(2002) 04 NCDRC CK 0014

In the National Consumer Disputes Redressal Commission

ARCHANA SINGH	APPELLANT
Vs	
Greater Noida Industrial Development Authority	RESPONDENT

Date of Decision : 02-04-2002

Acts Referred:

Citation : 2003 1 CLT 449 : 2003 1 CPJ 34

Hon'ble Judges : C.M.Nayar , Moksh Mahajan J.

Final Decision : Application disposed of

Judgement

1. THIS application has been filed under Sections 10(a)(i) and 36D of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as the Act). The brief facts of the case are that a plot No. M-24 measuring 450 sq. mtrs. under DELTA Scheme Greater Noida was allotted in the name of Mrs. Renu Ravi Khanna, w/o Mr. Ravi K. Khanna, r/o E-14, Neelkanth Ram Chander Lane Extension, Malad West, Mumbai-400 064 vide Allotment No. D-01-35123 dated 24th February, 1995. A copy of the Allotment Letter is annexed to the complaint. The above said Mrs. Renu Ravi Khanna agreed to sell the above plot to the complainant vide agreement to sell dated June 28, 1997. Thereafter she applied for transfer of the plot in the complainant''s name on 3rd July, 1997. As per prevailing scheme at that time the transfer charges to the tune of Rs. 4,500/- were required to be deposited, calculated @ 10/- per sq. mtr. The amount was deposited on 30.6.1997 with the Oriental Bank of Commerce, Noida. The bank draft of Rs. 4,500/-, application for transfer, indemnity bond and consent letter of the transferor of the plot were submitted in the office of the respondent on 3rd July, 1997. The complainant received a letter dated 18th November, 1997 on 21st November, 1997 in which she was required to submit an affidavit on non-judicial stamp paper declaring that she has no other residential plot in the Greater Noida and in case the averment is wrong the transfer will be cancelled. The complainant submitted the said affidavit on 24th November, 1997 and was awaiting the transfer of the plot in her name as she had completed all the requisite formalities as required by the respondent. However to the surprise of the complainant, the respondent sent a letter dated 4th July, 1998 addressed to

Mrs. Renu Ravi Khanna, the original allottee demanding further transfer charges of Rs. 40,500/- calculated at the rate of Rs. 100/- per sq. mtr. The complainant sent repeated communications to the respondent including legal notice dated 15th February, 1999 wherein it was reiterated that the demand for further transfer charges of Rs. 40,500/- was illegal as the rise in the transfer charges was only effected subsequent to the date of the application of the complainant.

2. WE have heard learned Counsel for the parties. The short question which arises for consideration is as to whether the Office Order dated 17th June, 1998 enhancing the transfer charges from Rs. 10/- per sq. mtr. to Rs. 100/- per sq. mtr. could be levied in the case of the complainant as she had paid the charges initially demanded and complied with all the formalities prior to the Office Order dated 17th June, 1998. The Office Order dated 17th June, 1998 may be referred to as below : "As per the proposal approved in the 27th Board Meeting of the Authority on 6.6.1998, for the transfer of plots of less than 150 sq. mtrs. in area, Rs. 50/- per sq. mtr. and for plots greater in size, Rs. 100/- per sq. mtr. transfer charges will be leviable. In case the lease deed of the plot has been executed, then only Rs. 50/- per sq. mtr. transfer charges would be leviable on plots of all sizes. The concerned person will have to deposit the transfer charges as applicable on the date of the transfer i.e. on the plots transferred after 5.6.1998, new rates of transfer charges would be payable."

