

Sanjay Kumar and anr. Vs. Secretary, City Civil Court Legal Services Authority and ors.

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Court : Andhra Pradesh

Decided On : Feb-19-2010

Reported in : 2010(3)ALT289

Judge : V.V.S. RAO and; B.N. Rao Nalla, JJ.

Acts : [Legal Services Authorities Act, 1987](#) - Sections 9(3), 19, 20, 20(3), 20(5), 22(2) and 22C(1); ;Evidence Act; ;[Code of Civil Procedure \(CPC\) , 1908](#) - Section 151; ;Code of Criminal Procedure (CrPC) ; ;[Constitution of India](#) - Article 226, 227

Appeal No. : Writ Petition No. 19143 of 2009

Appellant : Sanjay Kumar and anr.

Respondent : Secretary, City Civil Court Legal Services Authority and ors.

Advocate for Def. : M. Bhaskara Lakshmi, Adv. for Respondent No. 1 and; M.N. Bung, Adv. for Respondents 2 to 5 and 8 to 10

Advocate for Pet/Ap. : P. Shiv Kumar, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

V.V.S. Rao, J.

1. This petition under Article 226 of [Constitution of India](#) is filed seeking writ of certiorari to quash the order, dated 30.08.2008 passed by III Additional Chief Judge, City Civil Court, Hyderabad-cum-Presiding Officer, Lok Adalat and an order of even date passed by II Additional Chief Judge, City Civil Courts in E.P. No. 15 of 2003 and for a consequential direction to first respondent, namely, the Secretary, City Civil Court Legal Services Authority (hereafter called, LSA) to place I.A.S.R. No. 6184 of 2006 before Lok Adalat, LSA, Hyderabad, for proper adjudication as directed by this Court in its order, dated 21.06.2007 in W.P. No. 7214 of 2007.

2. The factual matrix is as follows. Respondents 2 to 5 herein filed O.S. No. 417 of 1999 on the file of the Court of the II Additional Chief Judge, City Civil Courts, Hyderabad, against the petitioners, their grandmother and mother. It is for a decree of specific performance of agreement of sale dated 15.12.1998 in respect of the premises bearing Municipal No. 21-7-822, admeasuring 210 square yards situated at Ghansi Bazar. The suit was referred to Lok Adalat under the provisions of [Legal Services Authorities Act, 1987](#) (the Act, for brevity). An Award was passed on 28.03.2001 in terms of the compromise among the parties to the proceedings. The decree holders then filed E.P. There was an unsuccessful attempt by J.Drs., to stall the execution. In 2005, respondents 8 and 9 herein filed an application before the trial Court to set aside the ex parte decree which was also dismissed. At that stage, petitioners who are J.Dr. Nos. 4 and 3 filed an interlocutory application under Section 151 of Code of Civil Procedure, 1908 (CPC) before the II Additional Chief Judge, City Civil Courts, Hyderabad, to set aside the compromise decree (Lok Adalat award dated 28.03.2001), alleging fraud. The same was rejected on 10.10.2006. A month thereafter, the petitioners filed another application under Section 22C(1) of the Act before the Lok Adalat to set aside Lok Adalat award.

3. The Secretary, Lok Adalat rejected the application (registered as Inward No. 306/2006) on 02.02.2007. The petitioners then filed W.P. No. 7214 of 2007 to quash the Secretary's order. A Division Bench of this Court allowed the writ

petition on 21.06.2007 setting aside Secretary's order dated 02.02.2007 and directed the Secretary 'to place the petition filed by the writ petitioners before the Lok Adalat, City Civil Courts, Hyderabad, to set aside the award in O.S. No. 417 of 1999, dated 28.03.2001'. The petitioners alleged that the Division Bench directed the Secretary to place I.A.S.R. No. 6184 of 2006 before Lok Adalat and that on enquiry, they came to know that two separate orders are passed, one by II Additional Chief Judge and the other by III Additional Chief Judge by proceedings on 30.08.2008 dismissing the petition to set aside. They contend that while doing so, they did not give notice. They further contend that the Secretary's noncompliance with the direction in W.P. No. 7214 of 2007 is audacious and contemptuous.

