15% per annum. Some of the instalments were paid by respondent no.2, however, later on he stopped. The petitioners issued various demand notices for payment of the balance allotment money along with interest. Additional demand was also raised on account of non-construction fee. The same was challenged by respondent no.2 before the Lok Adalat. Vide impugned award dated 9.7.2013, the claim of respondent no.2 was allowed. The award has been impugned in the present petition.

5. In other connected petitions, though the awards passed by the Lok Adalat were on different dates but the applicants before the Lok Adalat and the legal issue was the same.

6. Learned counsel for the petitioners submitted that after respondent no.2 was successful in the auction, allotment letter dated 12.7.2006 was issued in his favour in terms of which after adjusting the bid money paid at the time of auction, balance of Rs. 7,57,500/- was to be deposited within 30 days from the date of issuance of allotment letter or in six half yearly instalments with interest @ 15% per annum. The total sale consideration was Rs. 10,10,000/-. On failure to pay the instalments, additional penal interest @ 4% compounded half yearly was also chargeable and on default in payment of two successive instalments, the plot and the building, if any constructed thereon, could be resumed. Possession of the plot was to be offered within 30 days from the date of issuance of allotment letter after providing basic facilities. The construction was to be completed within a period of two years from the date of offer of possession of plot, which could be extended for further period of three years on payment of prescribed fee. The possession of the plot was offered to respondent no.2 vide communication dated 17.1.2007 but the allottee failed to take possession. Even despite grant of further opportunities, golden opportunity was granted to deposit the outstanding dues and complete construction after depositing the non-construction fee vide memo dated 1.4.2013 but the allottee failed to deposit the remaining allotment price with interest and non-construction fee. Respondent no.2 filed a petition before the Lok Adalat.

7. The allottee in the case in hand had failed to pay the remaining instalments. In reply to the petition filed before the Lok Adalat, preliminary objection was taken regarding jurisdiction in terms of Section 22-A of the Legal Services Authority Act, 1987 (for short, "the Act"). It was submitted that the Lok Adalat did not have the jurisdiction as the petitioner was not covered. Under the Punjab Agricultural Produce Market Act, 1961, even the jurisdiction of the Civil Court is barred.

8. As far as the merits of the case are concerned, it was submitted that basic amenities have already been provided. Only one water tank was to be constructed. Mandi was already operational. The allottees did not pay even the principal amount of the instalment, what to talk of interest thereon. They had purchased the plots with open eyes. They were bound to pay the instalments. In support of the plea, reliance was placed upon judgments of Hon''ble the Supreme

Court in Municipal Corporation, Chandigarh vs Shantikunj Investment (P) Limited , 2006 (2) R.C.R.(Civil) 26, Haryana State Agricultural Marketing Board and another vs Raj Pal , AIR 2011 SC 1394, State of Haryana and others vs M/s. Padam Chand Subhash Chand and another , 2015 (2) R.C.R. (Civil) 786.

9. On the other hand, learned counsel for respondent no.2 submitted that certain services have been provided in Section 22-A of the Act. However, it further empowers the Government to add any other service by issuing the notification. The Government of Haryana issued notification dated 19.5.2009 adding the "Housing and Estates", in the services covered under Section 22-A of the Act, hence, to claim that the petitioner is not covered under the provisions of the Act is totally misconceived. He relied upon an order passed by this Court in LPA No. 308 of 2012 Haryana Urban Development Authority through its Estate Officer, Rohtak vs Chairman, Permanent Permanent Lok Adalat (Public Utility Services), Rohtak and another, decided on 27.2.2012.

10. On merits, learned counsel for respondent no. 2 submitted that as per the terms of allotment letter, the possession was to be offered only after the basic amenities were provided. The question is whether basic amenities had been provided or not. He referred to the main award where on appreciation of various letters exchanged between the Market Committee concerned and the Board, it was established that the basic amenities such as water, sewerage and roads had not been provided. One of the conditions of allotment letter clearly provides that the liability to pay interest would arise only after offer of possession. Once offer of possession to the allottees was not made on fulfillment of pre-condition laid down in the allotment letter, it was not an offer of possession in the eyes of law. Hence, the allottees will not be liable to pay any interest on the instalments. However, he did not dispute the fact that the allottees were liable to pay the basic amount of instalments of plot and the interest thereon from the date the instalment became due.

11. Learned counsel for respondent no. 2 further submitted that once the possession of the plot could not be offered legally to the allottees in the absence of the development work in the area, the condition for raising construction within two years could not be applied. Hence, even the non- construction fee being charged was rightly set aside by the Lok Adalat. There is no error in the order passed. The same deserves to be upheld. In support of the arguments, reliance was placed upon judgment of Hon"ble the Supreme Court in Haryana State Agricultural Marketing Board vs Bishamber Dayal Goyal and others , 2014 (2) Civil Court Cases 772 (SC). He further submitted that even now the basic amenities are not available. Only one shop has been constructed. In the absence of amenities, the allottees have blocked their hard earned money. They could not even carry on their business.

