
(2000) 06 NCDRC CK 0021

In the National Consumer Disputes Redressal Commission

HOUSING AND DEVELOPMENT BOARD, U.P.

APPELLANT

Vs

HARI RAJ SWAROOP BHATNAGAR

RESPONDENT

Date of Decision : 09-06-2000

Acts Referred:

Citation : 2000 3 CPR 506 : 2001 1 CLT 614 : 2001 1 CPC 235 : 2001 1 CPJ 24

Hon'ble Judges : K.C.Bhargava , D.D.Bahuguna J.

Final Decision : Appeal dismissed with costs

Judgement

1. THIS is an appeal against the judgment and order passed on 18.1.1994 by District Consumer Forum, Hardwar, in Complaint Case No. 59 of 1993.

2. BRIEFLY stated facts of the case are as under : The complainant Mr. Hari Raj Swaroop Bhatnagar, a resident of Hardwar, was allotted Plot No. 786, price of which was Rs. 73,900/-. An area measuring 42.47 sq. mts. became the subject matter of the dispute and on 29.4.1988 the complainant received a stay order from the Court of Munsif Magistrate, Hardwar. The price of this area, against which the stay order was granted, was Rs. 21,899/-. The complainant asked for the refund of the amount alongwith interest @ 15% per annum.

The appellant contested the case before the District Consumer Forum, Hardwar, and admitted that Plot No. 786, with an area measuring 138 sq. mts. was allotted to the complainant, price of which had been paid to the Housing Board.

3. ACCORDING to the appellant, lease deed was also executed in favour of the complainant on 12.10.1987 and possession was offered of the plot of the area of 139.57 sq. mts. Plot No. 786 was handed over to the complainant. The Housing Board was not a party in the dispute before the Civil Court in which stay was granted by the Civil Court and, therefore, complainant was not entitled to any relief.

4. DISTRICT Consumer Forum came to the conclusion that the plot, which was offered to the complainant was of 138.18 sq. mts. but the possession of the full land was not given. District Consumer Forum, Hardwar, therefore, ordered that

payment of interest @ 10% per annum to the complainant be allowed on the amount of Rs. 21,899/- from 19.4.1988 till the date on which the possession of the rest of the land is not restored to the complainant or till the time excess money paid by the complainant is not refunded. Aggrieved of this judgment and order, the appellant has come up in the appeal.

5. IN the memo of appeal, it has been stated that the complainant is not a consumer and, therefore, the case is not triable by the Consumer Court.

6. IT was also stated that plot No. 786 was allotted to the complainant on 24.6.1987 and lease deed was signed on 12.10.1987 and registered on 27.10.1987. The complainant has signed the possession certificate on 14.10.1987 at the time of taking possession. After the deal was completed, the complainant has no right at all to file the case under Consumer Protection Act because the dispute ceases after the deal is completed and the complainant should have approached the Civil Court.

The dispute in question should not have been decided by the Consumer Forum, Hardwar, as a Civil Case No. 93/88 was going in the Civil Court. The matter regarding payment of interest does not come under the definition of service and no terms of the contract have been infringed by the appellant.

7. THE matter is the case of Law of Estoppel and after taking possession and executing the lease deed, the case cannot proceed in a Consumer Court. The complaint is time barred as the possession was handed over on 14.10.1987 and the complaint was filed in the year 1993 and, therefore, the complaint is liable to be dismissed.

8. WE have gone through the evidence on record. WE have also heard the learned Counsel for the appellant and the complainant in person. The learned Counsel for the appellant has argued that the case is time barred as the possession of the plot in question has been delivered on 14.10.1987 and since the possession has been taken over by the complainant, provisions of Consumer Act do not apply. The complaint was filed in the year 1993 and, therefore, the claim is stale and cannot be considered. On the other hand the case of the complainant is that the case is not time barred as the cause of action still continues because the amount charged for land which is not under the possession of the complainant on account of the stay order of the Civil Court has not been returned by the Housing Board and the complainant remained deprived of the land for which he has paid full charges.

9. A perusal of the record goes to show that the complainant was allotted Plot No. 786, the cost of which was Rs. 73,900/-. The area of the plot included 42.47 sq. mts. against which stay was granted by the Civil Court on 19.4.1988 which still exists. It is worthwhile to mention here that Housing Board, as per procedure laid down in the U.P. Housing and Development Board Act, carries out land acquisition procedures before the scheme is finalised and land acquisition procedures are drawn. This happens much before the scheme is put into initial

stages of the development. Construction and development works take place later on. It is, therefore, clear that much before the scheme was advertised and allotment was made to the complainant, acquisition proceedings were started by the Housing Board. The land was acquired, plots were demarcated and one of the plots allotted to the complainant. After the plot was allotted, a part of land of the plot for which payment was also received by Housing Board from the complainant, was challenged before the Civil Court and stay order was granted. The appellant should have ensured that the land being acquired by the Housing and Development Board should have been free from all the encumbrances and then only the land should have been sold alongwith the land covered under the plot allotted to the complainant. This is a clear deficiency on the part of the Housing Board and since the complainant has been disturbed and continues to be disturbed even now because of the stay order passed by Munsiff Magistrate, Hardwar, cause of action still continues and the complaint in our opinion is not time barred.

10. THE case of the complainant is that amount of Rs. 21,899/- for the land of which he has been dispossessed is still a matter of dispute and he is not in possession of that part of the land. This facts is not denied by the appellant Housing Board. The complainant has, therefore, been put to pecuniary loss and he is entitled to the relief claimed by him. Under the circumstances, there is no reason to interfere in the judgment and order passed by the learned Forum, which is perfectly alright. The appeal is, therefore, liable to be dismissed. Order The appeal is dismissed and the judgment and order passed by District Consumer Forum, Hardwar, are confirmed. The complainant will also be entitled to payment of Rs. 2,000/- as cost of proceedings of the appeal in this Commission. Let compliance of the order be made within a period of two months. Let copies of the order be issued as per norms. Appeal dismissed with costs.