4. The second respondent (decree holder No. 1) filed detailed counter affidavit opposing the writ petition. The important allegations and averments to the extent necessary are as follows. Respondents 6 to 10 are not necessary parties to the present writ petition and they are impleaded with an oblique motive. Kaushalya Devi, Pushpa Devi and petitioners herein executed agreement of sale on 15.12.1998 agreeing to sell the property for sale consideration of Rs. 19,50,000/- and received Rs. 19,00,000/-. The balance amount was agreed to be paid at the time of execution and registration of sale deed. When they did not cooperate, the answering respondent and others filed O.S. No. 417 of 1999 for specific performance of agreement of sale. In the written statement filed therein, the execution of suit agreement was admitted but contested the matter. When the trial was being conducted, the vendors proposed compromise and the matter was referred to Lok Adalat which verified the facts mentioned in the compromise deed and explained to mother and grandmother of the petitioners in Hindi language. They admitted the contents of memo of compromise as correct and thereafter, Lok Adalat passed award. The decree holders filed E.P. No. 15 of 2003. Kaushalya Devi, J.Dr. No. 1, filed E.A. No. 96 of 2003 on 28.07.2003 to set aside the decree, dated 28.03.2001, admitting that she went to the Court and signed the papers before the Court. Her application was dismissed by II Additional Chief Judge on 16.10.2003. Subsequently, respondents 8 to 10 herein, who are third parties to the suit, filed I.A. No. 862 of 2006 to set aside the decree, dated 28.03.2001 alleging fraud and collusion. The same was also dismissed on 14.07.2006. The orders

have become final. Again the petitioners filed an application being I.A.S.R. No. 6184 of 2006 on 30.06.2006 before II Additional Chief Judge, to set aside the compromise decree (Lok Adalat award), dated 28.03.2001. The same was dismissed on 10.10.2006. Yet again the petitioners filed another I.A., under Section 22C(1) of the Act before the Lok Adalat to set aside Lok Adalat award.

5. The respondents further state that after the Judgment of this Court in W.P. No. 7214 of 2007, the Secretary of Lok Adalat placed the petition filed by the petitioners before III Additional Chief Judge, City Civil Court, Hyderabad-cum-Presiding Officer, Lok Adalat, which was posted to 05.11.2007 ordering notice to counsel for J.Drs. On 05.11.2007, when the matter was called before the Special Lok Adalat Sri R.Umdender, advocate for J.Drs., 5 to 7 were present and as there was no representation for the decree holders and other J.Drs., the matter was adjourned to 16.11.2007 awaiting service of notice. The matter was again adjourned from 16.11.2007 to 21.11.2007 and again to 05.12.2007. After that, the matter was adjourned to 05.12.2007, 21.12.2007, 31.12.2007, 18.02.2008, 26.02.2008, 28.02.2008, 15.03.2008, 24.03.2008, 15.04.2008, 19.04.2008, 22.04.2008, 20.06.2008 and 30.08.2008. On that day, Special Lok Adalat assembled and the matter was called. The first petitioner and his father Bajrang Lal were present in the verandah outside the Court but did not choose to appear before Lok Adalat. The counsel for respondents were present. The Special Lok Adalat heard the matter and passed orders dismissing the petition to set aside the award.

6. When the matters came before us on 05.12.2009, after hearing the counsel, we recorded the following minutes.

The main contention of the petitioners, inter alia, is that as directed by this Court on 21.06.2007 in W.P. No. 7214 of 2007, the application filed by the petitioners to set aside the award dated 28.03.2001 has not been placed before the Chairman, City Civil Court Legal Services Authority. This has bearing on the issues involved in this writ petition.

Therefore, we feel appropriate to direct the Chairman, City Civil Court Legal Services Authority, to personally look into the matter and submit a report to this

Court within a period of ten days from today.