12. In response to the contention raised by learned counsel for the allottees, learned counsel for the petitioners submitted that even if all the amenities were not available when the possession was offered to the allottees, the same were in

the process of being developed and at present are ready. Even the allottees would have taken some time for construction.

13. Heard learned counsel for the parties and perused the paper book.

14. The sale of plots in open auction in New Grain and Cotton Market N.G.M. Malekan, N.G.M. Nathusari Chopta, District Sirsa, in which the allottees were successful bidders was not in dispute. The relevant terms of the allotment letter are extracted below:-

"4. The sum of Rs. 252500/- paid by you as 25% of the allotment price/ bid cost of the plot has been adjusted in your plot account. You are requested to remit a sum of Rs. 757500/- on account of balance 75% of the price of the plot either without interest within 30 days from the date of issue of this letter or in six half yearly instalments with 15% interest or such rate of interest as may be specified by the Board from time to time. Interest on instalment will accrue from the date of offer of possession as mentioned here under:

5. In case of failure to deposit the instalment in time penal interest @ 4% P.A. to be compounded half yearly shall be charged in addition to the normal interest. In case of default of two successive instalment, the plot and the building, if constructed, shall be resumed by the Market Committee after giving an opportunity of being heard to you.

6. xx xx xx

7. The possession of the plot shall be offered to you within 30 days from the date of issue of allotment letter provided that minimum basic facilities i.e. Roads, Water Supply, Sewerage and electrification are existing and if the said basic facilities are not existing, then after providing the said basic facilities.

8. to 13. xx xx xx

14. The allottee shall construct the building as per approved design within a period of two years from the date of offer of possession of the plot, which may be extended further by the Market Committee, Sirsa upto a maximum period of three years on payments of extension fee Rs. 10,000/-, Rs. 15,000/- and Rs. 20,000/- for the first, second and third year of extension, respectively. In the event of such resumption, the Market Committee shall deduct 10% of the price of the plot and 15% interest on balance overdue instalments and interest."

15. The various terms and conditions of allotment, if read together would lead to the conclusion that after depositing 25% of the bid money at the fall of hammer, the balance could either be paid without interest within 30 days of the issuance of allotment letter or in six half yearly instalments with interest @ 15% per annum. The interest of instalment was to accrue from the date of offer of possession. The allotment letter specifies the amount of instalment in principal and the interest accrued thereon. The column specifically mentions "Interest @ 15% P.A. (if possession offered)". On failure to deposit the instalments in time,

penal interest @ 4% per annum compounded half yearly was chargeable. The possession of the plot was to be offered within 30 days of the issuance of allotment letter provided that minimum basic facilities i.e. Roads, Water, Sewerage and electrification are existing and if the aforesaid basic facilities are not existing then after providing those facilities.

16. In the case in hand, few months after the issuance of allotment, the possession was offered to the allottees vide letter dated dated 17.1.2007 with reminders later on.

17. The first issue raised by learned counsel for the petitioners was that the Lok Adalat did not have the jurisdiction to deal with the petition filed by the allottees as the service provided by the petitioners is not covered under the provisions of Section 22-A of the Act. The relevant provisions of Section 22-A of the Act are extracted below:-

PRE-LITIGATION CONCILIATION AND SETTLEMENT

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

18. No doubt, in the services mentioned in the aforesaid provision, the petitioners may not be covered, however, it further provides that the Central Government or the State Government may by notification declare any other service to be public utility service for the purposes of this Chapter. In exercise of that power, the State of Haryana issued notification dated 19.5.2009 adding specifically the following services to be the public utility services:-

"(i) Housing and Estates,

(ii) Banking and Finance".

19. The activity of the petitioners may not fall in housing, but it will certainly falls within the meaning of "Estates" as the plots had been sold. Hence, to contend that the Lok Adalat did not have jurisdiction to entertain the petition filed by the allottees, is totally misconceived and is rejected. It is unfortunate that despite there being notification of the government, the petitioners had still taken the stand. Ignorance on the part of the petitioners about the notification issued by the State cannot be accepted and appreciated. Similar was the position in Haryana Urban Development Authority through its Estate Officer, Rohtak's case (supra), where the Haryana Urban Development Authority had taken same stand. The observations made therein are extracted below:-

"The appellant is totally ignorant of Notification No. 20/1/2009 - 4JJ (1) dated 19.5.2009, issued by the Haryana Government, vide which two more services, i.e. Housing and Estates; and Banking and Finance, have been declared to be public utility services for the purpose of the list of services, provided in Section 22A(b) of the Act. The aforesaid Notification was issued, as Section 22A(b) of the Act to provide that "public utility service shall include 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 Act." Faced with this situation, learned counsel for the appellant fairly conceded that the service in question involved in this case falls under "Housing and Estates", therefore, he does not want to press the objection with regard to jurisdiction of the Permanent Lok Adalat (Public Utility Services)."

