
(2004) 10 AP CK 0056
In the Andhra Pradesh High Court
Case No : Writ Petition No. 25817 of 2003

Eureka Estates (P) Ltd.

APPELLANT

Vs

A.P. State Consumer Disputes Redressal Commission and
Others

RESPONDENT

Date of Decision : 12-10-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 114
Constitution of India, 1950 — Article 226
Consumer Protection Act, 1986 — Section 13(4)

Citation : AIR 2005 AP 118 : (2004) 6 ALD 212 : (2004) 6 ALT 46

Hon'ble Judges : K.C. Bhanu, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : V. Venkataramana, for the Appellant; E. Manohar, for the Respondent

Judgement

B. Sudershan Reddy, J.

1.The petitioner invokes the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India with a prayer to issue a writ of certiorari or any other appropriate writ and quash the order of the 1st respondent in C.D.I.A. No. 1392 of 2003 (wrongly described as C.D.I.A. No. 1939 of 2001) in C.D. No. 74 of 1999, dated 7-11-2003.

2. In order to consider as to whether the impugned order passed by the A.P. State Consumer Disputes Redressal Commission (for short "the Commission") suffers from any errors apparent on the face of the record requiring our interference in exercise of our certiorari jurisdiction, few relevant facts leading to filing of this writ petition may have to be noticed.

3. Respondent Nos. 2 and 3 herein have filed a complaint in C.D. No. 74 of 1999 before the 1st respondent-Commission u/s 17(1) of the Consumer Protection Act, 1986 (for short "the Act") against the petitioner with a prayer to direct the petitioner to complete the construction of Flat Nos. C-9, C-10, C-11 and C-12 respectively in the fourth floor of "Eureka Court Apartments" in Survey No. 14,

Yellareddyguda, Hyderabad, as per the specifications and deliver the same; to pay compensation at Rs. 30,000/- per month from 31-3-1999 till the date of handing over possession of the flats; to get approval from the Municipal Corporation of Hyderabad under BRS Scheme and to provide lift, car parking area in the cellar etc.

4. The case of the respondents/ complainants before the Commission was that the petitioner is a builder of the building complex by name "Eureka Court Apartments" and it has sold Flat Nos. 3, 4, 5 and 6 relating to undivided interest in the land and further entered into an agreement for construction of the apartments with description as Flat Nos. C-9, C-10, C-11 and C-12 in the fourth floor and the petitioner had defaulted in construction of the apartments and the same has constituted a deficiency in service since the petitioner has failed to complete the construction and handover the flats to the respondents/ complainants. Petitioner has contested the said complaint on various grounds and it is unnecessary to notice the details of the grounds on which the petitioner resisted the complaint filed by the respondents/ complainants. The Commission vide its final order, dated 19-6-2003, partly allowed the said complaint. The relevant portion of the order reads as follows:

".....It is the duty of the opposite party to obtain proper sanction and complete the construction before he could seek for payment as per the terms of the agreement. As he failed to obtain permission from Municipal Corporation of Hyderabad he cannot convey the flats constructed unauthorisedly. Therefore, there is deficiency in service on his part in failing to convey the flats constructed as against approved plan as such the opposite party is bound to refund the amount already collected together with damages since the opposite party alone has failed to perform his part of contract. The mere fact that the opposite party applied for regularisation of unauthorised construction does not absolve him of his responsibility of handing over the constructed flats under approved plan. Hence we have no hesitation to hold that there is deficiency in service on the part of the opposite party.

The Commissioner who was appointed by this Commission filed his report dated 30-7-2001 pointing out several incomplete works and defects. Hence accepting the report of the Commissioner we direct the opposite party to complete the works as pointed out in the report after obtaining necessary permission from the Municipal Corporation of Hyderabad and deliver possession of the flats in question within a period of three months from today. Regarding compensation, a sum of Rs. 1 lakh to each of the complainants would meet the ends of justice in view of the delay in handing over the possession of the flats for the reason that the very construction is unauthorised and the opposite party failed to obtain necessary permission. This amount shall carry interest at 12% p.a. from the date of filing of the complaint till realization.

The next question is what is the compensation alternatively the complainants are entitled to in case of default in handing over possession within the time granted

above ?

The first complainant admittedly paid Rs. 2,82,000/- under Ex.A-6 agreement and the second complainant paid Rs. 2,74,000/-under Ex.A-7 agreement besides that the complainants paid a sum of Rs. 4,86,250/- on 19-12-1998. The complainants also purchased the undivided share of land for Rs. 68,000/-and Rs. 76,000/- respectively under Exs.A-9 and A-11. These payments come to Rs. 11,86,250/-. Therefore there shall be a direction to refund the said amount with interest at 24% p.a. from the date of their respective payments till realization.