Post the matter on 14.12.2009.

7. The learned Chief Judge submitted report dated 14.12.2009. Both the counsel obtained copies and made their submissions. After hearing the elaborate submissions and giving anxious consideration, in the background of the case, the only point requiring consideration is whether the petitioners are entitled for writ of certiorari as prayed for?

8. Section 9(3) of the Act empowers the State authority to post/appoint a person belonging to State Judicial Service not below the rank of Subordinate Judge as Secretary of the District Authority. Such Secretary shall be governed by the terms as may be determined by Regulations made by said authority in consultation with the Chief Justice of High Court. Whether such Secretary has powers to take cognizance of the case and pass awards? This is no more res integra. A Division Bench of this Court in W.P. No. 7214 of 2007, dated 21.06.2007 between the same parties, after referring to various provisions of the Act ruled as under:

A reading together of all the provisions, thus, clearly discloses that the exercise of the judicial powers, performance of judicial functions and discharge of judicial responsibilities in respect of the disputes referred to Lok Adalats, are the exclusive preserve of the respective benches of Lok Adalats and neither the Act nor the Rules nor the Regulations provide for any delegation of such powers to any other Authority or Functionary. The Lok Adalats in the State were not stated to have specified their own procedure for the determination of any dispute coming before them under Sub-section (2) of Section 22 or sub-regulation (4) of Regulation 47 which provides that every Bench of the Lok Adalat may evolve its own procedure for conducting the proceedings before it and shall not be bound by either the Civil Procedure Code or the Evidence Act or the Code of Criminal Procedure subject, however, to the principles of natural justice. Bereft of any such procedure under Section 22(2) or Regulation 47(4), there is no provision or principle which enables the Secretaries of the High Court Committee or the District Authority or the Chairman of the Taluk Committee to assume jurisdiction over the judicial powers or functions or duties or responsibilities of a Lok Adalat, their powers, duties and

functions being purely secretarial in nature and administrative in character.

9. The next aspect of the matter is whether the petition filed by the petitioners herein before Lok Adalat has been placed by the Secretary, Lok Adalat, for consideration and decision in accordance with law. Whether the petition is I.A.S.R. No. 6184 of 2006 in O.S. No. 417 of 1999 filed before the Court of II Additional Chief Judge, City Civil Courts, Hyderabad as alleged by petitioner or it is I.W. No. 306 of 2006 in O.S. No. 417 of 1999 filed before Lok Adalat? Whether application to set aside is already disposed of as directed by this Court in W.P. No. 7214 of 2007 and whether order dated 30.08.2008 is an order passed by III Additional Chief Judge, City Civil Court, Hyderabad-cum-Presiding Officer, Lok Adalat. Before considering these points, we may deal with the objection raised by counsel for contesting respondents that a writ petition would not lie to question an award of the Lok Adalat.

10. In *State of Punjab v. Ganpat Raj* (1) : (2006) 8 SCC 364 : 2006 (7) SCJ 364 : 2007 (1) ALT 28.3 (DNSC), the purport of Section 20(3) and (5) of the Act is explained by Supreme Court as follows:

The specific language used in Sub-section (3) of Section 20 makes it clear that the Lok Adalat can dispose of a matter by way of a compromise or settlement between the parties. Two crucial terms in sub-sections (3) and (5) of Section 20 are 'compromise' and 'settlement'. The former expression means settlement of differences by mutual concessions. It is an agreement reached by adjustment of conflicting or opposing claims by reciprocal modification of demands. As per *Termes de la Ley*, 'compromise is a mutual promise of two or more parties that are at controversy'. As per *Bouvier* it is 'an agreement between two or more persons, who, to avoid a law suit, amicably settle their differences, on such terms as they can agree upon'. The word 'compromise' implies some element of accommodation on each side. It is not apt to describe total surrender. (See *NFU Development Trust Ltd., Re* (2) (1973) 1 All ER 135 : (1972) 1 WLR 1548 (Ch D)). A compromise is always bilateral and means mutual adjustment. 'Settlement' is termination of legal proceedings by mutual consent.

