
(2012) 04 NCDRC CK 0042

In the National Consumer Disputes Redressal Commission

Jagdishbhai M. Sneth alias Soni

APPELLANT

Vs

Surbhih Realtors India Pvt. Ltd.

RESPONDENT

Date of Decision : 24-04-2012

Acts Referred:

Citation : 2012 0 NCDRC 149 : 2012 2 CPJ 525

Hon'ble Judges : Ashok Bhan , Vineeta Rai J.

Advocate : Priyanka Telang , Vishnu Mehra

Judgement

1. PETITIONER/Complainant has filed these Revision Petitions against the judgment and order dated 20.03.08 passed by the State Consumer Disputes Redressal Commission, Gujarat (in short, "the State Commission") in appeal nos. 1042 and 1109/06 whereby the State Commission reversing the order of the District Forum has allowed the appeal filed by the Respondent herein and dismissed the complaint filed by the PETITIONER. FACTS:- Briefly stated the facts of the case are that the PETITIONER who was a tailor was doing the business of tailoring in the premises situated at Moon House No. 3/11/63, City Survey No. 960-969 in the name and style of "J.M. Tailors" as a tenant. The owner of the property sold the said property to the Respondents herein (Opposite Parties before the District Forum) in the year 2002 along with all the rights including the tenancy rights. PETITIONER attorned to be the subsequent owner became tenant of the Respondents.

2. RESPONDENTS intended to demolish the old property and construct a commercial complex in the name of "Shankheshwar Complex" in its place. RESPONDENTS entered into an agreement with the Petitioner on 2.4.02. It was agreed between the parties that the RESPONDENTS would give shop No.1 admeasuring 26.29 sq. mtrs. at the ground floor of the "Shankheshwar Complex" to the Petitioner in lieu of the shop occupied by the Petitioner. Under the agreement, RESPONDENTS also agreed to bear the expenses towards the sale deed and registration of the transfer of the ownership. In the agreement, it was further provided that the possession of the shop shall be handed over to the

Petitioner within a period of one month from the date of agreement and if there was any delay in handing over the possession of the shop to the Petitioner, RESPONDENTS would pay Rs.10,000/- per month to the Petitioner for the delayed period. As per averments made in the complaint, it was alleged that after completion of the construction of the "Shankheshwar Complex", the possession of the shop No. 1 at the ground floor of the complex was not handed over to the Petitioner in terms of the agreement entered into between the parties. On 15.01.06, RESPONDENTS offered to give a shop situated on the backside of the complex to the Petitioner. Petitioner did not accept the said offer. Being aggrieved, Petitioner filed the complaint before the District Forum seeking a direction to the RESPONDENTS to hand over the possession of shop No.1, to pay Rs.10,000/- per month towards the monthly loss from 3.7.02 till the handing over of the possession and Rs.2,500/- towards costs. RESPONDENTS, on being served, entered appearance and filed joint written statement resisting the complaint, inter-alia, on the grounds that the Petitioner was not a "consumer" as he did not hire any services of the RESPONDENTS or purchase the goods for any consideration. That the Petitioner was a tenant and the dispute between the landlord and the tenant did not constitute a consumer dispute and, therefore, complaint filed by the Petitioner was not maintainable. That the District Forum did not have the jurisdiction to entertain the complaint as the agreement for giving a shop with ownership rights against the consideration of tenancy rights was illegal. That the only remedy available to the Petitioner was before the Civil Court by filing a civil suit under the provisions of Bombay Rent Act, Contract Act or Specific Relief Act. District Forum after taking into consideration the pleadings and the evidence led by the parties, partly allowed the complaint with the following directions:- (i) The Opponent No.1- Surbhi Relators India Ltd. and the Opponent No. 2 " Shri Rajesh J. Gandhi are hereby jointly and severally directed that they shall hand over the possession of the shop No.1 situated on the ground in the front side of the Shankheshwar Complex, which has been marked in the Appendix-3 to the agreement and the map produced by the complainant within a period of 30 days from today; and on handing over the possession, the opponents shall execute the sale deed in respect of ownership of the aforesaid shop in favour of the complainant at the cost of the complainant. (ii) If the opponents fail to hand over the possession of the aforesaid shop to the complainant within a period of 30 days, thereafter they shall pay the amount of Rs.10,000/- per month to the complainant towards compensation of damages till the possession of the shop is handed over to the complainant. (iii) The opponents shall have to pay the amount of Rs.2500/- towards the costs of this complaint to the complainant within a period of 30 days from today. (iv) The rest of the prayers of the complainant are hereby rejected. (v) The opponents shall implement the aforesaid order within a period of 30 days from today.

