

Kanti Devi Vs. the State of Bihar and Others

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Court : Patna

Decided On : Feb-22-2012

Judge : Mungeshwar Sahoo

Appeal No. : Civil Writ Jurisdiction Case No. 18500 of 2011

Appellant : Kanti Devi

Respondent : The State of Bihar and Others

Judgement :

Mungeshwar Sahoo, J.

Oral:

(1) I have already heard the learned counsel, Mr. Achhaibar Singh on behalf of the petitioner and the learned senior counsel, Mr. Kamal Nayan Choubey, on behalf of the respondent nos.3 to 6.

(2) The petitioner has filed this writ application for setting aside the order dated 04.07.2011 passed in Misc. Case No.6 of 2009 by Permanent Lok Adalat, Kaimur at Bhabhua as contained in Annexure-4 whereby the Permanent Lok Adalat has set aside the compromise award of the Lok Adalat dated 14.09.2006.

(3) It appears that Rajnath Singh had filed pre litigation case No.411 of 2006 before the Lok Adalat. All the parties to the said pre litigation case No.411 of 2006

compromised and a compromise application was filed before the Permanent Lok Adalat. The said compromise was accepted by the Permanent Lok Adalat on 14.09.2006 and an award was passed. Thereafter, the petitioner's father, Rajnath Singh who had filed pre litigation case died in January, 2009. After death of petitioner's father, Ramuna Kuer and Anr. filed a Misc. case being Misc. Case No.6 of 2009 before the Permanent Lok Adalat and prayed for setting aside the compromise award and decree dated 14.09.2006. The Permanent Lok Adalat issued notice to the petitioner and thereafter the petitioner filed objection. The Permanent Lok Adalat then framed the issues and tried the dispute between the parties and by the impugned order decided the issue in favour of the petitioner in Misc. case and set aside the award of the Permanent Lok Adalat.

(4) The learned counsel for the petitioner submitted that during the lifetime of father of the petitioner, there was no dispute. As soon as the father of the petitioner died, the Misc. case has been filed raising the ground of fraud. Permanent Lok Adalat has got no jurisdiction to try any issue. The jurisdiction conferred on the Permanent Lok Adalat is only to persuade the parties to arrive at compromise or settlement and, therefore, if there is no compromise between the parties, the Permanent Lok Adalat cannot decide the lis/dispute between the parties but here in the present case, the Permanent Lok Adalat assumed the jurisdiction of civil court and tried the matter as civil court and recorded a finding on the point of fraud as if Permanent Lok Adalat is a civil court. On these basis, the learned counsel submitted that the impugned order passed by the Permanent Lok Adalat is without jurisdiction as such, it is liable to be set aside. The learned counsel further submitted that there is no provision in the Legal Services Authority Act, 1987 empowering the Permanent Lok Adalat to set aside the award of the Permanent Lok Adalat after trying the issue of fraud between the parties.

(5) On the contrary, the learned senior counsel, Mr. Kamal Nayan Choubey submitted that the petitioner is guilty for contempt as the court below found that fraud was played upon. The Permanent Lok Adalat being a tribunal has the power to recall its own award if it is convinced that it had been obtained by practicing fraud or misrepresentation. Even if there is no provision in the Legal Services Authority Act, the tribunal/courts can exercise inherent jurisdiction for doing justice

between the parties.

(6) The learned counsel for the respondent relied upon AIR 1924 Calcutta 953(Raj Rajeshwari Fiu vs. Gati Krishna Chakraworty) and submitted that the petitioner cannot be heard by court till he purged his contempt as the Permanent Lok Adalat found that fraud was committed by the petitioner. The learned counsel further relied upon Volume 16, Halsbury's Law of England paragraph 1553 and submitted that the judgment obtained by fraud or collusion even if a judgment of the Houses of Lords may be treated as a nullity. The learned counsel further relied upon AIR 2000 SC 1165 and submitted that no court or tribunal is powerless and, therefore, even if there is no provision in the Legal Services Authority Act, the Permanent Lok Adalat can examining the point of fraud. The learned counsel next relied upon AIR 1994 SC 853 and submitted that guilty party is liable to be thrown at any stage if it is found that he has committed fraud on court and in the present case, the Permanent Lok Adalat has found the petitioner committing fraud on the court. The learned counsel further submitted that after notice, the petitioner never objected the jurisdiction of the Permanent Lok Adalat but he participated and submitted to the jurisdiction of permanent Lok Adalat and when the decision turned against him, he is challenging the jurisdiction of Permanent Lok Adalat which he cannot be permitted to do so. On these grounds, the learned counsel submitted that the writ application is liable to be dismissed as the impugned order passed by Permanent Lok Adalat cannot be interfered with in this writ application. According to the learned counsel, the petitioner if so likes he may file suit.

