

(2001) 10 NCDRC CK 0011

In the National Consumer Disputes Redressal Commission

AJIT SINGH SODHI

APPELLANT

Vs

ESTATE OFFICER, UNION TERRITORY CHANDIGARH

RESPONDENT

Date of Decision : 29-10-2001

Acts Referred:

Citation : 2003 4 CPJ 362

Hon'ble Judges : K.K.Srivastava , Devinderjit Dhatt J.

Final Decision : Appeal dismissed

Judgement

1. THIS appeal is directed against order dated 11.6.2001 passed by the District Consumer Disputes Redressal Forum-II, U.T., Chandigarh (for short hereinafter referred to as the District Forum-II) in Complaint Case No. 437 of 1997 filed by the appellant Shri Ajit Singh Sodhi against the Estate Officer, U.T., Chandigarh. The District Forum-II has dismissed the complaint on merits.

2. THE appellant filed the complaint alleging inter alia that he purchased a residential plot No. 385, Sector 38A, Chandigarh in an open auction on 27.10.1979 from the opposite party - Estate Officer, U.T., Chandigarh. THE building of the aforesaid residential plot was constructed by the appellant in accordance with the approved plan. Sewerage connection to the building was given on 28.10.1981. THE appellant Shri Ajit Singh Sodhi occupied the said building on 28.10.1981 itself. It is alleged that a Bank Draft for a sum of Rs. 15,525/- was sent by Shri Ajit Singh Sodhi to the Estate Officer, U.T., Chandigarh on 7.8.1991 towards ground rent of the plot for the period from 27.10.1983 to 27.10.1992. THE said Bank draft was, however, returned by the opposite party to the complainant with the remarks that the plot allotment stood cancelled due to certain violations in the construction of the building. It was alleged that the order of cancellation of the plot was not communicated to the complainant who paid a personal visit to the office of the Estate Officer and obtained the copy of the cancellation order dated 28.12.1983 and the copy of the notice issued on 21.5.1982 vide Annexures 3 and 4. THE complainant learnt from perusal of these documents that the violations which were pointed out in the building constructed

by the complainant were, (i) gate size has increased; (ii) smosam has been done on faces; (iii) water tap and sink provided in the store; and (iv) Ketches have been provided in the common walls. After obtaining the copies of the notice and the cancellation order, the complainant agitated the same before the different Fora and eventually the Lok Adalat restored the site to him vide its order dated 22.12.1993 vide photocopy Annexure-5. THE Lok Adalat, however, imposed certain conditions in its order, which were complied with by the complainant. THE complainant informed the opposite party vide letters dated 5.1.1994 and 18.1.1994 regarding the compliance of the conditions imposed in the order of the Lok Adalat vide copies Annexures-6 and 7. THE Lok Adalat had imposed a penalty of a sum of Rs. 3,105/-, which was also deposited by the complainant on 6.1.1994. THE complainant deposited a Bank draft for a sum of Rs. 23,295/- on 24.10.1996 with the Estate Officer towards ground rent of the plot for the period from 1983 to 1997 in respect of the site purchased by him at the auction. A photocopy of the letter dated 24.10.1986 along with the copy of the Bank Draft has also been annexed as Annexure-8. It was alleged that inspite of acceptance by the contesting parties i.e. complainant and the opposite party of the order of Lok Adalat, the opposite party - Estate Officer did not accept the amount of penalty of Rs. 3,105/- and Rs. 23,295/- as lease money of the plot and returned the two Bank Drafts to the complainant taking a plea that the site in question still stood cancelled. A copy of the letter dated 11.12.1996 sent by the opposite party was also annexed as Annexure-9. THE complainant visited the office of the Estate Officer on 23.5.1997 and again deposited the aforesaid money through Bank Drafts which was accepted by the opposite party which issued receipt for a sum of Rs. 26,400/- on 10.6.1997 to the complainant vide photocopy Annexure-10 it was alleged that the complainant was compelled to pay Rs. 25,547/- by way of interest on the delayed payment of ground rent of the site aforesaid vide letter dated 15.7.1997. THE letter informed the complainant that in case the interest aforesaid was not deposited, he would be proceeded legally. A photocopy of the letter dated 15.7.1997 of the opposite party was annexed as Annexure A-11. A pucca receipt dated 29.7.1997 regarding the deposit of Rs. 25,547/- was issued to him and the said receipt had annexed in the shape of four sheets of papers showing that the amount related to the interest of delayed payment of lease money. It was contended that during the period between 28.11.1983 to 1.9.1997, the site remained cancelled and legally the complainant is not liable to pay the lease money to the opposite party and consequently the complainant is entitled to get refund from the opposite party of the said amount. Annexure-14 was placed as copy of occupation order dated 1.9.1997 issued by the Estate Officer, U.T., Chandigarh. According to the complainant, he availed each opportunity to pay the lease money to the opposite party in time but the opposite party did not accept the same on the plea that the site stood cancelled. THE period between the cancellation order and the issue of occupation order should not have been taken for charging of interest when the cases were pending in various Fora. It was further alleged that the time limit is automatically extended. THE complainant, it was alleged, was helpless and debarred to pay