Dis-satisfied with the order passed by the District Forum, Petitioner as well as the Respondents filed the separate appeals before the State Commission. First Appeal No. 1042 of 2006 was filed by the Respondents for setting aside the order

of the District Forum while the First Appeal No. 1109 of 2006 was filed by the Petitioner for enhancement of the compensation. State Commission after due appreciation of the material available on record, evidence led by the parties and relying on the decisions in the case of Viraraghvan Vs. DDA " II (2003) CPJ 69 (NC) and Laxmiben Laxmichand Shah Vs. Sakerben Kanji Chandan and Ors. (2000) CPJ 7 (SC) came to the conclusion that the Petitioner was not a "consumer" as the transfer of the tenanted property into ownership property did not constitute any service from the landlord or it could not be said that the services were hired for any consideration. Accordingly, State Commission by a common order allowed the appeal filed by the Respondents, dismissed the appeal filed by the Petitioner and set aside the order passed by the District Forum. Petitioner, being aggrieved, has filed the present Revision Petitions. Learned counsel appearing for the Petitioner contends that the State Commission has committed an error in holding that the Petitioner was not a "consumer" and that the complaint was not maintainable as the Petitioner was a tenant. That the relationship of landlord and the tenant does not fall within the purview of the Consumer Protection Act, 1986 (For short, "the Act"). She further submits that the relationship of the "landlord" and "tenant" which was earlier between the parties ceased to exist after the execution of the agreement. That after execution of the agreement between the Petitioner and the Respondents, there was a new relationship of "flat purchaser" and the "Builder/Developer". That when a tenant hands over the property on the basis of an agreement relying on the promise that the builder would hand over a portion of the property in lieu of handing over of the possession, the same would be termed as consideration paid by the Petitioner to the Respondent. The handing over of the constructed premises would be consideration and as such the Petitioner would be a "consumer" within the meaning of section 2 (1) (d) of the Act. As against this, Ld. Counsel appearing for the Respondents supports the order passed by the State Commission.

3. HEARD the learned counsel for the parties at length. It is not disputed before us that the Petitioner was running a shop of tailoring as a tenant in the premises purchased by the Respondents from its original owner. Since the Respondents were intending to demolish the old building and construct a commercial complex in place of it, an agreement was entered into between the Petitioner and the Respondents on 2.4.02 according to which Respondents agreed and promised to give shop No.1 admeasuring 26.29 sq. ft. at the ground floor of the new complex to the Petitioner in lieu of handing over possession by the Petitioner/tenant. After completion of the construction of new complex, Respondent did not hand over the possession of shop No.1 at the front side of the new complex to the Petitioner as agreed and rather offered to give a shop backside of the Complex. Petitioner filed the complaint which was allowed by the District Forum directing the Respondents to hand over possession of the shop No.1 which order was reversed by the State Commission in appeal filed by the Respondents. The issue which falls for our consideration is, as to whether in the facts and circumstances,

the Petitioner who was a tenant would be a "consumer" within the meaning of Section 2(1) (d) of the Act, and the complaint filed by him maintainable" This Commission in a number of judgments in the similar facts and circumstances has held that the tenant would be a "consumer" within the meaning of section 2 (1) (d) of the Act and complaint filed by him maintainable. In the case of Sinew Developers Ltd. & Ors. Vs. Madhav Rajaram Outurkar IV (2008) CPJ 215 (NC), dealing with the same question, this Commission held as under:- " As may be seen from Para No.5 of the order of the State Commission to consider the meaning of "Consideration" it took note of the decisions in Regional Provident Fund Commissioner Vs. Shiv Kumar Joshi, III (1989) CPJ 36 (SC), Sonia Bhatia Vs. State of U.P. & Ors., 1981 (2) SCC 585 and the discussion made in Vol.17, Corpus Juris Secundum. Commission reached the conclusion that surrender of the tenanted shop by the Respondent to the Petitioners was consideration." Failure to provide shop admeasuring 250 sq. ft. by the Petitioners was deficiency in service. Pendency of suit instituted after the filing of complaint would not come in the way of respondent in securing possession of the shop through the consumer fora. Having heard Mr. Jaidka and considering the facts of the case, we do not find any illegality or jurisdictional error in the order of the State Commission warranting interference in revisional jurisdiction u/s 21 (b) of the Act." (Emphasis supplied)