The learned Counsel for the complainant submits that as per the terms of the agreements in case of delay beyond 31-3-1999 the opposite party agreed to pay a sum of Rs. 30,000/- per month to both the complainants put together. Strictly speaking as the opposite party failed to honour the terms of the agreements he has to pay the said sum as promised. However having regard to the circumstances of the case, we are of the view that a sum of Rs. 1 lakh by way of compensation to each of the complainants would meet the ends of justice, which shall carry interest at 12% p.a. from the date of filing of the complaint till realisation.

In the result, the complaint is allowed in part to the extent indicated above with costs of Rs. 10,000/-. Time for payment six weeks."

5. The 1st respondent in its final judgment has granted an option to the petitioner either to handover the flats after construction with due building permission to be obtained from the Municipal Corporation of Hyderabad or refund the amounts with interest together with compensation of Rs. 1.00 lakh each to the respondents/complainants.

6. Neither the petitioner nor the respondents/complainants have questioned the order. Thus the order attained its finality.

7. Respondents/complainants have filed C.D.I.A. No. 1392 of 2003 (wrongly described as C.D.I.A. No. 1939 of 2001 in the impugned order) in C.D. No. 74 of 1999 seeking review of the order, dated 19-6-2003, made in C.D. No. 74 of 1999. This application was filed some time in July, 2003.

8. The prayer in the said petition filed by the respondents/complainants is to the following effect:

"It is therefore prayed that C.D. No. 74 of 1999 may be posted for Being Mentioned and to pass such other order or orders as this Hon"ble Commission may deem fit and proper in the circumstances of the case."

9. The Commission by the impugned order, dated 7-11-2003, reviewed its earlier order pronounced on 19-6-2003 lock, stock and barrel; and granted choice to the respondents/complainants about delivery of the flats as against the alternate relief of refund of amount together with compensation. The Commission observed:

".....Of course, it is needless to observe that the parties have two options either the constructed flats with compensation as awarded in our order dated 19th June, 2003 or pay back the amounts with interest and compensation."

10. The Commission disposed of "review petition" in the following manner:

"It is the contention of the complainants that the opposite parties cannot walk away with immunity by repaying the amounts with interest or with awarded compensation when the cost of the flat has gone up by many folds and the opposite party cannot take advantage of its own default. It is no doubt true, that in case, the opposite party obtains regularisation under the earlier VRS (sic BRS) scheme or under the provisions of the Act 6 of 2003 it is open to the complainants to seek for relief of delivery of possession after completing incomplete works and this can be done provided the complainants do not opt for the alternative relief of recovering the amount paid with interest together with compensation as ordered by resorting to execution. When once the complainants execute the decree and recover the money, their right to go back to the main relief of recovery of possession of the flats would come to an end."

11. Sri Vedula Venkataramana, learned Counsel appearing on behalf of the petitioner, inter alia submitted that the Commission had no jurisdiction to review its judgment since the provisions of the said Act have not conferred power of review on the Commission. There is no provision of law by which the judgment can be modified or altered by the Commission. The impugned order passed by the Commission is totally void being without jurisdiction.

12. It was alternatively contended that the impugned order is totally unsustainable since it is outside the parameters of review petition and it is not covered by appropriate grounds of review as permitted by Order XLVII Rule 1 of the Code of Civil Procedure. There is no discovery of new facts or any other patent errors on the face of the record, which alone could have enabled the Commission to exercise the power of review.

13. Sri E. Manohar, learned Senior Counsel, appearing on behalf of the respondents/complainants, submitted that respondents/complainants filed application before the Commission with a prayer for posting of C.D. No. 74 of 1999 "for being mentioned" and the same cannot be treated as a review petition though the Commission misconstrued the said application as one of review petition. Learned Senior Counsel submitted that by the impugned order, the Commission merely rectified certain errors crept into the final order, dated 19-6-2003. It is a case of correction of certain mistakes and such corrections can always be made by any Forum exercising quasi-judicial power.

14. It was alternatively contended that even if the impugned order suffers from any infirmity or error; this Court, in the facts and circumstances of the case, may not interfere in exercise of its writ jurisdiction under Article 226 of the Constitution of India, since the impugned order is a just and reasonable one.

15. The Consumer Protection Act, 1986 (Act 68 of 1986) is an Act to provide for better protection of the interests of the consumers and for that purpose to make provision for the establishment of Consumer Councils and other authorities for settlement of consumers' disputes. These objects are sought to be promoted and protected by the Consumer Protection Councils to be established; to provide speedy and simple redressal to consumer disputes, a quasi-judicial machinery is sought to be set up at the District, State and Central levels.