(7) From the above contentions of the parties, the point arises for consideration is as to "whether the Lok Adalat/Permanent Lok Adalat has the jurisdiction to set aside the award on the ground of fraud or not?"

(8) It may be mentioned here that so far Bihar is concerned, no Permanent Lok Adalat under Section 22(B) of the Legal Services Authority Act has been constituted. The Lok Adalats existing in Bihar have been constituted under Section 19 of the Legal Services Authority Act. The said Lok Adalat are made to sit continuously and, therefore, they are known as Permanent Lok Adalat.

(9) In (2011)7 SCC 463(Interglobe Aviation Limited vs. N. Satchidanand), Hon'ble Apex Court at paragraph 32 and 33 has held as follows:

“32. We may also at this juncture refer to the confusion caused on account of the term Permanent Lok Adalat being used to describe two different types of Lok Adalats. The LSA Act refers to two types of Lok Adalats. The first is a Lok Adalat constituted under Section 19 of the Act which has no adjudicatory functions or powers and which discharges purely conciliatory functions. The second is a Permanent Lok Adalat established under Section 22-B(1) of the LSA Act to exercise jurisdiction in respect of public utility services, having both conciliatory and adjudicatory functions. The expression “Permanent Lok Adalat” should refer only to Permanent Lok Adalats established under Section 22-B(1) of the LSA Act and not to the Lok Adalats constituted under Section 19. However, in many States, when Lok Adalats are constituted under Section 19 of the LSA Act for regular or continuous sittings (as contrasted from periodical sittings), they are also called as Permanent Lok Adalats even though they do not have adjudicatory functions.

33. In LIC v. Suresh Kumar this Court observed:

“It is needless to state that Permanent Lok Adalat has no jurisdiction or authority vested in it to decide any lis, as such, between the parties even where the attempt to arrive at an agreed settlement between the parties has failed.”

The said decision refers to such a “Permanent Lok Adalat” organized under Section 19 of the Act and should not be confused with Permanent Lok Adalats constituted under Section 22-B(1) of the Act. To avoid confusion, the State Legal Services Authorities and the High Courts may ensure that Lok Adalats other than the Permanent Lok Adalats established under Section 22-B(1) of the Act in regard to public utility services, are not described as Permanent Lok Adalats. One way of avoiding the confusion is to refer to the Lok Adalats constituted under Section 19 of the Act on a regular or permanent basis as “Continuous Lok Adalats”. Be that as it may.”

(10) In the case of Life Insurance Corporation of India vs. Suresh Kumar, (2011)7 SCC 491, the Apex Court at paragraph 3 has held as follows:

“3. In our considered opinion, the impugned order passed by the Lok Adalat which has received its affirmation at the hands of the High Court suffers from incurable legal infirmity. The permanent Lok Adalat is not a regular court authorized to adjudicate the disputes between the parties on merits. It is needless to state that permanent Lok Adalat has no jurisdiction or authority vested in it to decide any lis, as such, between the parties even where the attempt to arrive at an agreed settlement between the parties has failed. It is a clear case where the Lok Adalat converted itself into a regular court and disposed of the claim of the respondent on merits. The impugned order suffers from jurisdictional error and is liable to be set aside. The orders passed by the permanent Lok Adalat and as well as the High Court are, accordingly, set aside.

(11) In the case of State of Punjab and another vs. Jalour Singh and others, (2008) 2 SCC 660, the 3 Judges Bench of the Apex Court considered the provisions of Section 19 to 22 of the Legal Services Authority Act, 1987 regarding the power and function of Lok Adalat/Permanent Lok Adalat and at paragraph 8 and 9 has held as follows:

“8. 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

decision-making 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.

