

(1997) 01 NCDRC CK 0042

In the National Consumer Disputes Redressal Commission

A.Manoharan

APPELLANT

Vs

TIRUNAGAR CO-OP. HOUSE CONSTRUCTION SOCIETY LTD.

RESPONDENT

Date of Decision : 22-01-1997

Acts Referred:

Citation : 1997 2 CPC 9 : 1997 2 CPJ 55

Hon'ble Judges : E.J.Bellie , Pulavar V.S.Kandasamy , Angel Arulraj J.

Final Decision : Appeal dismissed

Judgement

1. THE unsuccessful complainant is the appellant. THE complainant is a member of the 1st opposite party Cooperative Housing Construction Society Limited, Tirunagar. THE 2nd opposite party is the Special Officer of the said Cooperative Society. THE case of the complainant is that he joined as a member of the Society by paying the subscription fee for the purpose of getting a house site allotted by the Society from out of the lands acquired by the Society for distribution to its members. Even though he was the senior member, the Society has allotted house sites to junior members and his application for allotment of house site has not been given effect to at all. It is further alleged that there are certain procedures laid down in the by-laws of the Society to follow - some of them being regarding distribution of house sites. THE Society has violated the rules and it has ignored the application of the complainant. THEREfore, the opposite parties are guilty of deficiency in service. On these allegations the complaint has been filed for directing the opposite parties to allot a house site to the complainant and to award compensation.

2. THE opposite parties contended inter-alia that the Society is functioning without any profit motive and the complainant being a member of the same, he cannot maintain a complaint against the opposite parties. And it is not true that the complainant has made any application for allotment of house site, and therefore, on this ground also the complaint is not maintainable. The District Forum, on consideration of the pleadings and evidence, came to the conclusion that the case of the opposite parties that there was no application by the

complainant for allotment of house site is true and as such it cannot be pleaded that there was deficiency in service on the part of the opposite parties. On this finding, the case of the complainant has been rejected.

Now in the appeal, after hearing both sides, we find that the said finding of the District Forum is quite correct and we find nothing to disturb it. No application alleged by the complainant has been sent to the opposite parties nor any copy of the alleged application has been filed by the complainant. However, it is contended that Ex. B 1 which is the House Sites Applications Register and which has been filed by the opposite parties shows that the last entry at page 171 indicates that there was an application by the complainant. But on perusal of the order of the District Forum we find that no reference to this entry has been made in it and this makes us to think that this entry has not been brought to the notice of the District Forum. When this entry is compared with all other entries, it clearly appears that this one entry has been made in quite a different way from the manner in which the other entries have been made; while all other entries have been made by one person who perhaps was the person who was to maintain the said Register, this particular entry has been made by a different person; the ink also between this entry and the other entries differs. Quite possibly this entry has been forged and it has not been made by opposite parties. In these circumstances, we are of the view that the finding of the District Forum that there was no application made by the complainant must be taken to be true. Thus there is no merit in the appeal. Further, we are of the view that the Society in question being registered one and the complainant being a member thereof, the dispute should have been referred to the Registrar of Cooperative Societies. Recently in some of similar matters - for instance in *S. Kalyanasundaram v. The Special Officer, Thanjavur Co-op. Housing Society Ltd. & Anr.* (AP 228/96 decided on 6.1.97) - we have Held so. For this reason also the complaint cannot be maintained.

3. IN the result, therefore, the appeal is dismissed. However, there will be no order as to costs. Appeal dismissed. _____