Learned Counsel for the respondent has not been able to give any implicit explanation as to why registration of the plot in favour of the complainant was not effected when she had admittedly complied with all the formalities. After issuance of the Office Order dated 17th June, 1998 a further communication was sent to the complainant dated 4th July, 1998 asking for payment of additional amount of Rs. 40,500/- at the revised rate as stated in the above Office Order. The learned Counsel for the complainant has argued that the formalities having been completed prior to the issuance of an Office Order enhancing the transfer charges, the complainant was entitled for transfer on the amount as already paid and accepted by the respondent. The learned Counsel for the respondent has argued that it was within the legal right of the respondent to enhance the transfer duty by issuance of an Office Order dated 17.6.1998 and placed reliance on the judgment of the Supreme Court reported as 1981 (2) SCR 742, in the matter of State of Tamil Nadu v. Hind Stone Etc. This judgment related to the interpretation of Rule 8-C and Rule 9 of the Mines and Minerals (Regulation and Development) Act, 1957 for renewal of leases. The question for consideration was as to whether it was not open to the Government to keep applications for the grant of leases and applications for renewal pending for a long time and then to reject them on the basis of Rule 8C notwithstanding the fact that the applications have been made long prior to the date on which Rule 8C came into force. We may refer to the following paragraph : "The next question for consideration is whether Rule 8C is attracted when applications for renewal of leases are dealt with. The argument was that Rule 9 itself laid down the criteria for grant of renewal of leases and, therefore, Rule 8C should be confined, in its application, to grant of leases in the first instance. We are unable to see the force of the submission. Rule 9 makes it clear that a renewal is not to be obtained automatically, for the mere asking. The applicant for the renewal has, particularly, to satisfy the Government that the renewal is in the interest of mineral development and that the lease amount is reasonable in the circumstances of the case. These conditions have to be fulfilled in addition to whatever criteria is applicable at the time of the grant of lease in the first instance, suitably adapted, of course, to grant of renewal. Not to apply the criteria applicable in the first instance may lead to absurd results. If as a result of experience gained after watching the performance of private entrepreneurs in the mining of minor minerals it is decided to stop grant of leases in the private sector in the interest of conservation of the particular mineral resource, attainment of the object sought will be frustrated if renewal is to be granted to private entrepreneurs without regard to be changed outlook. In fact, some of the applicants for renewal of leases may themselves be the persons who are responsible for the changed outlook. To renew leases in favour of such persons would make the making of Rule 8C a mere exercise in futility it must be remembered that an application for the renewal of a lease is, in essence an application for the grant of a lease for a fresh period. We are, therefore, of the view that Rule 8C is attracted in considering applications for renewal of leases also. Another submission of the learned Counsel in connection with the consideration of applications for renewal was that applications made sixty days or more before the date of G.O.Ms. No. 1312 (2.12.1977) should be dealt with as if Rule 8C had not come into force. It was also contended that even applications for grant of leases made long before that date of G.O.Ms. No. 1312 should be dealt with as if Rule 8C had not come into force. The submission was that it was not open to the Government to keep applications for the grant of leases and applications for renewal pending for a long time and then to reject them on the basis of Rule 8C notwithstanding the fact that the applications had been made long prior to the date on which Rule 8C came into force. While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. None has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant of renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application. We are, therefore, unable to accept the submission of the learned Counsel that applications for the grant of renewal of leases made long prior to the date of G.O.Ms. No. 1312 should be dealt with as if Rule 8C did not exist."

The law as laid down in the above said judgment cannot have any obligations to the facts of the present case where the complainant paid the entire money as demanded by the respondent and was awaiting the transfer to be affected in her favour. Subsequently, she was asked to pay a further charge on the basis of the Office Order issued on 17th June, 1998. It is also not in dispute that the respondent did not communicate with the complainant prior to that date. By manipulating the conditions of delivery and price, the respondent has imposed unjustified cost on the complainant in terms of subsequent demands raised on the complainant which tantamounts to restrictive trade practice. In this view of the matter we have no hesitation to hold that the Office Order issued on 17th June, 1998 will not apply to the case of the complainant as she had complied with all the requisite formalities which were required by the respondent for affecting transfer and she is entitled for transfer on the amount as already paid and accepted by the respondent. Application disposed of.