

(2019) 04 PAT CK 0017

In the Patna High Court

Case No : Letters Patent Appeal No. 277 Of 2017, Civil Writ Jurisdiction Case No. 12990 Of 2014

Raj Mangal Raut Ramani And Ors

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 16-04-2019

Acts Referred:

Bihar Legal Service Authority Act, 1987 — Section 19, 22B
National Legal Services Authority Regulations, 2009 — Regulation 17
Constitution Of India, 1950 — Article 226, 227

Citation : (2019) 04 PAT CK 0017

Hon'ble Judges : Jyoti Saran, J;Arvind Srivastava, J

Bench : Division Bench

Advocate : Mahesh Narayan Parbat, Devendra Kumar, Ranjit Kumar Thakur, Pramod Kumar Verma, Nachiketa Jha, Satyabir Bharti, Alok Chandra

Final Decision : Allowed

Judgement

1. Heard Mr. Mahesh Narayan Parbat, learned Senior Counsel appearing for the appellants-writ petitioners with the assistance of Mr. Ranjit Kumar Thakur, Advocate on record. The respondent no. 1 is represented through Mr. Satyabir Bharti and the private respondents, who were the party to the pre-litigation before the Lok Adalat are represented through Mr. Nachiketa Jha.

This intra-Court appeal arises from the judgment and order of a learned Single Judge dated 14.09.2016 passed in CWJC No. 12990/2014 whereby a challenge to the award passed by the permanent Lok Adalat, Muzaffarpur has not been interfered with leaving it open for the parties to take recourse to civil law remedy that may be available to them for resolving the dispute so raised.

Mr. Parbat, learned Senior Counsel has been very brief on his submission to partly accept the advice of the learned Single Judge in so far as the issue of recovery of possession is concerned but while making such concession he submits that the learned Single Judge in the process has not expressed any

opinion on the challenge to the validity of the award which was neither sustainable on merits nor on exercise of jurisdiction. It is the submission of Mr. Parbat that the parties in the pre-litigation were sons of late Baidyanath Sahani. He submits that of the 10 kathas and odd land held by late Baidyanath Sahani, there were several transactions which took place, the evidence of which is also on record of the proceedings and yet the pre-litigation so filed before the Lok Adalat, Muzaffarpur, a copy of which is placed at Annexure-5 to the writ petition and includes the entire area possessed by late Sri. Baidyanath Sahani which is to the tune of about 10 kathas and odd. Mr. Parbat, learned Counsel for the petitioner in reference to the sale deeds, copies of which are enclosed in the writ petition has submitted that while Annexure-2 would confirm that late Baidyanath Sahani was survived by four sons including three who approached the Lok Adalat, a plain reading of pre-litigation at Annexure-5 would confirm the interpolation done by these sons of late Baidyanath Sahani to omit Bharat Sahani from the array of applicant with similar interpolation present at paragraph-2 of the recitals. It is thus the submission of Mr. Parbat in reference to the jurisdiction vested in the Lok Adalat either under Section 19 or in a Permanent Lok Adalat under Section 22B of the Act that the issue placed before the Lok Adalat was not to be entertained considering that it involved complicated issue of title and possession. While making reference to a judgment of the Supreme Court rendered in the case of Bharvagi Construction & anr. Vs. Kothakapu Muthyam Reddy & ors., since reported 2017(4) PLJR (SC) 196 he submits that it is in reference to an earlier judgment rendered in the case of State of Punjab & anr. v. Jalour Singh & ors., reported in (2008) 2 SCC 660, that it was held that an award of a Lok Adalat of the present kind is assailable before the High Court under Article 226 and under Article 227 of the Constitution of India. He submits in reference to the opinion of the learned Single Judge put to question before this Court that he has fallen short in expressing opinion on the validity of the award which was void ab initio in the circumstance discussed, on merits as well as on the exercise.

While Mr. Bharti, learned counsel appearing for the Civil Court, does not dispute the legal position, the main challenge has come through Mr. Jha, learned Counsel appearing for the respondents, who were party in the pre-litigation case and are beneficiaries thereof. In short it is the submission of Mr. Jha that there is no infirmity in the settlement arrived at between the parties through the pre-litigation case in question by invoking the jurisdiction of the Lok Adalat. According to Mr. Jha, the applicants before the Lok Adalat were within their rights to seek such settlement and there is absolutely no dispute of title as sought to be raised by Mr. Parbat in so far as the applicants are concerned.

We have heard learned Counsel for the parties and have perused the records.

While the judgment of the Supreme Court rendered in the case of Bharvagi Construction and Jalour Singh (supra) referred to above settles the legal position that an award passed by the Lok Adalat is assailable under Article 226 and/or

under Article 227 of the Constitution of India and where the award of the Lok Adalat was being questioned by the writ petitioners on the issue of fraud committed by the parties to demonstrate a settlement which was not to be, we are satisfied that there was no infirmity in the challenge so posed by the writ petitioners to question the award.