lease money by the opposite party by returning the Bank Drafts on accessions more than one. THE opposite party invoked harsh and extreme remedies by passing cancellation order ex parte of the site which was not warranted when the fine would have served the purpose for rectifying the violations pointed out in the aforesaid order/notice. THE complainant accordingly prayed that the opposite party be directed to refund the amount of Rs. 25,547/- together with interest @ 20% per annum from 29.7.1997 i.e. the date of deposit of the amount till its payment. Further direction was prayed about payment of 20% interest on the amount of Rs. 15,525/- w.e.f. 7.8.1991 to 30.1.1992, the date up to which the Bank Draft of this amount remained with the opposite party; to compensate the loss of interest by the complainant. A further direction to pay interest @ 20% on a sum of Rs. 3,105/- from 4.1.1994 to 10.6.1997 when the money remained with the opposite party had been made. It was also prayed that interest @ 20% be directed to be paid on a sum of Rs. 23,295/- for the period from 24.10.1996 to 10.6.1997 when the money remained with the opposite party to the complainant who incurred loss by way of Bank interest. A further direction was prayed that lease money paid by the complainant for the period from 28.10.1993 to 1.9.1997 during which the plot stood cancelled be also refunded. THE complainant prayed for compensation for harassment and mental agony and also prayed for the costs of litigation. The opposite party filed written statement through Shri S.K. Sharma, H.C.S., Assistant Estate Officer exercising the powers of Estate Officer, U.T., Chandigarh. In the written statement, preliminary objections were taken regarding the complaint being not maintainable under the C.P. Act, 1986 as the complainant was not a consumer under the definition of terms "consumer" as contained in the C.P. Act and the opposite party are not the provider of services to the complainant. The plot was sold at an auction to the complainant and the same was under contract under the Chandigarh Lease Hold of Sites and Building Rules, 1973 [for short hereinafter referred to as the Rules, 1973]. On merits, it was stated that the cancellation order was sent to the complainant on 28.12.1983 which was not received back undelivered in the office of S.D.O. (Buildings). It was not disputed that the amounts deposited by the complainant were returned on the basis of the report from S.D.O. (Buildings) with the remarks that the violations in the building constructed by the complainant had not been set right and as such the order of the Estate Officer became operative. It was further contended that the complainant made a request for acceptance of the drafts with the averment that all the violations had been set right and the orders of the Chief Administrator had been duly complied with. A report from S.D.O. (Buildings) was again called which revealed that some typographical mistake had occurred in the earlier report and it was clarified that the orders of the Chief Administrator have been complied with by the complainant. It was alleged that apparently earlier non acceptance of the demand draft was only for the reason that the office had relied upon the report of the S.D.O. (Buildings) dated 4.4.1994 wherein certain typographical mistakes occurred and the amount was returned to the complainant. The opposite party defended the demand of interest from the complainant on the ground that the

lessee is liable to pay the interest till contemplation of Rule 6 and Rule 12 Sub-rules (3), (3A) of the Rules, 1973. The cancellation order was made on the fault of the complainant and, therefore, the opposite party could not be made to loose the amount of interest for the breach of the terms and conditions committed by the complainant. It was alleged that the complainant was required to pay interest and ground rent for the cancellation period as per the agreed terms and conditions of allotment. The Estate Officer could not be made liable to suffer the loss of interest for the fault of the complainant. Lastly, it was contended that the site of the complainant was cancelled for the breach committed by him for the construction of the site and also he is liable to pay the amount of interest and ground rent till the date of deposit of the amount and acceptance thereof by the Estate Officer for the period of cancellation under the C.P. Act. The averments made in the preliminary objections were denied. The averments made in the written statement, in denial of the complainant's case were denied and the averments made in the complaint were reiterated. The appellant/complainant filed his affidavit in the evidence along with annexures. On behalf of the opposite party, affidavit was filed by Shri S.K. Sharma aforesaid.

The District Forum-II held that the complaint was not maintainable under the C.P. Act. On merits, it was held that the complaint was meritless. Consequently, the complaint was dismissed. The parties were, however, ordered to bear costs of litigation relating to the complaint case.

