

(2015) 11 NCDRC CK 0031

In the National Consumer Disputes Redressal Commission

Case No : 4350 of 2012

HUDA & ORS.

APPELLANT

Vs

D.P. JAIN

RESPONDENT

Date of Decision : 26-11-2015

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 2\(1\)](#) - Definitions

Citation : 2016 1 CPJ 260

Hon'ble Judges : Ajit Bharihoke, Rekha Gupta

Advocate : ANUBHA AGRAWAL, Kawaljit Singh

Judgement

1. The present revision petition is directed against the order dated 06.07.2012 of the Haryana State Consumer Disputes Redressal Commission, Panchkula ("the State Commission") in Appeal no. 1421 of 2009.

2. The facts of the case as per the respondent/ complainant are that the respondent is the owner of preferential plot/ house no. 2605 - P, Sector 16, Faridabad and has paid 10% extra price for preferential status of his plot to HUDA authorities. There exists an incidental vacant area ad-measuring 40"x90" adjoining to his house. The area was withdrawn by HUDA Authorities from perpetual leasehold right of 99 years to Employees State Insurance Corporation, Faridabad in order to maintain the preferential character of his plot no.2605 P. This withdrawal of land from ESIC was confirmed by the judgment of Civil Judge, Additional District Judge, Faridabad, Hon"ble High Court of Punjab and Haryana in various judgments. The petitioner/ opposite party had formulated a policy and circulated it vide memo no. A-11-87/7949 - 64 dated 19.03.1987 through the Chief Administrator HUDA on the subject of allotment of incidental open space to the allottees of a corner plot in various urban estates in Haryana by way of sale to the owners of those adjoining preferential plots. The said area was lying vacant and was being used for dumping of garbage etc., and thus had become a source of nuisance and was a health hazard for the respondent and his family. In accordance with the policy of HUDA mentioned above, the respondent applied for

allotment of this incidental area in favour of the respondent on the terms and conditions as mentioned in the policy and on the basis of payment of costs. The petitioner refused to do so. It was on these grounds the present complaint has been filed with a prayer that the petitioner be directed to allot the vacant adjoining site in question in favour of the respondent as per the terms and conditions of the policy framed by the petitioner. The respondent has also moved an application to the effect that the permanent boundary wall be also directed to be built by the petitioner to separate this vacant land belonging to the petitioner from that allotted to ESI Corporation so that dumping of garbage etc., over this vacant land be restricted.

3. The petitioner - HUDA in their reply had admitted that the area lying vacant adjoining to the plot of the respondent measuring 40x"90" was withdrawn from the ESI Corporation in order to maintain preferential status of the impugned plot and to provide green space adjoining to the house of the respondent. The said area was withdrawn out of the total area of about five acres which had been earlier allotted to ESI Corporation. The petitioners denied that as per the policy of HUDA such land can be allotted in favour of the respondent. The matter of allotment was referred to the District Town Planner, Faridabad and it was reported by him that the adjoining land in question cannot be allotted to the respondent. Therefore, it prayed for dismissal of the complaint.

4. The District Consumer Disputes Redressal Forum, Faridabad, ("the District Forum") vide its impugned order dated 30.07.2009 while partly allowing the complaint held that: "After great reluctance the petitioner admitted that such a policy exist with the petitioner and it has been circulated vide memo No. A-11/87/7949 - 64 dated 19.03.1987. According to the said policy, vacant adjoining land are to be allotted on completion of certain terms and conditions provided in that policy. But the land adjoining the house of the respondent was not covered under the policy because the area of this vacant land is 40x90 and it is more than the area of the plot of the respondent and only such areas can be allotted wherein the adjoining vacant land is less than the area of the plot/ house of the allottees/ owners. Though, in such circumstances, we are of the opinion that nothing could cause prejudice to the OPs, if the said vacant adjoining land is allotted by OP to the complainant on payment of cost and in accordance with the terms and conditions of the policy in question of the OP, yet we feel handicapped to pass such a direction to the opposite parties regarding allotment of the impugned vacant land in favour of the complainant as we are not equipped with such powers. However, we feel that the

complainant is at liberty to approach the authorities of the opposite parties in this matter for sympathetic consideration and the authorities of the opposite parties, if deem fit, may allot the impugned vacant land in favour of the complainant.

As far as the request of the complainant for directing the opposite parties to construct a boundary wall to separate the vacant adjoining land belonging to the

opposite parties from the land allotted to ESI Corporation is concerned, we feel that it is a justified demand because as per the evidence submitted by the complainant, the said vacant land is being used as a place for dumping garbage etc., and is creating nuisance and has become a health hazard to the complainant, his family and other residents of the area. Further, they are not able to get the benefit of that vacant land in the shape of green space. Moreover, this is the duty of the OP also in such circumstances, the complaint is allowed to the extent that the opposite parties are directed to construct a wall of at least 7feet height to separate the impugned vacant land measuring 40x90 adjoining the house of the complainant from the other land which has already been allotted to ESI Corporation. The complaint is disposed of accordingly".