9. But we find that many sitting or retired Judges, while participating in the Lok Adalats as members, tend to conduct the Lok Adalats like courts, by hearing parties, and imposing their views as to what is just and equitable, on the parties. Sometimes they get carried away and proceed to pass orders on merits, as in this case, even though there is no consensus or settlement. Such acts, instead of fostering alternative dispute resolution through the Lok Adalats, will drive the litigants away from the Lok Adalats. The Lok Adalats should resist their temptation to play the part of judges and constantly strive to function as conciliators. The endeavour and effort of the Lok Adalats should be to guide and persuade the parties, with reference to principles of justice, equity and fair play to compromise and settle the dispute by explaining the pros and cons, strengths and weaknesses, advantages and disadvantages of their respective claims.”

(12) In the case of K.N.Govindan Kutty Menon vs. C.D.Shaji, 2012(1) BLJ S.C. 98, the Hon'ble Supreme Court relying upon the previous decision of the Apex Court including the case of State of Punjab and others vs. Jalour Singh, (2008)2 SCC 660 at paragraph 15 has held that the “award” of Lok Adalat does not mean any independent verdict or opinion arrived at by any decision making process. The making of the award is merely an administrative act of incorporating the terms of settlement or compromise agreed by the parties in the presence of the Lok Adalat in the form and an executable order under the signature and seal of the Lok Adalat. It may be mentioned here that the case of State of Punjab(supra) is again followed in (2009)2 SCC 198(B.P.Moideen Sevamandir and others vs. A.M.Kutty Hassan). In this decision, the Apex Court at paragraph 10 held that although the members of Lok Adalats have been doing a commendable job, sometimes they tend to act as judges forgetting that while functioning as members of Lok Adalats they are only statutory conciliators and have no judicial role.

(13) In view of the above settled proposition of law laid down by the Apex Court, it becomes clear that the Permanent Lok Adalats are not regular court. They have got no adjudicatory function and they are only statutory conciliators and have no judicial role.

(14) The Division Bench of this court in CWJC No.14426 of 2009(Meena Choudhary vs. Dr. Dilip Choudhary) disposed of on 06.11.2009 has held that powers of Lok Adalat are not co-extensive with that of civil courts who have full power to take evidences including oral evidence and also to exercise necessary powers under Section 151 of the Code of Civil Procedure.

(15) In the Legal Services Authority Act, 1987, court has been defined in Section 2(i)(aaa) which means a civil, criminal or revenue court and includes any tribunal or any other authority constituted under any law for the time being enforce to exercise judicial or quashi judicial functions. The decisions relied upon by the learned counsel for the respondents are with regard to the powers and functions of either civil court, criminal court or revenue court and also any other tribunal or any authority constituted under any law to exercise judicial or quashi judicial functions. It may be mentioned here that we are considering the case of Lok Adalat. In the definition of "court", Lok Adalat is not included in the Legal Services Authority Act, 1987. Lok Adalat has been defined in Section 2(i)(d) means a Lok Adalat organized under chapter-6 which includes Section 19 to 22 of the Legal Services Authority Act. In such view of the matter, the analogy applicable to the "court" as defined under Section 2(i)(aaa) will not apply with respect to Lok Adalat as defined under Section 2(i)(d). We have seen above the decisions of the Apex Court wherein it has clearly been held that the Lok Adalats are not regular court. In other words, they are not court. They only persuade the parties to arrive at a settlement or compromise. The word "determination" used in Chapter-6 of the Act does not contemplate nor require an adjudicatory judicial determination but a non-adjudicatory determination based on a compromise or a settlement. The Apex Court has also held that 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. In view of the decisions of this court as well as the