16. That according to the Statement of Objects and Reasons, these quasi-judicial bodies will observe the principles of natural justice and have been empowered to give reliefs of a specific nature and to award, wherever appropriate, compensation to consumers.

17. Chapter m of the Act deals with the Consumer Disputes Redressal Agencies.

18. Section 9 of the Act inter alia provides for establishment of consumer disputes redressal agencies at the District, State and National level. The District Forum and State Commission are to be established by the State Government by notification; the National Consumer Disputes Redressal Commission is required to be established by the Central Government by notification.

19. Section 11 of the Act deals with the jurisdiction of District Forum to entertain complaints and Section 17 of the Act deals with jurisdiction of the State Commission. Section 18 of the Act provides the procedure applicable for disposal of complaints by the District Forum shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the Commission.

20. Therefore, the procedure prescribed by Section 13 of the Act for disposal of the complaints received by the District Forum, which mutatis mutandis applies for the disposal of the complaints by the State Forum may have to be noticed.

21. Section 13(4) of the Act declares that the District Forum shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit in respect of the following matters, namely:

"(i) the summoning and enforcing attendance of any defendant or witness and examining the witness on oath;

(ii) the discovery and production of any document or other material object producible as evidence;

(iii) the reception of evidence on affidavits;

(iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;

(v) issuing of any commission for the examination of any witness; and

(vi) any other matter which may be prescribed."

22. It is thus clear that a reading of conspectus of provisions of the Act and the

Rules framed thereunder makes it clear that Code of Civil Procedure, 1908, as such, are not applicable to the proceedings before the District Forum or State Commission, as the case may be, except to the extent indicated in Sub-section (4) of Section 13 of the Act. The Consumer Disputes Redressal Agencies, which are not vested with the powers of Civil Court, are not entitled to exercise the review jurisdiction as envisaged u/s 114 of the Code of Civil Procedure.

23. In the absence of any specific provision conferred upon them by the Act and the Rules framed thereunder, the power of substantive review does not exist in the District Forum or the State Commission. The power of review is not an incidental one but a substantive power unless specifically conferred, does not inhere in quasi-judicial bodies constituted and created under the statute.

24. In *Morgan Stanley Mutual Fund Vs. Kartick Das*, , the Supreme Court having considered as to the nature and scope of Section 14 of the Act which enables the District Forum to issue an order to the opposite party directing him to do one or more of things mentioned thereunder observed:

"A careful reading of the above discloses that there is no power under the Act to grant any interim relief of (sic or) even an ad interim relief. Only a final relief could be granted. If the jurisdiction of the Forum to grant relief is confined to the four clauses mentioned u/s 14, it passes our comprehension as to how an interim injunction could ever be granted disregarding even the balance of convenience."

25. On revisiting the question in *Gulzari Lal Agarwal Vs. Accounts Officer*, , the Supreme Court reiterated its view that "Consumer Forum has no jurisdiction or power to pass any interim order pending disposal of original complaint filed before it."

26. The decisions referred to hereinabove of the Supreme Court clearly laid down that the District Forum or the State Commission, as the case may be, are entitled to exercise only such power, which is specifically vested in them by the statute under the Act or the Rules framed thereunder. It cannot exercise any power other than the one vested in them. They have no inherent jurisdiction as that of a Civil Court. Their jurisdiction is clearly defined and spelled out by the provisions of the Act and the Rules framed thereunder. They cannot define their own jurisdiction but are bound by the provisions of the Act and the Rules.

27. It is unnecessary to further dilate on the subject since Sri E. Manohar, learned Senior Counsel, very fairly submitted that the State Commission has no jurisdiction to review its own order.

28. Now we proceed to consider the submission made by the learned Senior Counsel contending that the impugned order is in the nature of rectification of clerical or arithmetical mistakes due to accidental slip or omission crept in the final order, dated 19-6-2003, passed by the Commission.

29. In order to consider the submission, we shall briefly notice as to what has been stated by the respondents/complainants in their affidavit filed before the

Commission, which has been treated as review petition by the Commission though the application is described as one "for being mentioned". In the affidavit, it is inter alia stated, "several errors have occurred in the judgment and as such it has necessitated the filing of this petition "For Being Mentioned"."

