CASE NO.:
Appeal (civil) 3247 of 2000

PETITIONER:
HARESH DAYARAM THAKUR

RESPONDENT:
STATE OF MAHARASHTRA AND ORS.

DATE OF JUDGMENT: 05/05/2000

BENCH:
D.P. MOHAPATRA & R..P SETHI

JUDGMENT:
JUDGMENT

2000 (3) SCR 1140

The Judgment of the Court was delivered by

D.P. MOHAPATRA, J. Leave granted.

Appellant Haresh Dayaram Thakur and respondent No. 3 Pitambar Dayaram Thakur are brothers. Raj Kumari Pitambar Thakur Respondent No. 4 is wife of respondent no. 3. The dispute raised in the case centres round the flat bearing No. 16/199 at Ramakrishna Nagar, Khar, (W), Mumbai, belonging to the Maharashtra Housing and Area Development Authority, Mumbai (for short 'MHADA'). The MHADA had granted lease of the said flat to one N.H. Krishanan, who transferred his right, title and interest thereunder to one Manmeet Singh Chadha under an agreement of transfer dated 7th April, 1986. By the agreement for transfer dated 21.11.1989 the right, title and interest of the flat was purchased by the appellant for a consideration of Rs. 3,45,000. The appellant also became a member of the society of flat owners of the building called Melody Cooperative Housing Society of which the flat in question is a part. The appellant had applied to MHADA for regularisation of allotment of the flat in his name. In December 1992 on a routine inspection of the premises the Estate Manager of MHADA reported that the property was in occupation of the appellant and his family members including respondent No. 3, though it stood in the name of N.H. Krishnan, and therefore, they were unauthorised occupants of the flat. On receipt of the report a proceeding was initiated under section 66(1) of the Maharashtra Housing and Development Act, 1966 (for short 'the Act'). In pursuance of the order dated 23.4.1997 MHADA evicted all the unauthorised occupants from the flat and sealed the same. In the said order leave was given to the present appellant to establish his claim in respect of the property in light of the deed of transfer dated 21.11.1989 and other documents executed by the allottee in his favour. Subsequently, after examining the relevant documents MHADA regularised the allotment of the flat in favour of the appellant by an order under the Act.

On 19.9.1998 respondent no. 3 filed Writ Petition No. 5072/98 before the Bombay High Court challenging the order of eviction passed by MHADA under section 66(1) of the Act against him. It was the case of the respondent no. 3(writ petitioner) that he had also contributed a sum of Rs. 1,25,000 for the purpose of purchase of the flat alongwith his brother, the appellant herein, though the documents stood in the name of the latter. A Division Bench of the High Court disposed of the Writ Petition by the order dated 7.10.1998 directing, inter alia that the competent authority of MHADA would re-examine the claims of the respondent No. 3 as well as the appellant herein and pass a speaking order in accordance with the law. In compliance with the directions of the High Court the competent authority of MHADA passed the order dated 18.12.1998 rejecting the claim of respondent no. 3 and confirming the allotment/regularisation of the flat in the name of the appel-lant.

The respondent Nos. 3 & 4 challenged the order dated 18.12.1998 of MHADA by filing a writ petition under Articles 226 and 227 of the Constitution, Writ Petition No. 510/99, asserting their title to the property. They prayed for a writ of certiorari or any other appropriate writ, direction or order under Article 226 of the Constitution of India quashing the order of the Appellate Authority dated 23.4.1997 and the eviction order dated 18.12.1998; for a writ of Mandamus or any appropriate writ, direction or order directing MHADA and its Estate Manager and the respondent no. 7 in the writ petition (appellant herein) to restore to them possession of the flat No. 16/199 at Ramakrishna Nagar, Khar (W), Mumbai and for issue of a writ of mandamus to MHADA to regularise allotment of the said flat in favour of the writ petitioners and for an interim direction restoring possession of the flat to them after obtaining possession thereof from respondent No. 7 (ap-pellant herein).In the said writ petition the High Court by the order dated 6.3.1999 appointed a conciliator with regard to the dispute between the parties. The relevant portion of the order reads thus :

"By consent of the Petitioners and Respondent No. 7 hereto, Shri H. Suresh, Retired Judge of the Bombay High Court, is appointed as Conciliator with regard to dispute between the Petitioners and Re-spondent No. 7 relating to Flat No. 16/199. Melody Co-operative Housing Society Ltd., Ramakrishna Nagar, 9th Road, Khar, Mumbai - 400 052 including the issue of title, regularisation/possession and compensation, if any.

The parties agree and undertake to this Court that the decision of the Conciliator will be final and binding on both the parties.

Court Receiver, High Court, Bombay is hereby appointed as Receiver of aforesaid Flat No. 16/199, with a further direction to take formal possession of the said flat from Respondent No. 7, and appoint Respondent No. 7 as his agent, on monthly royalty of Rs. 1,000 to be deposited with the Conciliator, subject to the final award. The Receiver shall not insist tor security and shall not display his board at the suit flat.

The learned Conciliator is requested to submit his report/award, and preferably within six months."

