

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MRS. JUSTICE ANU SIVARAMAN

WEDNESDAY, THE 08TH DAY OF JULY 2020 / 17TH ASHADHA, 1942

WP(C).No.14425 OF 2019(C)

PETITIONER:

SANTHOSH T.N,
AGED 53 YEARS
S/O.T.K.NARAYANAN, COCHIN PORT EMPLOYEE,
R/O.QUARTER NO.E2-139, NAVAL ROAD, WILLINGDON
ISLAND, COCHIN-4.

BY ADVS.
SRI.G.KRISHNAKUMAR
SMT.M.L.REMYA

RESPONDENTS:

- 1 PERMANENT LOK ADALAT,
ERNAKULAM-682017,
REP. BY ITS SECRETARY.
- 2 V.DEVASIKHAMONY,
S/O.VAHNINATHAN, ADVOCATE, AGED 76, R/O.CC.DOOR
NO.6/1668, ANAVATHIL,
MATTANCHERRY, KOCHI-682002.
- 3 THRIVIKRAMAN NAMBEESAN,
S/O.RAMUNNI NAMBEESAN, AGED 73, CONTRACTOR,
R/O.H.NO.8/1310, PALLIYARAKKAVU ROAD,
MATTANCHERRY, KOCHI-682002.

R2-3 BY ADV. SRI.R.VENUGOPAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
08.07.2020, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ANU SIVARAMAN, J.

W.P.(C) No.14425 of 2019

Dated this the 08th day of July 2020

JUDGMENT

This writ petition is filed challenging Ext.P3 order of the 1st respondent dismissing Ext.P1 complaint preferred by the petitioner. It is submitted that the petitioner had preferred Ext.P1 complaint under the Legal Service Authorities Act. The contention was that the petitioner had entered into an agreement with respondents 2 and 3 for purchase of an apartment in a proposed apartment complex having six apartments. He had paid Rs.14 lakhs on the date of booking. Though the construction was agreed to be completed on 5.2.2015, respondents 2 and 3 failed to carry out the construction and the petitioner was forced to withdraw from the agreement. When respondents 2 and 3 refused to repay the amount paid by the petitioner, he had preferred Ext.P1 complaint.

2. Ext.P2 objection was filed by respondents 2 and 3. It is submitted that by Ext.P3 order, the 1st respondent rejected the complaint on the finding that the authority has no jurisdiction to entertain Ext.P1 complaint in the light of the Real Estate

(Regulation and Development) Act, 2016 (for short RERA).

3. The learned counsel for the petitioner submits that there is no ouster of jurisdiction as provided under the RERA. It is stated that all that is ousted is the jurisdiction of “civil courts” to entertain “any suit or proceeding” and that since the Permanent Lok Adalat is not a civil court, the ouster will not apply to the Adalat. Relying on a decision of the Apex Court in **Pioneer Urban Land and Infrastructure Limited and another v. Union of India and others** [(2019) 8 SCC 416], the learned counsel submits that the Permanent Lok Adalat and the Real Estate Regulatory Authority would have concurrent powers and the finding that the Permanent Lok Adalat does not have the jurisdiction to consider the issue is *per se* illegal. The decision of this Court in **Hamza P. v. Canara Bank, Shornur Branch** [2017 (5) KHC 713] is also relied upon to contend that even where the issue is covered by the provisions of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the jurisdiction under the Legal Services Authorities Act would not stand ousted since the Lok Adalat is not a civil court.

4. The learned counsel appearing for respondents 2 and 3 would place reliance on the decision of the Bombay High Court in **Neel Kamal Realtors Suburban Private Ltd and another v.**

Union of India [2018 KHC 3034].

5. I have considered the contentions advanced. The factual positions are not in dispute. The RERA came into force on 26.3.2016. Different dates were appointed for different provision and the Act has come into force, almost in entity by 01.05.2017. Section 18 of the RERA reads as follows :-

“18. Return of amount and compensation.-

(1) If the promoter fails to complete or is unable to give possession of an apartment, plot or building,-

(a) in accordance with the terms of the agreement for sale or, as the case may be, duly completed by the date specified therein; or

(b) due to discontinuance of his business as a developer on account of suspension or revocation of the registration under this Act or for any other reason,

he shall be liable on demand to the allottees, in case the allottee wishes to withdraw from the project, without prejudice to any other remedy available, to return the amount received by him in respect of that apartment, plot, building, as the case may be, with interest at such rate as may be prescribed in this behalf including compensation in the manner as provided under this Act:

Provided that where an allottee does not intend to withdraw from the project, he shall be paid, by the promoter, interest for every month of delay, till the handing over of the possession, at such rate as may be prescribed.

(2) The promoter shall compensate the allottees in case of any loss caused to him due to defective title of the land, on which the project is being developed or has been developed, in the manner as provided under this Act, and the claim for compensation under this subsection shall not be barred by limitation provided under any law for the time being in force.

(3) If the promoter fails to discharge any other obligations imposed on him under this Act or the rules or regulations made thereunder or in accordance with the terms and conditions of the agreement for sale, he shall be liable to pay such compensation to the allottees, in the manner as provided under this Act.”

