
(2014) 06 GAU CK 0034
In the Gauhati High Court
Case No : Review Petition No. 2 of 2013

Lalkanglova Sailo

APPELLANT

Vs

Ngurthantluangi Sailo

RESPONDENT

Date of Decision : 05-06-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1
Constitution of India, 1950 — Article 39-A
Legal Services Authorities Act, 1987 — Section 19, 19(1), 20, 21, 22

Citation : AIR 2014 Guw 120 : (2015) 1 GLD 73 : (2014) 3 GLT 615

Hon'ble Judges : Ujjal Bhuyan, J

Bench : Single Bench

Advocate : P.C. Prusty, A.K. Rokhum and D.C. Chakraborty, Advocate for the Appellant; A.R. Malhotra and Amicus Curiae, Advocate for the Respondent

Final Decision : Allowed

Judgement

Ujjal Bhuyan, J.—Heard Mr. P.C. Prusty, learned counsel for the review petitioner and Mr. A.R. Malhotra, learned Amicus Curiae for the respondent. This review petition has been filed seeking review of judgment and order dated 16.9.2008 passed by this Court in Civil Revision Petition No. 13/2007. Initially, the review petition was filed in the Principal Seat at Guwahati on 22.10.2008 during vacation. Later on, in the year 2013, it was transmitted to the Aizawl Bench where the case has been re-numbered.

2. Review petitioner was the revision petitioner in the said case and had filed the revision petition assailing the legality and correctness of the award dated 30.7.2007 passed by the Lok Adalat, Aizawl, Mizoram.

3. Substance of the award of the Lok Adalat dated 30.7.2007 is that Lok Adalat (Pre-Litigation) Case No. 66/2006 was filed by the respondent before the Lok Adalat, Aizawl in connection with a dispute relating to settlement of land between petitioner and respondent. Though both the parties had appeared before the Lok Adalat, there was no compromise. Lok Adalat tried to settle the matter but failed.

Ultimately, as the matter could not be settled between the parties, the Lok Adalat passed the award u/s 22(2) of the Legal Services Authorities Act, 1987 in the following terms:-

"1. The Plaintiff-her two landed property covered by the LSC's mentioned above and losing the both just because that the Defendant had realized her two housing loan's is a violation of Principal of Natural Justice and Equity and the same cannot be sustainable.

2. The Plaintiff is given back her landed property covered by LSC No. 520 of 1977.

3. As the Defendant had realized the housing loan of the Plaintiff and in return the Defendant shall have the house side landed property covered by LSC No. 771 of 1979.

4. The Plaintiff's housing loan at the D.C. Aizawl by mortgaging LSC No. 771 of 1979 was also realized by the Defendant amounting to Rs. 28,115/-, the said amount shall be return to the Defendant by the Plaintiff.

5. It is fixed that the Plaintiff shall make payment of Rs. 28,115/- to the Defendant on 17th September, 2007 (Monday).

6. The Plaintiff's LSC No. 520 of 1977, which was alleged to transfer in the name of the Defendant be produced on 17th September, 2007 (Monday) at Lok Adalat and to be handed over to the Plaintiff.

7. The Lok Adalat shall be sitting on 17th September, 2007 at 11:00 a.m. and the parties were served a summon notice.

8. The Defendant shall make approached towards his residence as instructed by the Lok Adalat.

9. The Award made by the Lok Adalat is as, "Every Award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the Award" (vide section 22(2) of the Legal Services Authorities Act, 1987 (as amended up to 2002).

10. This copy of Award shall be issued to the parties.

Lok Adalat members who made the Award:-

1. SD/- RITA NEIHPII

2. SD/- Dr. H.C. THANHRANGA

3. SD/- ZOZINGA

4. SD/- F. THANGHULHA

5. SD/- ROBERT LALCHHUANA

6. SD/- ZOPARI

7. SD/- V.L. BELA."

4. This was challenged by the petitioner before this Court by filing revision petition contending that the Lok Adalat could not have adjudicated the matter and in the absence of any consensus, no award could have been passed.