In pursuance of the said order Justice H. Suresh (Retired) held meetings on 20.4.99, 5.7.99, 25.7.99, 8.8.99 and on 24.8.99 in presence of the counsel for the parties. In the minutes of the Meeting held on 8.8.99 it was recorded :

"After hearing both the parties, the Conciliator suggested that the matter could be settled on the petitioner paying an amount as may be fixed by the Conciliator, to the Respondent, the petitioner would be entitled to the flat in question and would be put in possession. The parties agreed to the above and requested the Conciliator to settle on these lines, and the Conciliator to fix all the relevant terms, including the requirement the petitioner foregoing his claim for the ancestral flat i.e. 18/224, R.K.Nagar.

The Meeting is now adjourned to 24th Aug., 1999 at 4.30 p.m. when the Advocates will make all the relevant submissions which will enable the Conciliator to fix the amount and the other terms of settlement."

In the minutes of the last meeting held on 24.8.1999 the Conciliator recorded that both the advocates have completed their submissions in respect of the amount to be paid by the petitioner to the respondent to enable the Conciliator to fix the amount as noted in the last meeting; that both the advocates stated that there are no further submissions to be made. In the concluding portion of the minutes of the said meeting it is recorded "accord-ingly these proceedings come to an ending excepting the Conciliator will make a report to the High Court incorporating the terms of

settlement". The Conciliator in his report dated 31.8.1999 which was sent to the High Court stated inter alia, that after taking into account all the submissions made by both the parties and after considering all the relevant documents and papers and pleading he (Conciliator) proposes to settle the dispute in the manner set out in the report. The proposals in the Conciliator's report included the stipulation i.e. (1) that on petitioner's (respondents 3 & 4 herein) paying a sum of Rs. 4,00,000 to respondent no. 7 (appellant herein) he shall vacate the flat No. 16/199 and the petitioners shall be put in possession thereof; (2) Petitioner No. 1 (Respondent 3 herein) shall forego and relinquish all his claims in respect of flat No. 18/224 Sunshine Co-operative Housing Society Ltd. 9th Road, Khar, Mumbai 400 052.; (3) that on the basis of the above settlement, the possession of the said Flat No. 16/199 by the Petitioners be regularised in their favour by the Maharashtra Housing and Area Develop-ment Authority (Respondent No. 2) and that in view of the settlement respondent No. 7 (appellant herein) will have no claim whatsoever in respect of flat No. 16/199 and the writ petitioners (Respondent 3 & 4 herein) will have no claim whatsoever in respect of flat no. 18/224. The other stipulations of the settlement set out in the report are not very material for the purpose of the present case. It is relevant to state here that the so called 'proposal' by the Conciliator was not signed by the parties, nor were its terms disclosed to the parties by the Conciliator. As submitted by Sri Tulsi learned Sr. counsel appearing for the appellant the report was sent by the Conciliator in a sealed cover to the High Court directly.

The appellant filed an objection against the report of the Conciliator setting out various grounds of challenge. A Division Bench of the High Court summarily rejected the objections raised against the Conciliator's report. Referring to the statement in the previous order dated 6.3.1999 that the parties agreed to undertake to the Court that the decision of the Conciliator would be final and binding on both the parties the Division Bench was of the opinion that when the Conciliator has been appointed for taking a decision, with the consent of the parties no amount of objections raised in the form of appli-cation can be entertained at all. (emphasis is mine). Division Bench observed in the order "but in the present case, at the time when conciliator was agreed to be appointed, clear cut understanding was there between the parties to given to finality". The conclusion arrived at by the Court as expressed in paragraph 4 of the order reads :

"The net result of the matter is that the report filed by the conciliator shall be treated as the Order in the Writ Petition and parties' rights will be governed thereunder. Petition is disposed of accordingly. Civil Application is disposed of."

The said order is under challenge in this appeal filed by the respondent No. 7 of the writ petition.

The Arbitration and Conciliation Act, 1996, as the name itself suggests, deals with two types of proceeding: arbitration proceedings and conciliation proceedings. While provisions relating to arbitration proceedings are con-tained in part-I in which are included Chapters 1 to X, the conciliation proceedings are dealt with in part-Ill which includes sections 61 to 81. On perusal of the provisions of the Act the position is manifest that a clear distinction is maintained in the statute between arbitration proceedings and conciliation proceedings.

Section 61 which deals with Application and Scope of the provisions, in part-Ill provides, inter alia, that save 3s otherwise provided by any law for the time being in force and unless the parties have otherwise agreed, this Part shall apply to conciliation of disputes arising out of legal relationship, whether contractual or not and to all proceedings relating thereto.

In section 64 provision is made that the appointment of conciliators shall

be by agreement of parties or if the parties agree they may request a suitable institution or a person to appoint a conciliator on their behalf. In section 65 it is provided, inte.r alia, that on being appointed the conciliator shall request each party to submit to him a brief written statement describing the general nature of the dispute and the points at issue. Each party shall send a copy of such statement to the other party.

