
(1997) 04 NCDRC CK 0049

In the National Consumer Disputes Redressal Commission

JAINA PROPERTIES PVT. LTD

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 24-04-1997

Acts Referred:

Citation : 1998 3 CPJ 54 : 1998 3 CPR 238 : 1999 1 CLT 128

Hon'ble Judges : U.P.Singh , Sardar Ali Khan J.

Final Decision : Enquiries discharged

Judgement

1. BY this order we propose to dispose of two enquiries bearing UTPE No. 177/89 and RTPE No. 143/89 against M/s. Jaina Properties Pvt. Ltd. (hereinafter referred to as the respondent No. 1) and M/s. Aar Pee Apartments Pvt. Ltd. (hereinafter referred to as respondent No. 2) based on the common preliminary investigation report (PIR) submitted by me Director General of Investigation & Registration (hereinafter referred to as DC). The Commission initially received a complaint under Section 36B(a) of the Monopolies and Restrictive Trade Practices Act, 1969 (hereinafter referred to as Act) from the Jaina Towers Association, B-1/490, Janakpuri, New Delhi alleging certain prohibited trade practices under the Act indulged in by the respondents. The Commission in terms of Section 36-C of the Act referred the matter for submitting the PIR by the DG. After submission of the PIR by the DG wherein it has been recommended that the respondents are indulging in both restrictive trade practices under Section 2(o)(ii) and unfair trade practices under Section 36A(1)(ii)(iv) and (vi) of the Act and recommended for issuance of Notice of Enquiry relating to both restrictive and unfair trade practices.

2. ON the recommendation of the DC, two separate notices of enquiry were issued against the respondents, one under Section 36B(d) read with Section 36A(1)(ii)(iv) and (vi) and other relating to restrictive trade practices under Section 2(o)(ii) of the Act. The respondents filed their respective replies and taken certain preliminary objections besides filing the reply on merits. No rejoinder was filed by the DC and on 14.12.1990 the following issues were

framed : UTPE No. 177/89 1. Whether the Commission has no jurisdiction to deal with the subject matter of the enquiry, the light of the preliminary objections taken in the reply to the Notice of Enquiry ? 2. Whether the respondent has been indulging in unfair trade practices as mentioned in the Notice of Enquiry ?

If answer to Issue No. 2 is in the affirmative whether the said unfair trade practices are not prejudicial to public interest, interest of the consumer and the consumers in general ?

Relief. RTPE No. 143/89 1. Whether the Commission has no jurisdiction to deal with the subject matter of the enquiry, in the light of preliminary objections taken in the reply to the Notice of Enquiry ? 2. Whether the respondent has been indulging in the restrictive trade practices as mentioned in the Notice of Enquiry? 3. If answer to Issue No. 2 is in the affirmative whether the said restrictive trade practices are not prejudicial to public interest, interest of the consumer and the consumers in general ? 4. Relief. 3. In the UTP Enquiry DC has produced one Col. B.S. Sharma, who was the President of the Association at whose instance the enquiry was ordered to be instituted after the PIR was submitted by the DC. He has re-affirmed the contents of the complaint. The said witness was also cross-examined by the Counsel for the respondents. Besides, the Director General has also relied on certain admitted documents, which were ordered to be exhibited as Exs. A-1 to A-6, A-6/1 to 5. The respondents in this proceeding did not propose to adduce any oral evidence in this case and relies only on documents which are already on record. 4. So far as RTF Enquiry is concerned, the Director General has relied upon the admitted document which is an agreement entered by the respondents with the flat buyers. The respondents in rebuttal has produced Shri H.C. Bhardwaj, who was working as a clerk with the respondent No. 1.

3. IN these proceedings the arguments were concluded and parties were given liberty to file their synopsis, which were filed by them later. In both these proceedings we have noticed that the respondents have moved an application dated 15.5.1995 under Regulation 65(1)(j) of the MRTP Regulations, 1991 read with Section 12 of the Act and Section 151 of CPC for closing the enquiry. The contention of the respondents in that application is that the complainant association and the respondents had entered into an agreement to their entire mutual satisfaction and the memorandum of settlement between the parties is also forming a record as AW-1/R-6 whereby the request was made for withdrawal of the complaint (AW-1/R-7). The respondents also relied on an order dated 6.1.1995 of the Hon''ble Supreme Court in SLP (CRL) No, 625 of 1989 which is being reproduced hereunder: State through Delhi Admn.-Petitioner Versus Shri Tek Chand Jain -Respondent ORDER We have heard learned Counsel for the parties. It transpires from the counter affidavit filed by the respondent that the complainant, Smt. Surinder Kaur, had earlier filed a special leave petition in this Court against the order which has been impugned in this special leave petition and that special leave petition was dismissed. This fact is conspicuous by its absence in the memo of special leave petition. After quashing the First

Information Report, at the instance of respondent No. 1, Tek Chand Jain, by the High Court, it is averred in the counter affidavit that the claim between the parties has been settled. This position is also evident from perusal of the letter addressed by the complainant himself to the Deputy Commissioner of Police (Crime) on 15th March, 1989 wherein she has also stated that the FIR may be considered as withdrawn because of the settlement of her claim by the respondent. Keeping in view these factors, we do not think that any interference is called for with the order of the High Court dated 20.10.1989, quashing the First Information Report filed by the complainant Smt. Surinder Kaur. The Special Leave Petition is, accordingly dismissed. Sd/- (A.S. Anand), J. Sd/- (Faizan-uddin), J."

4. FROM the aforesaid judgment it is clear that even the First Information Report lodged with the police against the accused was ordered to be quashed on the basis of the withdrawal of the complaint by the complainant, we see no reason why the proceedings in question shall allow to continue, particularly when there is no other material on record except that of the complaint of the complainant. In the facts and circumstances of the case, we allow the application of the respondents moved under Section 65(1)(j) of the MRTPC Regulations, 1991 for withdrawal of the complaint and discharge both the Notice of Enquiries. It is hereby clarified that we have not given any opinion on merits with regard to the allegations made in the Notice of Enquiries. The parties are left to bear their own costs. Enquiries discharged. _____