11. In *State of Punjab v. Jalour Singh* (3) (2008) 3 SCC 660, the wife and son of Amarjit Kaur, who died in a motor accident, filed petition before the Motor Accidents Claims Tribunal (MACT) claiming Rs. 5,00,000/- as compensation. An award was passed by MACT on 01.12.1998 for Rs. 1,44,000/-. The claimants filed appeal before High Court, which was referred to High Court Lok Adalat for settlement. On 03.8.2001, Lok Adalat passed an order awarding Rs. 1,70,200/- observing that if the parties have any objection to the order proposed, they may move the High Court for disposal of appeal on merits. Aggrieved by the same, Punjab Roadways filed application before the High Court to set aside the Lok Adalat award. A learned Single Judge rejected the same placing reliance on earlier judgment of another learned Single Judge wherein it had been held that an order passed by Lok Adalat can be challenged by filing a petition under Article 227 of [Constitution of India](#). Therefore, another petition was moved under Article 227 of Constitution challenging the order of Lok Adalat. The same was rejected by learned Single Judge on the ground that such a petition is not maintainable under Article 227 of Constitution. The Supreme Court while reversing the award and remanding the matter to High Court laid down as under:

It is true that where an award is made by the Lok Adalat in terms of a settlement arrived at between the parties (which is duly signed by parties and annexed to the award of the Lok Adalat), it becomes final and binding on the parties to the settlement and becomes executable as if it is a decree of a civil court, and no appeal lies against it to any court. If any party wants to challenge such an award based on settlement, it can be done only by filing a petition under Article 226 and/or Article 227 of the Constitution, that too on very limited grounds. But where no compromise or settlement is signed by the parties and the order of the Lok Adalat does not refer to any settlement, but directs the respondent to either make payment if it agrees to the order, or approach the High Court for disposal of appeal on merits, if it does not agree, is not an award of the Lok Adalat. The question of challenging such an order in a petition under Article 227 does not arise. As already noticed, in such a situation, the High Court ought to have heard and disposed of the appeal on merits.

12. Dealing with the provisions of the Act especially Sections 19 and 20, their Lordships observed as under.

It is evident from the said provisions that the Lok Adalats have no adjudicatory or judicial functions. Their functions relate purely to conciliation. A Lok Adalat determines a reference on the basis of a compromise or settlement between the parties at its instance, and puts its seal of confirmation by making an award in terms of the compromise or settlement. When the Lok Adalat is not able to arrive at a settlement or compromise, no award is made and the case record is returned to the court from which the reference was received, for disposal in accordance with law. No Lok Adalat has the power to 'hear' parties to adjudicate cases as a court does. It discusses the subject-matter with the parties and persuades them to arrive at a just settlement. In their conciliatory role, the Lok Adalats are guided by the principles of justice, equity and fair play. When the LSA Act refers to 'determination' by the Lok Adalat and 'award' by the Lok Adalat, the said Act does not contemplate nor require an adjudicatory judicial determination, but a non-adjudicatory determination based on a compromise or settlement, arrived at by the parties, with guidance and assistance from the Lok Adalat. The 'award' of the Lok Adalat does not mean any independent verdict or opinion arrived at by any decisionmaking process. The making of the award is merely an administrative act of incorporating the terms of settlement or compromise agreed by parties in the presence of the Lok Adalat, in the form of an executable order under the signature and seal of the Lok Adalat.

(emphasis supplied)

13. From the above judgments, it may be taken as well settled that the award of Lok Adalat is administrative act of incorporating the terms of compromise or settlement agreed by the parties in the presence of Lok Adalat and Lok Adalat does not sit in adjudication of the dispute. When an award is passed in terms of the settlement arrived between the parties, which is duly signed by the parties annexed to the award of Lok Adalat, it becomes binding on the parties to the settlement and becomes executable as if it is a decree of Civil Court. No appeal would lie against the award of Lok Adalat and if any party wants to challenge such

an award, it can be by way of petition under Article 226 or 227 of Constitution. If there is no compromise or settlement between the parties before the Lok Adalat, it cannot pass any award nor such award can bind the parties. The challenge to the award of Lok Adalat under Article 226 of Constitution can be entertained on very limited grounds raised only by parties to the settlement/compromise before Lok Adalat and not by anyone else.