5. Aggrieved by the order of the District Forum, the petitioner - HUDA filed an appeal before the State Commission. The State Commission vide its order dated 06.07.2012 held that: "Having considered the facts and circumstances of the as well as the observation of the District Forum, as mentioned above, we are of the view that the plot in question is being used by the HUDA for dumping of garbage which is health hazard to the complainant as well as to his family. Thus, the District Forum has rightly directed the opposite parties for construction of wall of atleast 7 ft height to separate the vacant land from the land of complainant. No prejudice is going to be caused to the opposite parties from the directions issued by the District Forum.

Thus, no case for interference in the impugned order is called for.

Hence, finding no merit in this appeal, it is dismissed".

6. Hence, the present revision petition.

7. We have heard the learned counsels for the parties have gone through the record. Learned counsel for the petitioner has contended that the impugned order passed by the Fora below are illegal, bad in law, arbitrary as the Consumer Fora under the Consumer Protection Act are not competent to interfere in the policy matter of the Government and for issuance of direction to exercise their powers beyond the powers and jurisdiction enshrined under the Consumer Protection Act, hence, the impugned orders are liable to be set aside/ quashed.

8. Both the fora below gravely erred in law in not taking into consideration the fact that the definition of "complainant", "complaint", "consumer dispute" and "service" as defined in Section 2 (1) of the ibid Act do not cover the claims arising under the present dispute and that from the aforesaid definitions, the complainant is not a "consumer" and the controversy involved in the complaint is not a "consumer dispute".

9. The impugned order dated 06.07.2012 passed by the State Commission, Panchkula, Haryana in appeal no. 1421 of 2009 are short and non-reasoned orders which reflect non-application of mind on the part of the consumer Fora below because, it is a well settled law that a short order without any reasoning is

no order in the eyes of law and the same deserves dismissal on this score alone.

10. We have gone through the record. It is an admitted fact that the respondent is not the original allottee. The house was first allotted to one Shri Kuldeep on 31.01.1969. He had been given a preferential plot for which he had paid 10% extra. The present respondent/ complainant had purchased the plot in 1987 from the first allottee. In the instant case, it is nowhere on record that the first allottee who was a bonafide consumer vis-?-vis the petitioner had made any demand for the adjacent vacant plot. In fact, he had opted for a corner plot by paying 10%, in view of the green space left open. As such, the respondent bought the plot from the first allottee and was fully aware of the situation on the ground and that the vacant plot has to be kept as green space. Hence, he had no right now to insist for the allotment of same to him on the specious ground that otherwise, it will be used as a dumping yard for garbage. The District Town Planner, Faridabad has also taken the same stand that the plot cannot be allotted to the respondent as the status of the plot has to be maintained as a green space measuring 40"x90". It is also a fact that when ESI Corporation to whom the vacant plot was initially allotted, had been enshrined from constructing a boundary wall on that space as it would block the light and air to the plot of the said plot/ house no. 2605 P.

11. Further, the complainant had prayed for transfer of the vacant site and expressed his willingness to pay the price determined according to the rules. He had never prayed for building of a wall between this plot and his plot or between this plot and the ESIC plot.

12. The District Forum, Faridabad vide its impugned order dated 30.07.2009 having accepted that the land adjacent to the house of the complainant was covered under the policy circulated by Memo no. A 11-87/7949 - 64 dated 19.03.1987 erred in directing the petitioner to construct a wall of 7 ft height to separate the impugned vacant land measuring 40"x90" adjoining the house of the complainant from the other land which has been allotted to ESI Corporation. The State Commission vide its impugned order dated 06.07.2012 while dismissing the appeal has erroneously recorded that "thus, the District Forum has rightly directed the opposite parties for construction of a wall of at least 7 ft height to separate the vacant land from the land of the complainant". The order of the State Commission thereby modifies the order of the District Forum and is violative of the orders of passed by the Additional District Judge, Faridabad in which a permanent injunction was passed against any encroachment or raising of any construction over the strip of land measuring 40"x90" situated towards the Southern side of the preferential plot no. 2605 P, Sector 16, Faridabad of the respondent. Further, the building of a wall will not by itself prevent dumping of garbage.

13. In view of the above, we are of the view that the lower fora have exceeded its jurisdiction in allowing the complaint of the respondent who was re-allotted the land bought from the original allottee who had purchased it knowing its

situation and the fact that the open space has to be maintained as a green space.. The fora below have also erroneously ordered the construction of a wall of 7 ft on the vacant plot of 40"x90" which is meant for green space. Hence, the revision petition is allowed, the impugned orders are set aside and the complaint is dismissed.

14. However, in all equity and in the interest of neighbourhood the petitioner is advised to ensure that the vacant space is maintained as a green space and not used as garbage dump. Necessary steps may be taken for the same.