Section 67 which makes provision regarding role of conciliator pro-vides in sub-section (1) that the conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute. In sub-section (2) thereof, it is provided that the conciliator shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute including any previous business practices between the parties. In sub-section (4) of section 67 it is laid down that the conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor. Section 69 contains the provision regarding communication between conciliator and parties whether orally or in writing and about the place of meetings etc. in section 70 provision is made regarding disclosure of information. Therein it is provided, inter alia, that when the conciliator receives factual information concerning the dispute from a party, he shall disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which he considers appropriate. In the provision to the section it is stated that when a party gives any information to the conciliator subject to a specific condition that it he kept confidential, the conciliator shall not disclose that information to the other party. Under section 72 it is laid down that each party may, on his own initiative or at the invitation of the conciliator, submit to the conciliator suggestions tor the settlement of the dispute.

Section 73 in which provision is made regarding settlement agreement reads as follows :

"73. Settlement agreement - (1) When it appears to the conciliator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. Alter receiving the observations of the parties, the conciliator may reformulate the terms of a possible settlement in the light of such observations.

(2) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the conciliator may draw up, or assist the parties in drawing up, the settlement agreement.

(3) When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respec-tively.

(4) The conciliator shall authenticate the settlement and furnish a copy thereof to each of the parties."

Section 74 provides that the settlement agreement shall have the same status and effect as if it is an arbitral award on agreed terms on the substance of the dispute rendered by an arbitral tribunal under section 30.

Section 75 which incorporates in the statute the confidentiality clause provides that notwithstanding anything contained in any other law for the time being in force, the conciliator and the parties shall keep confidential all matters relating to the conciliation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement.

Section 76 wherein provision is made regarding termination of conciliation proceedings is extracted hereunder :

"76. Termination of conciliation proceedings - The conciliation proceedings shall be terminated -

(a) by the signing of the settlement agreement by the parties on the date of the agreement; or

(b) by a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or

(c) by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or

(d) by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

Section 77 contains the provision that the parties shall not initiate, during the conciliation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject-matter of the conciliation proceedings except that a party may initiate.arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.

At this stage it will be convenient to refer to section 30, which is a provision in Chapter VI dealing with making of arbitration award and termination of proceedings. Section 30 reads as follows:

"30. Settlement: (1) It is not incompatible with an arbitration agree-ment for an arbitral tribunal to encourage settlement of the dispute and, with the agreement of the parties, the arbitral tribunal may use mediation, conciliation or other procedures at any time during the arbitral proceedings to encourage settlement.

(2) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(3) An arbitral award on agreed terms shall be made in accordance with section 31 and shall state that it is an arbitral award.

(4) An arbitral award on agreed terms shall have the same status and effect as any other arbitral award on the substance of the dispute."

From the statutory provisions noted above the position is manifest that a coneiliator is a person who is to assist the parties to settle the dispute between them amicably. For this purpose the conciliator is vested with wide powers to decide the procedure to be followed by him untrammeled by the procedural laws like the Code of Civil Procedure or the Indian Evidence Act, 1872. When the parties are able to resolve the dispute between them by mutual agreement and it appears to the conciliator that there exists an element of settlement which may be acceptable to the parties he is to proceed in accordance with the procedure laid down in section 73, formulate the terms of a settlement and make it over to the parties for their observations; and the ultimate step to be taken by a conciliator is to draw up a settlement in the light of the observations made by the parties to the terms formulated by him. The settlement takes shape only when the parties draw up the settlement agreement or request the conciliator to prepare the same and affix their signatures to it. Under sub-section (3) of section 73

the settlement agreement signed by the parties is final and binding on the parties and persons claiming under them. It follows therefore that a successful conciliation proceeding comes to an end only when the settlement agreement signed by the parties comes into existence. It is such an agreement which has the status and effect of legal sanctity of an arbitral award under section 74.

In the case in hand, as appears from the materials on record, no such procedure as prescribed under part-Ill of the Act has been followed by the conciliator. The conciliator appears to have held some meetings with the parties in which there was discussion and thereafter drew up the so called settlement agreement by himself in secrecy and sent the same to the court in a sealed cover. Naturally the so called settlement agreement drawn up by the conciliator does not bear the signatures of the parties. As the impugned order shows the said settlement has been given a status higher than an arbitral award in as much as the court has refused to even entertain any objection against the said settlement agreement reiterating the position that the settle-ment arrived at by the conciliator will be binding on the parties. The conciliator who is a former judge of the High Court and the learned Judge who passed the impugned order failed to take note of the provisions of the Act and the clear distinction between an arbitration proceeding and a con-ciliation proceeding. The learned judge in passing the impugned order failed to notice the apparent illegalities committed by the conciliator in drawing up the so called settlement agreement, keeping it secret from the parties and sending it to the Court without obtaining their signature on the same. The position is well settled that if the statute prescribes a procedure for doing a thing, a thing has to be done according to that procedure. Thus the order passed by the High Court confirming the settlement agreement received from the conciliator is wholly unsupportable.

Accordingly, the appeal is allowed. The order dated 6.10.1999 passed by the High Court of Bombay in Civil Application No. 7117 of 1999 is set aside. The settlement agreement dated 31.8.1999 filed by Justice H. Suresh before the High Court is also set aside. The High Court is directed to dispose of the Writ Petition afresh on merit in accordance with law. Parties to bear their own costs.