14. Thus to a limited extent judicial review is available to test the validity of awards passed by Lok Adalat. One such ground is when a party alleges that there is no settlement to pass an award. If it is shown that there is no settlement or compromise or that settlement or compromise itself is vitiated by fraud or misrepresentation, it would be a fit case for interference. Except the remedy of challenging the Lok Adalat award on limited grounds, no other authority or Court can question the award of Lok Adalat which shall be treated as final and binding. In this case, the grievance of the petitioners is the alleged non-compliance with this Court's orders in earlier writ petition. Therefore, we need not burden this Judgment with various allegations made by petitioners or their mother or grandmother in the earlier proceedings with regard to alleged fraudulent acts on the part of the purchasers of the property. Indeed, it is not within the scope of the writ petition.

15. Whether the Court's order has been complied with? We have clinching material on record to include that the Secretary of LSA has placed the application filed by the petitioners to set aside Lok Adalat award before the Lok Adalat and the III Additional Chief Judge, City Civil Court, Hyderabad-cum-Presiding Officer, Lok Adalat, passed an order on 30.08.2008 dismissing their petition. The submission that I.A.S.R. No. 6184 of 2006 was filed before the Lok Adalat cannot be accepted. Learned Counsel for Secretary, LSA and the learned Counsel for respondents 2 to 5 have placed before this Court two separate applications and the relevant orders which would belie any submission of the petitioners. This is not said that would belie the contention that the petition filed before Lok Adalat has not been disposed of by Lok Adalat. I.A.S.R. No. 6184 of 2006 was filed before the Court of II Additional Chief Judge, City Civil Courts, Hyderabad, in O.S. No. 417 of 1999. The same reads as under:

In The Court of Hon'ble II

Additional Chief Judge: City Civil

Court at Hyderabad

I.A.SR No. 6184 of 2006

In

O.S. No. 417 OF 1999

Between:

1. Sanjay Kumar, S/o Bajranglal Aged about 40 years, OccBusiness

2. Manoj Kumar S/o Bajranglal Aged about 42 years, OccBusiness

(Both R/o 21-7-822, Gandhi Bazar, Hyderabad). Petitioner/Defendants 4 and 3

And

1. Goverdhandas Tapadia S/o late Sri Ghisalalji Tapadia, aged 47 years, Occ: Business

2. Smt Premlata Tapa DIA, w/o Goverdhandas Tapadia, aged 43 years, Occ: Household

3. Sri Anand Tapadia, S/o Goverdhandas Tapadia, aged 24 years, Occ: Business

4. Pooja Tapadia, D/o Goverdhandas Tapadia aged 23 years, OccBusiness

(All R/o 19-3-1011, Shamsheergunj, Hyderabad). Respondents/Plaintiffs

Petition Filed Under Section 151 of CPC

For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble court may be pleased to set aside the compromise decree (Lok Adalat Award) dated 28-03-2001 fraudulently obtained to meet the ends of justice, otherwise we

will suffer serious hardship and irreparable loss and injury which cannot be compensated by any means and pass such other(s) as this Hon'ble court may deem fit and proper in the circumstances of the case.