20. As far as the merits of the controversy are concerned, if the various conditions in the allotment letter are read together, it is evident therefrom that the balance sale consideration, after depositing 25% of the bid cost of the plot could either be paid without interest within 30 days from the date of issuance of letter of allotment or in six half yearly instalments with interest @ 15% per annum. The interest on the instalment is to accrue from the date of offer of possession. Even the schedule of payment as mentioned in the allotment letter clearly shows that interest is payable only if the possession is offered. On failure to pay the instalments in time, penal interest @ 4% per annum compounded half yearly is chargeable in addition to the normal interest. The possession of the plot is to be offered within a period of 30 days from the date of issuance of allotment letter provided that minimum basic facilities i.e. Roads, Sewerage and electrification are existing and if these basic facilities are not existing, then after providing these basic facilities. Regarding construction of the building, it is provided that the allottee is to raise construction within a period of two years from the date of offer of possession of the plot, which may be extended further upto a maximum period of three years on payments of prescribed extension fee. The possession of the plot was offered to the petitioner vide letter dated 17.1.2007. There were subsequent reminders.

21. The allottees deposited some of the instalments, whereas some were not

deposited. The details are not being mentioned as have not been provided in all the cases. The fact remains that all the instalments were not paid.

22. The findings recorded by the Lok Adalat in the impugned order regarding availability of basic amenities are extracted below:-

"9. The present dispute has arisen between the parties because the respondents have failed to comply with these terms and conditions. The respondents being seller of the plot and Government Department want to compel the petitioner to deposit the remaining 75% amount with interest under the threat of resumption of the plot knowing fully well that they have not provided the basic amenities in the locality. One Sh. Vishwa Mitter sought information from the office of the respondents under the RTI Act. On 21.5.2013 vide his letter No. 1260, copy of which is Ex.P- 11, the Secretary-cum-Executive Officer, Market Committee, Sirsa informed applicant Vishwa Mitter son of Banwari Lal that in Grain Market, Nathusari Chopta, basic amenities like water supply and sewerage have not been provided. The petitioner as well as the other allottees moved an application, copy of which is Ex. P12, to the respondents and informed them that they have wrongly issued letter of possession and have wrongly required them to pay the interest on the remaining sale consideration from the date of letter of possession. The respondents did not take any action on the request of the petitioner and others. These letters, however, go to show that the basic amenities were not provided by the petitioners upto 21.5.2013. This being so the respondents have wrongly alleged in the reply of this petition that they have provided the basic amenities. The fact remains, that all the basic amenities have not been provided so far."

23. The aforesaid findings get support even from a memo no. 8726 dated 8.1.2015 from the Executive Engineer, H.S.A.M. Board, Sirsa, to the Secretary-cum-E.O., Market Committee, Sirsa, on the subject of providing basic facilities in Anaj Mandi-IV, Anaj Mandi Mallekan and Anaj Mandi Nathusari Chopta, wherein it has been clearly mentioned that works for providing water supply & sewerage facility in NGM at Nathusari Chopta is in progress, which is likely to be completed by 31.3.2015. Meaning thereby, what to talk of at the time when the allottees approached the Lok Adalat for redressal of their grievances even in January, 2015, the basic facilities of water and sewerage were not available. The abovesaid letter was produced by learned counsel for the petitioners in Court at the time of hearing.

24. If the aforesaid finding is read with condition no.7 in the allotment letter, the allottees could not be offered possession of the plot. In terms of clause 4, interest on the balance price is to accrue on the instalments only if the possession of the plot is offered. That would mean on fulfillment of the conditions laid down in the allotment letter and not offer of possession on papers. If all basic formalities are available only then an allottee can raise construction and utilise the property for the purpose of his business and not otherwise.

25. Payment of interest as calculated on the instalments and provided for in the letter of allotment is one part. The allotment letter mentions the dates on which the instalments are to be paid. The allottees were certainly bound to pay the allotment price on the due dates. On failure to pay the same on the due date, they are certainly liable for payment of interest from that date onwards @ 15% per annum and further even liable to payment of penal interest as provided for in clause 5 of the allotment letter.

26. Condition no.14 of letter of allotment provided that an allottee has to complete construction of building within two years from the date of offered of possession. Once there were no basic amenities available and the possession could not be offered, there was no question of levy of non- construction fee. Hence, the claim of non-construction fee is totally uncalled for.

27. For the reasons mentioned above, the present petitions are disposed of while holding that the allottees were liable to pay the principal amount of the instalments on the due dates as mentioned in the allotment letter and on failure to pay the same, they are liable to pay interest @ 15% per annum from the date the instalment became due till its payment. They shall also liable to pay penal interest as provided in clause 5 of the allotment letter. However, the allottees will not be liable to pay interest as calculated and mentioned in a separate column with the title "Interest @ 15% P.A. (if possession offered)". The allottees shall not be liable to pay any non- construction fee till the expiry of two years from the date the possession of the plot is offered after providing basic facilities such as road, water, sewerage and electrification.

28. The writ petitions are disposed of accordingly.