The provisions of the RERA with regard to jurisdiction of the civil court is contained in Section 79 thereof, which reads as follows :-

“79. Bar of jurisdiction.- No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Authority or the adjudicating officer or the Appellate Tribunal is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.”

The 1st proviso to Section 71 states that any person, whose complaint covered by Sections 12, 14, 18 and 19 is pending before the Consumer Disputes Redressal Forum or Commissions on or before the commencement of the Act, may, with the permission of the Forum or Commission, withdraw the complaint and file an application before the adjudicating officer under the RERA.

6. The decision in **Pioneer Urban Land and Infrastructure Limited's case** supra relied on by the learned counsel for the petitioner was rendered by the Apex Court with regard to the applicability of the Insolvency and Bankruptcy Code to allottees of real estate projects. It was held that even though there are separate remedies available to the allottees under the RERA, availability of such remedies would not affect their rights to avail remedies under the Insolvency Code. It was held that the RERA is to be read harmoniously with the Code as amended and

that the remedies are therefore concurrent remedies. In **Hamza P.'s case** supra, the facts were that the dispute between the parties stood settled before the Lok Adalat. Thereafter, an award was passed on consensus. However, the award was not complied with and the bank had approached the DRT seeking execution of the award. This Court held that the Recovery of Debts Due to Banks and Financial Institutions Act is a general statute and the Legal Services Authorities Act had overriding effect over the same. It was further held that an award passed under the Legal Services Authorities Act, would bind the parties and that it could be executed through the D.R.T.

7. The decision of the Bombay High Court in **Neel Kamal Realtors Suburban Private Ltd.'s case** supra, on the other hand, was one rendered considering the provisions of the RERA. The nature of the power of the authorities under the RERA were considered by the Bombay High Court and the challenge to the validity of the provisions was repelled.

8. The Permanent Lok Adalat considered the contentions advanced on either side at considerable length and held that the decision of the Bombay High Court has persuasive force on it and followed the said judgment. It has been held as follows :-

“As discussed above comprehensive and effective measures were provided in RERA to protect the consumers/allottees in the Real Estate field. There is Forum or Authority constituted under RERA to decide and manage all the matters with respect to the Real Estate field including sale of plots, construction of flats, apartments etc. This authority is having supervisory control over the Real Estate Promoters through out the transactions till handing over possession. The same is applicable not only to new ventures but also to all on going projects. An efficacious remedy of appeal before an Appellate Tribunal which is presided by a Hon’ble Judge or retired Judge of the Hon’ble High Court is provided under Chapter VII of the Act. Under Section 58 another appeal will lie to the Hon’ble High Court against the orders passed by the Appellate Tribunal. In the said circumstances, if the promoters are permitted to file petitions before this Authority, then definitely that, will defeat the right of the allottees/customers since under Proviso of Section 22 C(1) of the LSA Act after an application is made under Sub Section (1) of the Permanent Lok Adalat no party to that application shall invoke the jurisdiction of any court in the same dispute. In the said circumstances, we are bound to follow the finding the Hon’ble High Court of Bombay and basing on the said finding we are constrained to hold that this Authority is having no jurisdiction to entertain this petition.”

9. After considering the contentions advanced on either side, I am of the opinion that there is no glaring error of law or fact apparent on the face of the record which justifies an interference with Ext.P3. It is an admitted fact that the petitioner herein has an efficacious remedy under the RERA which provides specific fora for allottees to agitate their grievances. Even if it is admitted for the

sake of argument that the Lok Adalat has concurrent power to decide the issue, the petitioner who is possessed of a more specific and efficacious remedy cannot be said to be aggrieved by Ext.P3. The Permanent Lok Adalat has specifically considered that the decision of the Adalat would not be subject to any further appeals and is final except for judicial review under Article 226 of the Constitution of India.

10. Having regard to the facts and circumstances of the instant case, I am of the opinion that since the dismissal of the complaint preferred before the Adalat does not preclude the invocation of the more efficacious remedy by the petitioner, the order of the Permanent Lok Adalt does not require interference in exercise of judicial review under Article 226 of the Constitution of India. The writ petition fails and the same is accordingly dismissed. However, the legal question of concurrent jurisdiction of the Adalat is left open.

Sd/-

ANU SIVARAMAN

JUDGE

APPENDIX

PETITIONER'S/S EXHIBITS:

- EXHIBIT P1** **TRUE COPY OF THE COMPLAINT IN OP.32/2018
ON THE FILES OF THE 1ST RESPONDENT.**
- EXHIBIT P2** **TRUE COPY OF THE OBJECTION FILED BY THE
RESPONDENTS 2 & 3 IN EXHIBIT P1
OP.NO.32/2018 ON THE FILES OF THE 1ST
RESPONDENT.**
- EXHIBIT P3** **TRUE COPY OF THE ORDER DATED 11.12.2019
OF THE 1ST RESPONDENT IN OP.NO.32/2018.**

//TRUE COPY//

P.A. TO JUDGE