Annexure 2 to the writ petition is a sale deed executed by four gentlemen, who claim to be the sons of late Baidyanath Sahani and the daughter of late Baidyanath Sahani and who are the vendors namely; Hanuman Sahani, Chaturbhuj Sahani, Bharat Sahani, Triloki Sahani, all sons of late Baidyanath Sahani as well as Most. Gangajali Devi, wife of late Bangali Sahani. The sale deed is in respect of a sale of land which undisputedly is also the subject matter of pre-litigation case because this is all the land that was held by late Kali Charan Sahani and is part of the land held by his son late Baidyanath Sahani.

We have gone through the pre-litigation case at Annexure-5 and a plain look at the array of the applicants would confirm the interpolation because the name of applicant no.3 has been struck off by a whitener and applicant no.4 has been corrected to read as applicant no. 3 obviously to omit Bharat Sahani, one of the sons named in the sale deed at Annexure 2. It is nowhere explained in the application as to why these applicants have omitted the name of Bharat Sahani from the array of the applicants especially when they seek settlement of the land of their father Baidyanath Sahani. This is the first infirmity which we notice in the pre-litigation case.

The second infirmity which is apparent from the pleadings of the pre-litigation case is that even when there is an apparent omission not only in the memo of parties but also at paragraph-2 of the application, yet the Presiding Officer, Lok Adalat refused to satisfy himself as to the identity of these applicants and whether they were the only sons of late Baidyanath Sahani or there were other surviving heirs. This is the second infirmity which we find in the pre-litigation.

According to Mr. Parbat, there would be another infirmity even on the area of land settled through the process of Lok Adalat in view of the sale deeds present at Annexure-2 and others which accordingly to Mr. Parbat are transactions from the land held by Late Baidyanath Sahani but the pre-litigation case is silent on those transactions rather three of those applicants who were parties to those sale deed, are applicants in the pre-litigation but are silent on the transaction. This is gross infirmity which borders on suppression of material fact.

Last but not the least is the subject matter of dispute and by-now it is well settled that complicated civil disputes are not to be either placed before the Lok Adalat nor can be taken as a pre-litigation by the Lok Adalat in purported exercise of powers vested under Section 19 of the Act. For the purpose we may refer to the expression of the Division Bench of this Court on an identical matter arising in some of the identical case reported in 2014(1) PLJR 476 (Srinivas Rai vs. Mahendra Rai & ors.) and for the purpose we reproduce the expression of the

Division Bench as found in paragraph 9 to 14 of the judgment which also advises the Presiding Officer of Lok Adalat to refrain from entertaining complicated issues of the present nature of case.

"9. In the present case, the application was filed by the parties before the Lok Adalat at the pre-litigation stage. The Award was passed the same day that the application of settlement was filed. On the face of the proceedings, the procedure prescribed for a pre-litigation reference to the Lok Adalat was not followed. The Award dated 29.3.2001 in Case No. 358(D) of 2001 is therefore vitiated without furthermore.

10. In LPA No. 1923 of 2009 (Nawal Kishore Prasad Singh & ors. vs. State of Bihar & ors.) setting aside a pre-litigation Award it was observed as follows by the Division Bench:-

"A direction is issued to all Lok Adalats not to entertain the property disputes or the disputes involving contentious issues in Lok Adalat and not to record compromise in respect of such disputes, especially the property disputes. Violation of this direction will be treated as contempt of this Court."

11. The Division Bench did not bar pre-litigation reference to Lok Adalat by the parties. But such settlement has to be in accordance with the statutory provisions. Due care and caution has to be exercised before referring the matter to the Lok Adalat. In contradistinction the reference made by the Court carries inherent procedural safeguards. Any settlement Award by a Lok Adalat contrary to the statutory provisions arising from a pre-litigation reference will obviously attract application of directions in (Nawal Kishore Prasad Singh).

12. The Lok Adalat is required to satisfy itself with regard to the identity of the parties present before it at the time for pronouncement of Award as also required by Rule 17 of the NALSA Regulations, 2009. It shall be advisable for it to require documentary identification issued by Government or semi-Government authorities and make a brief narration of the same in the order-sheet.

13. The District Legal Services Authorities in each District of the State shall ensure that pre-litigation reference to the Lok Adalat of family property disputes are made strictly and only in accordance with statutory procedures. A copy of this order shall be made available by the concerned Authority to every new incumbent appointed as a Judicial or Non-Judicial Member of a Lok Adalat.

14. A copy of this order be forwarded to Member Secretary, Bihar State Legal Services Authority for circulation to all District Legal Services Authority for needful compliance."

For the discussions that we have held hereinabove, it would not detain us to declare the award passed by the Lok Adalat, Muzaffarpur in Pre Litigation Case No. 272/2013 dated 02.12.2013 illegal, void ab initio and in excess of jurisdiction vested in the Lok Adalat under the provisions of Section 19 of the Bihar Legal Service Authority Act, 1987. Accordingly, we set aside the award impugned at

Annexure 1 to the writ petition.

We express our respectful disagreement with the opinion expressed by the learned Single Judge to set aside the judgment and order passed in CWJC No. 12990 of 2014.

The writ petition is allowed.

The Appeal is allowed.