

**(1998) 10 MAD CK 0094**  
**In the Madras High Court**

|                                                           |            |
|-----------------------------------------------------------|------------|
| C.B.S. Property Development (P) Limited and Another       | APPELLANT  |
| Vs                                                        |            |
| The District Consumer Disputes Redressal Forum and Others | RESPONDENT |

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**Date of Decision :** 29-10-1998

**Acts Referred:**

**Citation :** (1999) 1 MLJ 312

**Hon'ble Judges :** S.S. Subramani, J

**Bench :** Division Bench

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## **Judgement**

S.S. Subramani, J.—This revision is filed under Article 227 of Constitution of India by the respondents in Complaint No. 146 of 1998 on the file of District Consumer Disputes Redressal Forum, Coimbatore.

2. It is the case of the respondents that the petitioners herein are builders. Complainants purchased constructed flats from the opposite parties in 50 cents of land in Ward No. 1, Block No. 29 in T.S. No. 1349 Trichy Road, Coimbatore. It is the further case that all the flats that are constructed by the petitioners herein are residential apartments and not to be used for commercial purpose. Complainants have purchased the undivided 1/24th shares in the entire 50 cents of land and all the complainants have occupied the respective flats in the month of July, 1996.

3. While so, they found out shortfall in the area of land recorded in their agreement and the sale deed. Petitioners herein ought to have registered the sale deeds for the extent of land as per the agreement, but they have arbitrarily executed the sale deed without notice to the above four complainants, resulting in shortfall in the land. It is their further case that with regard to first complainant, agreement was to sell 1060 sq.ft. of undivided land but only 1000 sq.ft. was conveyed, leaving 60 sq.ft. short, Likewise, second complainant had agreed to purchase 868 sq.ft. and agreement also executed for the same, but actually agreement was executed only for 820 sq.ft. With regard to third complainant, the agreement was to sell 1035 sq.ft. but he was given ownership only for 975 sq.ft. As far as 7th complainant is concerned, agreement was to sell

715 sq.ft. but actual sale was only 675 sq.ft. According to the complainants, these deficiencies are caused by the petitioners herein.

4, At that time, it was found that petitioners herein have obtained a revised approval plan from Coimbatore Municipal Corporation after a lapse of 14 months from the original plan that was obtained on 20.12.1993. It is said that all the 24 flats had been sold to the individual or institutional purchases. As per the approved plan of Coimbatore Municipal Corporation dated 20.12.1993, the basement floor is meant and earmarked exclusively for car-parking, office room recreation hall and other amenities. As per the original plan and agreement, petitioners are bound to earmark the basement area exclusively for carparking, office room, recreation hall and for other amenities, and petitioners cannot have any right to make use of any portion in the entire 50 cents of land or in the basement area after the construction was over and possession was given to the individual flat owners against full payment. Petitioners also cannot remain in the basement area nor run their office or store building materials in this area meant for car-parking.

5. It is said that the petitioners have converted the basement area into their office room, computer room, store room, dining hall and parking area for their use and the use of their staff. It is against the original agreement entered into between the parties and representations were made to the petitioners by the individual flat owners. It is also said that under Tamil Nadu Apartment Ownership Act, 1994, the common areas and facilities shall remain undivided and no apartment owner or any other person shall bring any action for partition or division of any part thereof and any covenant to the contrary shall be null and void and that the common areas and facilities in accordance with the purpose for which they are intended without hindering or encroaching upon the lawful rights of the other apartment owners. Petitioners have grossly committed serious infringement of the provisions of law and the same amounts to unfair Trade Practice. It is under these circumstances respondent herein filed a complaint before the District Consumer Disputes Redressal Forum to remove and vacate the office and other rooms put up by the opposite parties in the basement area which belongs to them with all their materials kept therein and to pay compensation of a sum of Rs. 4,50,000 for damages and mental agony and for other reliefs.

6. When complaint was entertained by the District Consumer Disputes Redressal Forum, and notice was also issued to the petitioners herein, the entertainment of complaint by the District Consumer Disputes Redressal Forum is challenged in this revision on the ground that such an application is not maintainable. It is their case that the relief sought for is recovery of possession of property and petitioners are also part owners. A suit with regard to immovable property is not maintainable before the Consumer Disputes Redressal Forum and the allegation in the petition do not show that there is any service to be rendered by the petitioners and it is also not their case of deficiency of service. Since petitioners

are in possession of immovable properties and the same is sought to be recovered that can only be by a civil suit and not before the Consumer Disputes Redressal Forum.

7. Respondents-complainants entered appearance and filed detailed counter affidavit explaining the circumstances under which they had to file the complaint. As stated earlier, the counter narrates in short the allegations in the complaint. It is their case that the builder has made false and misleading representations and when they had made an agreement agreeing to convey the property, they cannot retain by themselves portion of the same for their own benefits. It is also their case, subsequent variation in the plan was not brought to their notice and sale deed was executed not for the area agreed to be Sold but for lesser area on the basis of revised plan. This according to them is deficiency in service and not a claim or dispute over immovable property.