3. THE complainant Shri Ajit Singh Sodhi felt aggrieved by the impugned order of the District Forum-II and he has filed this appeal. Notice of this appeal was served on the respondent who put in appearance through Mr. K.C. Sahu, Govt. Pleader. Record of the complaint case was summoned from the District Forum-II. We have perused the record of the complaint case and heard the learned Counsel for the appellant Mr. B.J. Singh, Advocate and the learned Govt. Pleader Mr. K.C. Sahu appearing for the opposite party. We have also carefully perused the impugned order of the District Forum-II. The District Forum has upheld the preliminary objection raised by the respondent/opposite party about the non-maintainability of the complaint under the provisions of the C.P. Act. The District Forum-II while recording the finding regarding the non-maintainability of the complaint placed reliance on the decision of the Hon''ble National Consumer Disputes Redressal Commission in the case of Shiela Construction Pvt. Ltd. v. Nainital Lake Development Authority & Anr., III (1996) CPJ 11 (NC)=1997 (1) CON.LT 330. The District Forum further referred to the decision of the Hon''ble National Consumer Commission in another case reported in Tamil Nadu Housing Board v. R. Sivasubramaniayan, III (1998) CPJ 39 (NC)=1999 (1) CON.LT 16. The District Forum-II observed that in both the authorities, the Hon''ble National Consumer Commission had held that the Consumer Fora could not grant any relief in matters where the transaction had arisen out of auction sale, which amounted to outright sale of immovable property and there was no arrangement of hiring of service for consideration between the parties. Reference was made to the judgment of the Punjab State Consumer Disputes Redressal Commission in

the case of State of Punjab v. Kasturi Lal, I (1999) CPJ 436=1999 (2) CON.LT 437, wherein the Punjab State Consumer Commission relied on the judgment of the Hon''ble National Consumer Commission in the case of Allied (Garments) Export Industries Pvt. Ltd. v. D.D.A., 1986-95 Consumer 152 (NS), and it was held by the Punjab State Consumer Commission that it could be said that in the cases of auction of S.C.F., the complainant had hired the services of opposite party by payment of th of the auction money and thereafter allege deficiency in rendering service. At the most it could be a case of breach of contract enabling the complainants to approach the Civil Court.

4. THE Hon''ble National Consumer Commission decided the Original Petition No. 45 of 1990 filed by Allied (Garments) Exports Industries Pvt. Ltd. against DDA on 11.7.1990, referred to above and held, inter alia, as under : "This is a case where the petitioner purchased in auction a commercial plot which was put to auction by the Delhi Development Authority. Though the petitioner is justified in putting forward the grievance that the Delhi Development Authority after accepting the bid amount in full has failed to give him the delivery of possession of the plot since some other persons encroached the plot, we do not find it possible to grant any relief to him since the transaction was not one of allotment of plots as part of a scheme for providing housing facilities to the public but one of straight sale of immovable property at an auction..." This authority has been relied on by the District Forum-II in the impugned order. It may be pointed out that the aforesaid case of Allied (Garments) Exports Industries Pvt. Ltd. (supra), was not considered in the case of Shiela Constructions Pvt. Ltd. (supra), which was decided on 21.6.1996. The District Forum-II referred to the two judgments of this Commission (U.T., State Consumer Commission) in the cases of Mohan Singh & Ors. v. Chandigarh Administration & Ors., I (2000) CPJ 428, and Complaint Case Nos. 95 to 100 all of 1999, Narain Dass Budhi Raja v. Chandigarh Administration & Anr., decided on 28.5.1999 and 22.12.2000 respectively. The District Forum-II did not rely on these two judgments on the ground that this Commission had not referred to the judgments of the Hon''ble National Consumer Commission, which had been cited by the District Forum-II in the earlier part of the impugned order. The District Forum-II was of the view that the view of the Hon''ble National Consumer Commission has to prevail and as such the judgments of this Commission which were relied on by the learned Counsel for the complainant were of no help to him. The District Forum further repelled the submission made on behalf of the complainant that in the instant case, the lease hold rights were sold and this fact distinguished the instant case from the facts involved in the cases decided by the Hon''ble National Consumer Commission referred to above. The District Forum-II specifically made reference to the decision of the Hon''ble National Consumer Commission reported in the case of Ashok Tayal & Anr. v. Delhi Development Authority & Ors., II (1995) CPJ 3 (NC)=1996 (1) CPC 114, wherein the Hon''ble National Consumer Commission held that the cases involving perpetual lease were not cognizable by the Consumer Disputes Redressal Agencies under the provisions of the C.P. Act. The