30. It is further stated that "the complainants have purchased (Omission: Flat) Nos. C-9, C-10, C-11 and C-12 from the Opposite Party in the 4th floor and were even registered in their favour vide Document No. 1850/97 and 1851/97 dated 7-8-1997, transferring the land share of 85 Sq.yards and 95 Sq. yards respectively of undivided and unspecified share of land out of 2920 Sq. yards in Sy.No. 14 of Yellareddyguda, Ameerpet, Hyderabad. It is submitted that the complainants had spent Rs. 2,16,642/- for stamp duty and documentation purposes. Once registration has also been done, the question of refund of the amounts paid does not arise. The Opposite Party has to convey the flats to the complainants as per the orders of the Hon"ble Commission."

31. It is also stated that "over a period of 6 years time, the land/building appreciation has increased several fold to Rs. 2,000/-per sft. and the monetary estimations are beyond imagination".

32. It is unnecessary to notice further details of the averments made in the affidavit. It is nowhere pleaded that the errors sought to be rectified are of clerical or arithmetical mistakes crept in the final order due to accidental slip or omission. Substantial pleas, which were not raised in the complaint and therefore not dealt with by the Commission were sought to be raised in the so-called application filed "for being mentioned". The Commission treated the application as the one of review application. In the very introductory paragraph of the impugned order, the Commission observed:

"This is an application filed by the Complainants 1 and 2 to review our order in CD 74/99 dated 19th June, 2003 on the ground that certain mistakes have crept into our order and hence it requires that those mistakes should be rectified."

33. We have already noticed the substantive operative portion of the impugned order, which, in our considered opinion, travels even beyond review. As has been rightly contended by the learned Counsel for the petitioner that by the impugned order, dated 7-11-2003, the Commission has totally changed the judgment that was pronounced by it on 19-6-2003 by introducing a new concept of choice to the respondents/ complainants about delivery of the flats as against the alternative relief of refund of the amount together with compensation.

34. The Commission in its main judgment, dated 19-6-2003, posed the question for its consideration as to what is the compensation alternatively the complainants are entitled to, in case of default in handing over possession of the flats within the time granted and accordingly directed payment of specified amounts at Rs. 11,86,250/- with interest at 24% per annum from the date of their respective payments till realisation and also awarded a sum of Rs. 1.00 lakh towards compensation to each of the complainants which shall carry interest at

12% per annum from the date of filing of the complaint till realisation. By the impugned order, the Commission in a way kept the lis between the parties alive by reserving liberty to the claimants to seek for relief of delivery of possession after the petitioner obtains regularisation under BRS scheme and completion of the incomplete works.

35. In our considered opinion, the impugned order cannot be treated as the one of correction or rectification of clerical or arithmetical mistakes due to accidental slip or omission. The impugned order passed by the Commission could not have been passed even in the review proceedings. The review petition itself can be entertained by the Courts or bodies which may have been conferred with the power of review only on the ground of error apparent on the face of the record and not on any other ground. "An error apparent on the face of record must be such an error which must strike one on mere looking at the record and would not require any long-drawn process of reasoning on points where there may conceivably be two options. The limitation of powers of Court under Order 47, Rule 1 CPC is similar to the jurisdiction available to the High Court while seeking review of the orders under Article 226." (See: Smt. Meera Bhanja Vs. Smt. Nirmala Kumari Choudhury, .

36. The impugned order, in our considered opinion, is essentially one without jurisdiction.

37. We are not impressed by the submission made by the learned senior Counsel that the writ petition deserves dismissal on the ground of availability of alternative remedy to the petitioner.

38. Respondents/claimants may have described the application filed by them as the one "for being mentioned" but in reality they have sought for a relief of more than review of the main order passed by the Commission. That under the guise of hearing of a petition "for being mentioned", the Commission granted more than what could have been granted even in a review petition. What is directly prohibited, cannot be permitted to be achieved in indirect manner. What cannot be done directly, cannot be done indirectly. Exercise of any such power in indirect manner may tantamount to a fraud on and colourable exercise of power.

39. Is it the case whether the Court is not required to interfere with the impugned order in exercise of its equitable jurisdiction under Article 226 of the Constitution of India?

40. It is true that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, may not interfere with every erroneous order, in case, where such erroneous order has not resulted in causing any substantial injustice to the parties. The said principle would not be applicable in a case where an authority usurps jurisdiction and makes an order without any authority of law.

41. An order, which suffers from inherent lack of jurisdiction, is void and this Court is duty bound to declare of such orders as void. That an erroneous order

cannot be equated to that of void order suffering from inherent lack of jurisdiction.

42. For the aforesaid reasons, we find it difficult to sustain the impugned order passed by the State Commission. The impugned order suffers from errors apparent on the face of the record and eminently a fit case for our interference in exercise of our certiorari jurisdiction.

43. Accordingly, the impugned order is quashed. Let a writ of certiorari be issued. Each party shall bear their own costs.