Apex Court, I do not find force in the submission of the learned counsel for the respondents that the Permanent Lok Adalat constituted under Section 19 of the Legal Services Authority Act have got inherent jurisdiction to try an issue of fraud. The decisions cited by the learned counsel for the respondents referred to above right from the Halsbury's Law of England and that 1924 Calcutta 953 and the Apex Court's decisions are not with regard to the Lok Adalat constituted under Section 19 of the Legal Services Authority Act, 1987. As stated above, those decisions cannot be applied with respect to the powers and functions of Lok Adalat. The powers and functions of Lok Adalat are not co-extensive with that of the tribunals and courts as defined under Section 2(i)(aaa). It may be mentioned here that the functions and powers conferred on the Lok Adalat constituted under Section 19 of the Legal Services Authority Act are entirely different than the court. It is settled rule of interpretation that where express provisions are made by a statute, the doctrine of employed power cannot be invoked to supply the provisions which had been deliberately omitted as has been held by the Apex Court in the case of Union of India vs. Gopal Chandra Mishra, AIR 1978 SC 694. Admittedly, Lok Adalat is not included in the definition of court as discussed above. Therefore, the court has no jurisdiction to interpret that "Lok Adalat" is equally empowered as that of court or any other tribunal. It is well settled principles in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in statute is the determinative factor of legislative intent. The object of interpreting statute is to ascertain the intention of the legislature inacting it. The intention is to be gathered from the language used which means that attention should be paid to what has been said as also to what has not been said. As a consequence, a construction which requires for its support, addition or substitution of words or which results in rejection of word as meaningless has to be avoided. A *cassus omissus* cannot be supplied by the court except in the case of clear necessity and when reason for it is found in the four corners of the statute itself but at the same time, a *cassus omissus* should not be readily inferred and for that purpose, all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent inactment of

the whole statute. A *cassus omissus* ought not to be created by interpretation save in some cases of strong necessity.

(16) Lok Adalat system is not visualized as a supplant to court system but supplementary machinery to get resolved pending cases in the courts of law by discussion, counseling, persuasion and conciliation so that it gives cheap justice with the mutual and free consent of the parties. Lok Adalat decision is basically meant for resolution of people's dispute by conciliatory technique and voluntary actions. In short the concept of Lok Adalats implies speedy and cheap justice to common man at his door step. If now the Lok Adalats are conferred the jurisdiction of the court for trying the *lis* between the parties, there will be no difference between the court and the Lok Adalat. This is the clear distinction between the court and the Lok Adalat.

(17) So far the submission of the learned counsel for the respondents that the petitioner herein submitted to the jurisdiction of the Permanent Lok Adalat and participated in the Misc. case and, therefore, he cannot be allowed to challenge the jurisdiction is concerned also, I do not find any merit because if the Permanent Lok Adalat has no jurisdiction to adjudicate or decide a *lis* the party cannot confer jurisdiction by agreement also. Here, the Permanent Lok Adalat has got inherent lack of jurisdiction, therefore, even if the petitioner subjected to the jurisdiction may be because of lack of knowledge or lack of advice, the Permanent Lok Adalat will not be conferred upon the jurisdiction as by statute the powers are conferred on the tribunal or the court or the Lok Adalat. It does not depend on the participation or no participation in the proceeding if inherent lack of jurisdiction is there.

(18) In legal terminology of the expression "to determine and arrive at a compromise and settlement" connotes the jurisdiction that could be exercised by the Lok Adalat cannot extend to decide a dispute where one of the parties is not amenable or agreeable to a compromise or settlement. Here, admittedly, in the present case at our hand so far Misc. case is concerned, there is no question of settlement or compromise arises. If Lok Adalat has no jurisdiction to give its own verdict for passing award, how can the said Lok Adalat can give its own verdict to set aside the award based on compromise between the parties? There is no

dispute about the legal position argued by the learned counsel for the respondents relying upon the decisions referred to above but in my opinion, those principles of law will not apply with respect to Lok Adalat.

(19) In view of my above discussion, I find that the Permanent Lok Adalat constituted under Section 19 of the Legal Services Authority Act, 1987 has exceeded its jurisdiction and tried the issues i.e. adjudicated upon the dispute raised by the respondents regarding fraud and decided the matter as if the Permanent Lok Adalat is civil court. In my opinion, the Permanent Lok Adalat constituted under Section 19 of the Act has no jurisdiction to adjudicate upon a lis. Here, the dispute between the parties is regarding whether any fraud was committed or not. So far this dispute is concerned, the Permanent Lok Adalat has no jurisdiction to decide the same as has been held by the Division Bench of this court referred to above. The Division Bench also held that the Permanent Lok Adalat has no inherent jurisdiction under Section 151 C.P.C.

(20) In the result, this application is allowed. The impugned order passed by the Permanent Lok Adalat is set aside. The petitioners of the Misc. Case, if so advised, may challenge the award before appropriate forum by initiating appropriate proceeding. Since the finding arrived at by the Permanent Lok Adalat in the impugned order is without jurisdiction, it is a nullity and cannot be taken into account in future litigation between the parties, if any.

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