Recently, again the same question came up for consideration before this Commission in R.P. No.337/11 entitled Ghansi Ram Lal Shah Vs. Supriya Suhas Sarmalkar & Ors. decided on 06.09.11. In the aforesaid case, Complainant/ Respondent No.1 was in occupation of a room bearing No. 1, Moreshwar Choudhary Chawl, Daftray Road, Malad (East) Mumbai as a tenant. Petitioner Builder entered into Development Agreement with the Respondent to develop the entire chawl and to allot flat no.102, admeasuring 275 sq. fts. in carpet area in newly constructed building in lieu of old tenanted premises. As per agreement, Respondent vacated the tenanted premises and shifted to an alternate accommodation. Petitioner Builder demolished the erstwhile tenanted room and constructed six storied building known as "Siddha-Paras". Respondent was not handed over possession of the flat as agreed. He filed the complaint which was allowed by the District Forum. Appeal filed by the Petitioner was also dismissed by the State Commission. Dealing with the question to be decided in the present Revision Petitions, this Commission held as under:- "9. In the agreement dated 05.1.2002, petitioner has been referred to as developer of the property in question. Once the petitioner becomes developer then relationship of landlord and tenant, which was earlier there between the parties ceased to exist. In this regard it would be relevant to go through the findings of the District Forum, which reads as under:- " Now admittedly there had been Development Agreement dtd. 5/1/2002, a copy of which is produced on the record by the Complainants, alongwith list of documents at Exhibit-A. The complainants are seeking relief, as against the Opposite Party-Builder-Developer; on the basis of this Development Agreement. No doubt, in the development agreement, the

Complainants are referred to as the "tenants" and the Opposite Party "Builder/ Developer, has been referred to as the "owner/landlord" However, the foundation of the complaint is the terms incorporated in the Development Agreement dated 5.1.2002, based upon relationship as the flat-purchaser and the Builder/ Developer. The complainants have not filed this complaint, as against the Opposite Party "Builder/Developer; in his capacity as "landlord", and therefore, relationship of "landlord" & "tenant", which previously existed is immaterial. Under the Development Agreement dtd. 5/1/2002, a new relationship came into existence, as the flat-purchaser and the Builder/Developer, Consideration of the said development agreement was the original tenanted room occupied by the Complainants, which they vacated pursuant to the development agreement. It be further noted that as per clause No. (07) of the development agreement, the Opposite Party "Builder/ Developer, specifically agreed to allot Flat No. B/102 to the Complainants, on ownership basis, free of any cost. Rights of the Complainants qua that flat emanate from the above-referred term incorporated in the development agreement. As pointed out above, relationship of landlord & tenant got subsided/ vanished/ extinguished on execution of Development agreement dtd. 5/1/2002 and a new relationship got blossomed in place of old relationship of landlord & tenant. This is further articulated by the fact that the Opposite Party "Builder/Developer; not only entered into an agreement with the complainant, but got possession of the tenanted room from the complainants and accommodated the complainants in an alternate temporary accommodation. Thus, the agreement was not only executed, but partly performed by either of the party and that part was performed by the Opposite Party, in his capacity as the Builder/Developer and not as a landlord. No landlord on earth would provide an alternate accommodation to the tenant on vacating tenanted premises. All these facts are sufficient to expose the contentions of the Opposite Party "Builder/ Developer; and this further show that the contention is wholly unsustainable and based upon misconstrued interpretation of the development agreement. The statement in commentary relied upon by the Learned Advocate for the Opposite Party shows that a tenant under a lease agreement had approached the Hon"ble National Consumer Disputes Redressal Commission claiming compensation on the ground that the landlord had failed to render service to him. That is not the case here and the Complainants have not approached this Forum, in their capacity as the tenants of the Opposite Party "Builder/Developer; as the landlord. Therefore, that statement in the commentary would not be applicable to the present case. Hence, we hold that the complaint as filed is maintainable before this Forum under the Consumer Protection Act, 1986." (Emphasis supplied)