Hyderabad Counsel for Petitioner/Defendants 3 and 4

16. The learned II Additional Chief Judge rejected the same on 10.10.2006 and a copy thereof has been placed before us. After the same was dismissed on 10.10.2006, the petitioners again filed another interlocutory application before Lok Adalat. The xerox copies of the original file has been placed before us by the counsel for first respondent. This is numbered as I.W. No. 306 of 2006 dated 21.11.2006 reads as under:

Before The Lok Adalat: City Civil Court At Hyderabad

I.A.SR No. of 2006

In

O.S. No. 417 of 1999

Between:

1. Sanjay Kumar, S/o Bajranglal Aged about 40 years, OccBusiness

2. Manoj Kumar S/o Bajranglal Aged about 42 years, OccBusiness

(Both R/o 21-7-822, Gandhi Bazar, Hyderabad). Petitioners/Defendants 4 and 3

And

1. Goverdhandas Tapadiya S/o late Sri Ghisalalji Tapadiya, aged 47 years, Occ: Business

2. Smt Premlata Tapadiya, W/o G.D.Tapadiya, aged 43 years, Occ: Household

3. Sri Anand Tapadiya, S/o Goverdhandas Tapadiya, aged 24 years, Occ: Business

4. Pooja Tapadiya, D/o Goverdhandas Tapadiya aged 23 years, Occ: Business

(All R/o 19-2-1011, Shamsheergunj, Hyderabad). Respondents/Plaintiffs

Petition Filed Under Section 22-C(1) OF LSA Of 1987

R/W Section 151 of CPC

For the reasons stated in the accompanying affidavit, it is prayed that this Hon'ble Lok Adalat may be pleased to set aside the Lok Adalat Award dated 28-03-2001 fraudulently obtained to meet the ends of justice, otherwise the petitioners will suffer serious hardship and irreparable loss and injury which cannot be compensated by any means and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case. Hyderabad Counsel for the petitioners/Date: 16-11-2006 Defendant Nos. 3 & 4

17. As noticed supra, the Lok Adalat passed order on 30.08.2008 which is substantial compliance with the orders of this Court dated 21.06.2007. We are therefore not able to countenance the submission of the counsel for petitioners that the petition filed before Lok Adalat has not been disposed of. We are also not impressed by the submission that the petition filed by petitioners has been disposed of by II Additional Chief Judge, City Civil Courts, Hyderabad, and by Lok Adalat. In all probability, the petitioner applied for certified copy to the Court of III Additional Chief Judge, City Civil Courts, Hyderabad, and to the Court of II Additional Chief Judge, City Civil Courts, Hyderabad. In both the cases, certified copy of the order was furnished to the petitioners and from this, petitioners cannot derive any support for their contention that I.A.S.R. No. 6184 of 2006 is still pending.

18. The Lok Adalat passed award on 28.03.2001 and Execution Petition filed in December, 2002. Thereafter, petitioners' grandmother, and petitioners' father and others made attempts to defeat the award, in vain. They then filed I.A.S.R. No. 6184 of 2006 before the executing Court which was rejected on 10.10.2006 by the II Additional Chief Judge, City Civil Courts, Hyderabad. Yet again they filed Writ Petition complaining improper exercise of jurisdiction by the Secretary, LSA.. In

accordance with order of this Court, the same was disposed of by the III Additional Chief Judge, City Civil Court, Hyderabad-cum-Presiding Officer, Lok Adalat, on 30.08.2008. Again the petitioners filed the present writ petition on 09.09.2009. This brief background would indicate that the petitioners abused the process of this Court in spite of the fact that all the defendants including the mother and the grandmother appeared before the Lok Adalat accepting the compromise and signed before the Lok Adalat. They now cannot turn around complaining any grounds to get over the award which itself was based on the compromise between the parties. Such acts by the persons who submit to the jurisdiction of Lok Adalat and after lapse of few years take a different stand must be curbed by imposing compensatory costs for false, frivolous and vexacious causes.

19. In the result, for the above reasons, the writ petition is dismissed with exemplary and compensatory costs, which we set at Rs. 25,000/- (Rupees twenty five thousand only). We direct that this amount shall be paid by the petitioners to the City Civil Court Legal Services Authority, Hyderabad, within a period of one month from today, failing which it shall be open to the City Civil Court Legal Services Authority, Hyderabad, to execute this order as decree of the Court, in accordance with the provisions of Code of Civil Procedure, 1908.

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