8. Regarding the interpretation to the Consumer Protection Act, in the recent decision of Honourable Supreme Court, it is held that it should receive a liberal construction. In *Spring Meadows Hospital and Another Vs. Harjol Ahluwalia through K.S. Ahluwalia and Another*, , in paragraph 8, it is held thus:

. .The Consumer Protection Act confers jurisdiction on the Commissioner in respect of matters where either there is defect in goods or there is deficiency in service or there has been an unfair and restrictive trade practice or in the matter of charging of excessive price. The Act being a beneficial legislation intended to confer some speedier remedy on a consumer from being exploited by unscrupulous traders, the provisions thereof should receive a liberal construction.

9. In *Lucknow Development Authority Vs. M.K. Gupta*, , their Lordships of the Supreme Court have considered the relationship of the builder and the purchaser in detail and their Lordships held that really the builders are doing service and an application before the District Consumer Disputes Forum is maintainable. In paragraph 6 of the judgment at 256, it is held thus,

...If the service is defective or it is not what was represented then it would be unfair trade practice as defined in the Act. Any defect in construction activity would be denial of comfort and service to a consumer. When possession of property is not delivered within stipulated period the delay so caused is denial of service. Such disputes or claims are not in respect of immovable property as argued but deficiency in rendering of service of particular standard, quality or grade. Such deficiencies or omissions are defined in Sub-clause (ii) of Clause (r) of Section 2 as unfair trade practice....

10. From the above decision, it is clear that if the purchaser is not getting what it was represented by the builder, it would amount to unfair trade practice and their Lordships further held that if possession of the property is delivered within stipulated period, the delay so caused is denial of service and such claims are not claims in respect of immovable property. According to me, the same principle applies to the facts of this case also. What the petitioners allege is that what was

agreed was for larger area that all the 24 flat owners will be the absolute owners of entire 50 Cents of lands with superstructure. Now the builder has withdrawn from that and he has retained a portion of that land for himself. If he has not performed his part or has not acted on his representation that will amount to denial of service. Such claim will not amount to a claim of immovable property, and their Lordships further held in last portion of paragraph 6 of the above judgment thus,

... A person who applies for allotment of a building site or for a flat constructed by the development authority or enters into an agreement with a builder or a contractor is a potential user and nature of transaction is covered in the expression service of any description", It further indicates that the definition is not exhaustive. The inclusive clause succeeded in widening its scope but not exhausting the services which could be covered in earlier part. So any service except when it is free of charge or under a constraint of personal service is included in it. Since housing activity is a service it was covered in the clause as it stood before 1993.

11. According to me the question of jurisdiction also will have to be decided only by the Forum where the complaint is filed. Even before moving that court to decide the case, petitioners have come to this Court.

12. In *Laxmi Engineering Works Vs. P.S.G. Industrial Institute*, , paragraph 13, their Lordships held thus,

By virtue of Section 18 the procedure prescribed in Section 13 applies to State Commission as well. From the above provisions, it is clear that the orders of the District Forum, State Commission and National Commission are final as declared in Section 24 and cannot be questioned in a civil court. The issues decided by the said authorities under the Act cannot be re-agitated in a civil court. The said provisions make it equally clear that the forums created by the Act fall in the second category of tribunals mentioned in *R. v. Commissioner for Special Purpose of the Income Tax* - Which decision has been repeatedly affirmed and applied by this Court which means that the Forums/ Commissions under the Act have jurisdiction to determine whether the complainant before them is a "consumer" and whether he has made out grounds for grant of relief. Even if the Forum/Commission decides the said questions wrongly, their orders made following the procedure prescribed in Sub-sections. (1) and (2) of Section 13 cannot be questioned in a Civil court - except of course, in situations pointed out in *Dhulabhai v. State of M.P.* They can and must be questioned only in the manner provided by the Act.

13. When the question of jurisdiction is involved, the authorities are to consider the allegation in the complaint and the defence taken. *Primg facie* the District Consumer Dispute Redressal Forum has jurisdiction to deal with the case and the dismissal at the threshold as requested by the learned Counsel for the petitioner cannot be accepted. If ultimately Consumer Disputes Redressal Forum decides

that it has got jurisdiction and also holds that the respondents herein are consumers and there is deficiency of service, the petitioners will have to challenge the same as provided under that statute. I do not find that there is inherent lack of jurisdiction as was contended by the learned Counsel, for the petitioners.

14. In the result, the revision petition is dismissed. I make it clear that I have only considered the prima facie view and the question whether respondents are consumers or whether there is deficiency of service and what relief if any respondents are entitled to including the question of its own jurisdiction will have to be decided by the District Consumer Disputes Redressal Forum when the complaint is being finally disposed of.

15. The Civil Revision Petition is dismissed as above. No costs. Consequently, C.M.P. No. 10769 of 1998 is closed.