5. This Court by the order sought to be reviewed held that the case relates to pre-litigation conciliation. Though the dispute between the parties was placed before the "Permanent Lok Adalat" for settlement by the respondent by filing an application, the same could not be settled between the parties even after conciliation. Accordingly, by resorting to the provision of sub-section (8) of Section 22C of the Act, the Lok Adalat decided the dispute between the parties as indicated in the award. This Court held that since the matter related to prelitigation conciliation and settlement, the "Permanent Lok Adalat" had the jurisdiction to decide the dispute as per provision of Sub-Section (8) of Section 22C when the parties failed to arrive at a settlement. Therefore, this Court dismissed the revision petition. Relevant portion of the order of this Court reads as under:-

"7. Chapter VI of Legal Services Authorities Act, 1987 deals with the subject of Lok Adalats. In this chapter jurisdiction, power and functions of Lok Adalats have been provided. Sections 19, 20, 21 and 22 deal with the subject of organization of Lok Adalats, cognizance of cases by Lok Adalats, Award of Lok Adalat and Powers of Lok Adalats. This chapter is applicable to post litigation conciliation and settlement while Chapter VI-A relates to the pre-litigation conciliation and settlement that means settlement of dispute before the dispute is brought before any court.

8. The case at our hands is a pre-litigation conciliation which arose out of an application made by the respondent herein. Section 22C deals with the subject of cognizance of cases by permanent Lok Adalat. While Sections 22D and 22E deals with the subject of procedure of Permanent Lok Adalat and award of Permanent Lok Adalat to be final respectively. Section 22C speaks for that any party to a dispute may, before the dispute is brought before any court, make an application to the Permanent Lok Adalat for settlement of dispute. The dispute herein as projected was placed before the Permanent Lok Adalat for settlement by respondent by an application but the same could not be settled between the parties even after conciliation, held on various occasions. Therefore, the Permanent Lok Adalat by resorting to provision of sub-section (8) of Section 22C decided the dispute between the parties as incorporated in the impugned order. Jurisdiction has been given to Permanent Lok Adalat to decide the dispute between the parties by virtue of sub-section (8) of Section 22C of the Act where the parties failed to reach an agreement under sub-section (7) of the Section. The authorities as relied on by Mr. P.C. Prusty do not have any application to our present case. Since the entire matter relates to prelitigation conciliation and settlement, the Permanent Lok Adalat, when, the parties failed to reach a settlement or agreement has got a jurisdiction to decide the dispute per

provision of Sub-section (8) of Section 22C.

9. It is apparent from the impugned order that even after conciliation, the parties failed to reach an amicable settlement and, therefore, the Permanent Lok Adalat decided the dispute per provisions of sub-section (8) of Section 22C.

10. Mrs. Helen Dawngliani, learned counsel for the respondent submits that since the dispute was referred or placed before a Permanent Lok Adalat for settlement before putting the matter in a court of law, decision of the dispute as incorporated in the impugned order can offend the provision of sub-section (8) of Section 22C. The Permanent Lok Adalat, therefore, has not committed any error and illegality in deciding the dispute between the parties per terms of the order.

11. Having meticulously considered the provisions of the law on the subject, this court does not find any plausible ground to interfere with the impugned order. This revision accordingly fails."

6. I have heard learned counsel for the parties and have considered the submissions made. I have also perused the materials on record.

7. Following the mandate of Article 39-A of the Constitution of India which enjoins upon the State to secure to the citizens that the operation of the legal system promotes justice on the basis of equal opportunity and to provide free legal aid by suitable legislation or schemes or in any other way so that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, the Parliament had enacted the Legal Services Authorities Act, 1987 (supra). Chapter VI of the said Act deals with Lok Adalats. Section 19 of the Act which forms part of Chapter VI provides for organization of Lok Adalats sub-section (2) of Section 19 provides that every Lok Adalat organised for an area shall consist of such number of serving or retired judicial officers and other persons of the area as may be specified. Section 20 deals with cognizance of cases by the Lok Adalats. The hallmark of Lok Adalats as provided in Chapter VI is that it functions as a body to arrive at a compromise or settlement between the parties. The Lok Adalat is a non-adjudicatory body strives to arrive at a decision based on mutual consent or consensus.