consistent view expressed by the Hon''ble National Consumer Commission as expressed in the aforesaid cases reported in Shiela Construction Pvt. Ltd. (supra), Tamil Nadu Housing Board (supra), Allied (Garments) Export Industries Pvt. Ltd. (supra), Ashok Tayal & Anr. (supra), is that where the complainants purchased the plots in an auction sale, there was no hiring of service of the Development Authorities and the complaints filed under the C.P. Act were not maintainable. In the instant case, the complainant Shri Ajit Sodhi purchased a lease hold rights in the land at an auction sale. The District Forum-II while placing reliance on the law laid down by the Hon''ble National Commission held that the complainant did not hire the services of the opposite party and as such the complaint was not maintainable under the provisions of the C.P. Act. Mr. B.J. Singh, Advocate learned Counsel for the appellant/complainant vehemently argued that the District Forum-II did not rely on the decision rendered by this State Commission in two cases referred by him namely Mohan Singh & Ors. v. Chandigarh Administration & Ors. (supra), and Complaint Case Nos. 95 to 100 all of 1999 - Narain Dass Budhi Raja v. Chandigarh Administration & Anr., decided on 28.5.1999 and 22.12.2000 respectively. Mr. B.J. Singh, Advocate contended that the District Forum-II working in the Union Territory of Chandigarh was bound to follow the decisions rendered in the aforesaid cases by the State Commission, U.T., Chandigarh. We have carefully gone through the two judgments relied by the learned Counsel for the complainant i.e. Mohan Singh & Ors. (supra), and Narain Dass Budhi Raja (supra), and we find that in both the cases, the judgments rendered by the Hon''ble National Consumer Commission in the case of Shiela Construction Pvt. Ltd. (supra), Tamil Nadu Housing Board (supra) and Allied (Garments) Export Industries Pvt. Ltd. (supra), were not taken into consideration and referred in the judgments. It may be mentioned that once the Hon''ble National Consumer Commission has expressed its view regarding position of law, the same is binding on all the State Commissions and the District Fora working under the respective State Commissions. In view of the law settled by the Hon''ble National Consumer Commission, a complaint filed in respect of a plot of land purchased at an auction sale being an outright sale, would not be maintainable as there was no hiring of service of the concerned development authority. In this view of the matter, the District Forum-II was right in holding that the complaint filed by the appellant under the provisions of the C.P. Act was not maintainable. Consequently we uphold the finding of the District Forum that the complaint under the C.P. Act is not maintainable.

5. THE District Forum-II also considered the complaint on merit of the averments made therein. THE plea of the complainant that he was not liable to pay ground rent for the period the plot remained under cancellation was considered and the said plea was not accepted. It was held by District Forum-II that in spite of the cancellation order regarding the plot purchased at the auction sale, the complainant continued to occupy the site wherein he raised construction in house and was living there. THE District Forum-II held that the penalty of a sum of Rs. 3,105/- imposed by the Lok Adalat which restored the site of the complainant

has to be taken into consideration in entirety and not partly. THE District Forum-II found that the complainant accepted the order of the Lok Adalat restoring the site to him on payment of the penalty but he questioned the order of the Lok Adalat, which went against him. THE District Forum-II repelled such a contention.

6. AT this stage, we may mention that once the District Forum-II found that the complaint was not maintainable under the provisions of the C.P. Act, the merit of the complaint case should not have been examined by the District Forum-II and that too only partly. Any opinion expressed by the District Forum-II on the merit of the allegations of the complaint may prejudice the case of the complainant, in case the complainant filed an appropriate action in a Civil Court of competent jurisdiction. Apart from it, Mr. B.J. Singh, Advocate, learned Counsel for the appellant/complainant pointed out that the complainant had prayed for relief under eight items as mentioned in the relief clause. The grievance of the learned Counsel for the appellant/complainant was that the District Forum chose to pick up only part of the reliefs relating to the liability to pay ground rent and about the order of the Lok Adalat but the District Forum-II did not address itself and decide the other reliefs claimed by the appellant/complainant. In the earlier part of our order, we have referred to in detail all the reliefs claimed by the appellant/complainant. These reliefs are dependent on the merit of the case and can appropriately be considered by a Civil Court of competent jurisdiction, in case the appellant decides to file a civil suit in respect of these reliefs. In view of the foregoing discussion, the findings of the District Forum-II, U.T., Chandigarh on merit, on the point dealt with by it shall, therefore, be not considered as binding on the Civil Court where a civil suit may eventually be filed. The District Forum-II, U.T., Chandigarh has rightly dismissed the complaint on the ground of non-maintainability under the C.P. Act. The appeal fails and is dismissed with no orders as to costs. Copies of this judgment be supplied to the parties free of charges. Appeal dismissed.