

(1996) 02 NCDRC CK 0013

In the National Consumer Disputes Redressal Commission

CHAIRMAN, TAMIL NADU HOUSING BOARD

APPELLANT

Vs

N.SIVASAILAM

RESPONDENT

Date of Decision : 29-02-1996

Acts Referred:

Citation : 1996 0 NCDRC 91 : 1996 1 CPJ 321 : 1996 2 CPC 337 : 1996 2 CPR 114 : 1997 1 CLT 134

Hon'ble Judges : V.BALAKRISHNA ERADI , B.S.YADAV , R.THAMARAJAKSHI J.

Advocate : ARUNA MATHUR , MARIARPUTHATN , K.B.S.RAJAN

Judgement

1. THE present Revision Petitioners, the Chairman, Tamil Nadu Housing Board, Madras and the Executive Engineer and Administrative Officer, Madurai Housing Unit, Madurai have filed this Revision Petition against the order dated 7th April, 1994 passed by the State Consumer Disputes Redressal Commission, Tamil Nadu (For short the State Commission) in A.P. No. 642 of 1993. It may be mentioned here that the present Revision Petitioners were opposite parties in the complaint filed before the District Forum by the present respondent, N. Sivasailam. The District Forum, Madurai allowed the complaint and directed the opposite parties to pay to the complainant Rs. 18,700/- towards cost of repairs effected by the complainant in the house allotted to him plus Rs. 1,000/- towards mental agony totalling Rs. 19,700/- and Rs. 500/- was also allowed as cost of the complaint. Feeling aggrieved against the order the present Revision Petitioners filed appeal before the State Commission which was dismissed. Hence, this Revision Petition by the opposite parties.

2. THE facts of the case are that the complainant had applied for a house on 18.9.73 in response to an advertisement of the Tamil Nadu Housing Board. He was allotted house No. 328, MIG Colony, Anna Nagar, Madurai in 1976. The complainant was in Government Service at that time and, therefore, he let out the house. After his retirement he occupied the house on 30.4.87. When he occupied the house he noticed some major cracks in the main southern wall of the house which according to the complainant were due to defective design and

construction and presumably due to use of sub standard building material in the construction of the house. He sent a letter dated 4.5.87 to the Executive Engineer and Administrative Officer (opposite party No. 2) demanding the rectification of the defects in the house. On 19.5.87 one Mr. Durairaj, Assistant Engineer of the Housing Board inspected the house and estimated the cost of rectification of defects at Rs. 18,700/-. He has taken into account some other defects. The complainant took photos of the house and sent to the Executive Engineer and Administrative Officer requesting him to start the repair work. The complainant estimated the cost at Rs. 20,000/- and wrote a letter dated 17.6.87 to the opposite party No. 2 to effect the repairs. The final permission was granted to the complainant on 14.3.88. He was told that the repairs can be effected upto the tune of Rs. 5,000/-. The complainant effected the repairs but according to him he spent Rs. 20,000/-. The complainant wrote many letters to the II nd opposite party to pay the cost of repairs. However, vide letter dated 1.10.92 he was informed that it was not feasible for them to pay the cost of the repairs since the Sale Deed has already been executed in his favour on 15.4.88. The complainant filed the complaint in the District Forum praying for a direction to the opposite parties to pay Rs. 20,000/- towards the cost of repairs with interest @ 18% p.a. plus Rs. 5,000/- towards mental agony. The IInd opposite party filed counter which was adopted by the 1st opposite party. In the said counter all the contentions of the complainant were denied. It is contended by the opposite party that the possession of the house was handed over to the complainant on 13.12.76 and thus the cost for the repair undertaken on 24.12.88 cannot be asked to be paid due to time bar. The complainant was allowed to effect the repairs to his house subject to the condition that a maximum contribution of Rs. 5,000/- will be released subject to the sanction by the Competent Authorities. However vide letter dated 1.12.92 the higher officials refused to sanction the payment towards the cost of the repairs done by the complainant since the Sale Deed has been executed in his favour son 15.4.88. After carefully going through the evidence, the District Forum allowed the complaint and granted the reliefs noticed above to the complainant. The appeal filed by the opposite party before the State Commission met with no success. Hence, this Revision Petition.

3. THE main points stated by the Revision Petitioners are that the complaint was time barred and that the complainant was allowed to effect repairs only to the tune of Rs. 5,000/- as per the letter dated 14.7.88 and as the repairs were carried out by the respondent on the basis of the said permission he cannot go beyond the conditional permission and claim more than the permitted amount. We may take the grounds in seriatim.

4. THE house was allotted to the complainant in 1976 and he occupied the house in April, 1987. At that time he noticed that in the southern wall of the house there were major cracks on account of defective design and construction and use of sub-standard building material. The complainant wrote to the respondent and vide letter dated 14.3.88 he was allowed to do special repair works to his house

subject to the condition that a maximum contribution of Rs. 5000/- will be released. We are not able to understand why this amount was limited when the Assistant Engineer of the Department had assessed the cost of repairs at Rs. 18,700/-. The complainant effected the repairs and reported to the Executive Engineer on 24.12.88. The complainant wrote some letters to the Executive Engineer for estimating cost of repairs. On 23.3.90 and 3.6.91 the complainant received interim replies. The letter dated 23.3.90 from Executive Engineer and Administrative Officer is as follows : "The Special repair estimate to MIG House No. 328 at A.A. Nagar has been submitted to the Board and awaiting for approval. After approval of the same, the contribution amount will be released."

The letter dated 3.6.91 reads as follows : "The estimate for repair works for 328 M.I.G. House at A.A. Nagar is yet to be approved by the Board. After receipt of the Estimate, the contribution amount will be paid and intimated to you."

These letters kept the complainant in suspense. The reimbursement was refused vide letter dated 1.10.92 which reads as follows : "With reference to your letter I am to inform that the contribution amount could not be paid to you since sale deed of building was issued on 15.4.88 itself."

We are not able to understand why the cost of repairs has been refused by the Housing Board on the ground that the Sale Deed has been executed in his favour on 15.4.88. Long before the execution of the Sale Deed the complainant had informed the Housing Board about the major cracks in the main southern wall and Department had appointed its Assistant Engineer to prepare the estimate of the repairs on 19.5.87. Vide letter 14.3.88 conditional permission was granted to the complainant to effect the repairs to the tune of Rs. 5,000/-. These happenings took place before the sale deed was executed. Hence the Department cannot now refuse to reimburse the complainant for the cost of repairs.

5. AS far as the question of limitation is concerned, it does not behove a public undertaking to take up this plea particularly when major cracks have appeared in one of the walls of the house constructed by it. As noticed above the Department has assessed the costs of repairs and also allowed the complainant to effect the repairs though a limit was put upon the cost of the repairs.

6. THE next question for determination is that to what amount the complainant is entitled for effecting the repairs. Though the Assistant Engineer of the Department has assessed the cost of repairs at Rs. 18,700/-, we find that the complainant did not produce any evidence before the District Forum to prove that he had spent Rs. 20,000/- or Rs. 18,700/- towards the repairs. The State Commission also upheld the order of the District Forum when there was no evidence in support of the claim of the complainant except his averments. Thus we find that the State Commission has failed to exercise its jurisdiction. In view of the above discussions, we partially accept the revision petition and reduce the amount awarded by the District Forum and upheld by the State Commission to

Rs. 5,000/-. The parties will bear their costs.