4. WE agree with the view taken by the District Forum that the Petitioner is a "consumer" as defined in Section 2(1) (d) of the Act. State Commission has committed an error in holding that the Petitioner is not a "consumer". Judgments relied upon by the State Commission are not either relevant or germane to the point involved in the present case. In Viraraghvan's case (Supra), Complainant

had applied for conversion of lease hold rights in the flat to the DDA into free hold rights. There was a delay in converting the lease hold rights into free hold. Complainant filed the complaint alleging deficiency in service on the part of the Respondent. This Commission relying upon its earlier judgment in the case of DDA Vs. S.S. Puri, I (1997) CPJ 86 (NC) wherein it was held as under:- "The Complainant is an allottee of the MIG Flat on the lease hold basis. He applied for conversion as lease hold rights into freehold rights in respect of the said flat. The complainant paid the conversion charges from lease-hold to free hold. The deposits/payments of the conversion charges is not for hiring of the services of the DDA. There is no hiring of service for consideration within the meaning and scope of the Consumer Protection Act."

Held that the complaint filed by the Petitioner was not maintainable. That the deposit/payment of the conversion charges was not for hiring of services of the DDA. Since, there was no hiring of service for consideration within the meaning and scope of the Consumer Protection Act, the complaint was not maintainable. In Laxmiben's case (Supra), the Complainant approached the National Consumer Disputes Redressal Commission claiming compensation on the ground that the Respondent landlord had failed to render services to him. This Commission found that the Complainant was a tenant of the Respondent and as per the terms of the lease agreement dated 15.12.67, there was no provision in the said agreement wherein the Respondent agreed to render any sort of service to the Complainant. Complainant, being aggrieved, filed the appeal against the order passed by this Commission before the Supreme Court. Supreme Court upholding the order, dismissed the appeal by observing as under:- "2. In the grounds of appeal filed in this Court, it was contended that the appellant had hired the services of the respondent landlord in respect of cleaning, repairing and maintenance of the subject building for consideration. But we do not find any such clause in the terms of the lease. The National Commission was therefore right in coming to the conclusion that the appellant was not a consumer as defined in the Consumer Protection Act, 1986. "

The aforesaid two judgments are not applicable in the present case as the point involved in those cases is not germane to the point involved in the cases before us. For the reasons stated above, order of the State Commission is set aside and that of the District Forum is restored with certain modifications as indicated below:- RELIEF:- Ld. Counsel appearing for the Respondent submitted that the Respondent had created a tenancy of shop No.1 on the ground floor in favour of a third person who is in occupation of the same. That the Respondent had put the inducted tenant on notice. Since the physical possession of the shop No.1 cannot be handed over to the Petitioner and especially keeping in view the fact that the dispute is lingering over a period of 10 years between the parties, we would mould the relief granted by the District Forum in the following terms:- (i) Respondents are directed to put the Petitioner in possession of the shop offered to him on 15.01.06. If the said shop is not available then allot another suitable shop admeasuring 26.29 sq. mtrs. at a prominent place in the complex. (ii) In

addition, Respondents are directed to pay the sum of Rs.15 lakhs to the Petitioner towards the difference in the price of front side shop and backside shop in the complex. The sum of Rs.15 lakh deposited in a Bank at the prevalent rate of interest would fetch approx. Rs.10,000/- per month which would be equivalent to the rent for which the Respondents had aggrieved to pay. (iii) Further, Respondents are directed to pay a sum of Rs.2 lakh towards compensation for the undue harassment caused to the Petitioner for all these years. Respondents are directed to pay the sum of Rs.17 lakhs and hand over the possession of the shop to the Petitioner within a period of 8 weeks from today failing which the Respondents would be liable to pay interest @ 12% p.a. on the awarded amount from the date of filing of complaint till realization.