8. Chapter VIA comprising of Sections 22A to 22E was inserted into the Act by way of an amendment made in the year 2002. It deals with pre-litigation conciliation and settlement. Section 22A is a definition Section. Clause (a) defines a "Permanent Lok Adalat" and Clause (b) defines "public utility service". Section 22B provides for establishment of Permanent Lok Adalats whereas Section 22C deals with cognizance of cases by Permanent Lok Adalat. Here also the thrust is on settlement of disputes by conducting conciliation proceedings. In the event of failure of the parties to arrive at an agreement, sub-section (8) comes into play. It provides that where the parties fail to reach at an agreement, the Permanent Lok Adalat shall, if the dispute does not relate to any offence, decide the dispute.

9. The constitutional validity of the amendment Act of 2002 inserting Chapter VI-A into the Act was put to challenge before the Hon'ble Supreme Court by the Bar Council of India in the case of Bar Council of India Vs. Union of India (UOI), . Particular challenge was made to the provision of sub-section (8) of the Section 22C by contending that it introduces an element of adjudication by vesting adjudicatory authority on the Permanent Lok Adalat which was not the intent and purport of the Parliament when it enacted the Act. The challenge to the constitutional validity of the Act was negated by the Hon'ble Supreme Court in the said judgment by holding that it (Permanent Lok Adalat) is an alternative institutional mechanism with regard to disputes concerning public utility service so as to provide an affordable, speedy, and efficient mechanism to secure justice. Permanent Lok Adalats are in addition to and not in derogation of the fora provided under various statutes. Such a provision cannot be termed as being ultra vires to the constitutional principles.

10. A reading of Chapter VI-A of the Act would show that Permanent Lok Adalats are established for the purpose of pre-litigation conciliation and settlement of disputes in respect of public utility service as defined in Section 22A(b). Public utility service has been defined to mean transport service for the carriage of passengers or goods by air, road or water, postal, telegraph or telephone service, supply of power, light or water to the public by any establishment, system of public conservancy or sanitation, service in hospital or dispensary, insurance service or any other service which the Central Government or the State Government may declare to be a public utility service.

11. Coming to the facts of the present case, it is seen that the dispute which was referred to the "Permanent Lok Adalat" was a dispute regarding land and property covered by land settlement certificates. Reading of Section 22-A(b) would make it clear that such a dispute will not come within the definition of public utility service. If it is not a public utility service, question of pre-litigation conciliation and settlement by the Permanent Lok Adalat does not arise. In such a case, question of passing of an order by invoking sub-section (8) of Section 22-C would also not arise.

12. Review petitioner has also placed on record a notification dated 7.12.2005 issued by the Member Secretary, Mizoram State Legal Services Authority which was issued in exercise of powers conferred under sub-section (1) of Section 19 of the Act nominating various members to constitute Benches of Permanent Lok Adalats in the districts. As already noticed above, Section 19 deals with organization of Lok Adalats and does not deal with Permanent Lok Adalats under Chapter VI-A. The 7 (seven) members who had comprised the Lok Adalat which passed the award dated 30.7.2007 were nominated as panel member vide the aforesaid notification dated 7.12.2005 issued u/s 19(1). If that be so, the Lok Adalat which passed the award dated 30.7.2007 was not a Permanent Lok Adalat but a Lok Adalat under Chapter VI. Such a Lok Adalat is not vested with the power to decide disputes as provided under sub-section (8) of Section 22-C.

13. Having noticed the above, I am of the view that this Court had erred in holding that the Lok Adalat which passed the award dated 30.7.2007 was a Permanent Lok Adalat and further holding that the award was passed under sub-section (8) of Section 22-C of the Act. It is a fit case for review under Order 47, Rule 1 of the CPC and therefore, I am of the view that the aforesaid decision is required to be recalled, which I hereby do.

14. Accordingly, judgment and order dated 16.9.2008 passed in Civil Revision Petition No. 13/2007 is hereby recalled.

15. Having regard to the discussions made above, Civil Revision Petition No. 13/2007 is allowed and order dated 30.7.2007 passed by the Lok Adalat in Lok Adalat (Pre-Litigation) Case No. 66/2006 is set aside and quashed.

16. Review petition is allowed. Before parting with the record, this Court would like to place on record its appreciation of the assistance rendered by Mr. A.R. Malhotra, learned Amicus Curiae, who shall be paid his fees as per the fee schedule prescribed by the Mizoram State Legal Services Authority.