
(2007) 11 NCDRC CK 0038

In the National Consumer Disputes Redressal Commission

JASWINDER KAUR

APPELLANT

Vs

ESTATE OFFICER ESTATE OFFICE

RESPONDENT

Date of Decision : 13-11-2007

Acts Referred:

Citation : 2008 4 CPJ 291

Hon'ble Judges : K.C.Gupta , MajGenS.P.Kapoor J.

Advocate : H.P.S.Kochhar , Rajinder Singh

Judgement

1. -THIS appeal has been directed by the complainants against order dated 27. 4. 2007 passed by Consumer Disputes Redressal Forum-II, U. T. Chandigarh (hereinafter to be referred as District Consumer Forum), vide which their complaint was dismissed being meritless.

2. BRIEFLY stated the facts are that Smt. Nachhattar Kaur (now deceased) was the mother-in-law of Jaswinder Kaur appellant No. 1 (complainant No. 1) and mother of Kesar Singh appellant No. 2 (complainant No. 2). She had moved an application to the Estate Officer on 11. 8. 2005 for issuance of "no Objection Certificate" (NOC) for transferring her shop- cum-flat No. 16, Sector-9d, Chandigarh in favour of her daughter-in-law Jaswinder Kaur appellant No. 1 through an instrument of gift deed. The copy of the receipt issued by the respondent is annexure C-1. The date of delivery of NOC recorded on Annexure C-1 is 23. 9. 2005. It was next averred that after due date of 23. 9. 2005, they visited the office of respondent several times and ultimately vide letter dated 23. 12. 2005 respondent informed Nachhattar Kaur that her request for grant of NOC for transferring the said property in favour of her daughter-in-law-appellant No. 1 through an instrument of gift deed had been declined because the site in question already stood resumed due to building violations. However, Nachhattar Kaur filed appeal against communication dated 23. 12. 2005 of the respondent before the Appellate Authority and Sh. P. S. Aujla, Commissioner, Municipal corporation exercising the powers of Chief Administrator, U. T. Chandigarh under the provisions of the Capital of Punjab (Development and Regulation) Act,1952

vide order dated 25. 5. 2006 (annexure C-2) held that appellant No. 1 being an old lady was suffering at the hands of the staff of Estate Office, u. T. Chandigarh and such like happening should be checked and possible action should be taken against delinquent officials. Consequently the case was remanded to the Estate Office for passing a speaking order within two weeks from the date of order after affording an opportunity to the appellant No. 1 and ultimately NOC was issued as it was found that the order resuming SCF for building violations was cancelled later on.

Alleging deficiency in service, the complaint was filed and the complainants claimed that they had to spend Rs. 1,61,210 as in the meantime rate of stamp duty had increased as on 11. 8. 2005 the rate of stamp duty was Rs. 45,000 per sq. yard and rate of registration fee was Rs. 1,000 whereas on 6. 7. 2006 the rate of stamp duty was Rs. 72,000 per sq. yard and rate of registration fee was Rs. 10,200. They further claimed Rs. 5 lacs for harassment and mental torture along with interest @ 18% p. a. and Rs. 11,000 as litigation expenses.

3. RESPONDENT contested the complaint and stated that appellant No. 1 had applied for issuance of NOC on 11. 8. 2005 but since site in question was resumed due to building violations on 2. 7. 90, so, the office vide letter dated 9. 9. 2005 requested appellant No. 1 to get the site restored. It however admitted that on 11. 8. 2005 Nachhattar Kaur being registered owner of SCF in question had applied for NOC for transferring the said property in favour of her daughter-in-law through an instrument of gift deed. It next admitted that against order of resumption, Nachhattar Kaur had filed Appeal No. 3 of 2006 which was allowed by the Court of Sh. P. S. Aujla vide order dated 25. 5. 2006 Annexure C-2. It was next pleaded that after passing order by Sh. P. S. Aujla exercising the power of Chief Administration, the case was processed for issuance of NOC and the same was issued vide memo dated 6. 7. 2006. It next stated that several opportunities were given even after 18. 8. 2006 to rectify the violations but the same were not rectified and as such revised plan was rejected on 27. 9. 2006 and then transferee had applied for conversion from SCF into SCO and the case was fixed for 23. 2. 2007 for further proceedings along with conversion proceedings. It next stated that Chief Administrator vide order dated 25. 5. 2006 had remanded the case to the Estate Officer for passing speaking order within 15 days. The Estate Officer had granted time till 18. 8. 2006 vide order dated 4. 6. 2006 for getting the violations sanctioned/rectified but till date the transferee had not complied with the order and NOC to sell the property in question was not issued because the site stood resumed due to building violations, so, it prayed that there was no deficiency on its part and as such complaint should be dismissed. Parties adduced their evidence by way of affidavits and documents.

4. AFTER hearing Counsel for the parties, the District Consumer Forum vide order dated 27. 4. 2007 dismissed the complaint by holding that there was no merit in the same. Aggrieved by the said order, complainants have filed the present appeal. We have heard Counsel for appellants Mr. H. P. S. Kochhar, Sh.

Rajinder Singh, Deputy District Attorney on behalf of respondent and carefully gone through the file.

5. IT is an admitted fact that Smt. Nachhattar Kaur (now deceased) being registered owner of SCF No. 16, Sector-9-D, Chandigarh had applied for "no Objection Certificate" for transferring property in favour of her daughter-in-law Smt. Jaswinder Kaur-appellant No. 1 on the basis of gift deed. It is also not disputed that vide communication dated 23. 12. 2005 respondent informed Nachhattar Kaur that her request for grant of NOC for transferring the property in question in favour of Jaswinder Kaur through gift deed had been declined as property in question stood resumed due to building violations. Against the said communication, Nachhattar Kaur filed appeal No. 3 of 2006 to the Chief Administrator, U. T. Chandigarh and it was held by Sh. P. S. Aujla that if the site in question had not been resumed then the case for issuance of NOC should be processed immediately and necessary NOC be issued in time bound manner and regarding observance of additional violations, Assistant Estate Officer exercising the powers of the Estate Officer was at liberty to take action in accordance with law. There is no dispute about it that on receipt of copy of order dated 25. 5. 2006 of the Chief Administrator, U. T. Chandigarh, the Estate Officer had processed the case and issued NOC on 6. 7. 2006.

6. NOW first question to be seen is whether property was resumed for certain violations vide order dated 2. 7. 1990. A perusal of order dated 4. 6. 2006 passed by Assistant Estate Officer shows that the case on remand was processed as it was remanded by the order of Chief Administrator vide his order dated 25. 5. 2006 for passing speaking order within 15 days. It is mentioned in second para of the order that resumption order passed on 2. 7. 1990 was withdrawn on 15. 10. 1990 and Assistant Estate Officer exercising the powers of Estate Officer, U. T. Chandigarh had ordered to withdraw the order dated 2. 7. 1990 but keeping in view statement of Sh. Kesar Singh son of Nachhattar Kaur-appellant No. 2 that he had submitted revised building plan for sanction case was kept pending till sanction of building plan. However, order dated 2. 7. 1990 vide which the site was cancelled for building violations had been withdrawn. The Chief Administrator had also observed in his order that an old lady was suffering for the wrongdoings in the office of Estate Officer, U. T. Chandigarh, therefore, speaking order must be passed within a period of 15 days positively. It was also observed that if the site was not resumed then case for issuance of NOC should be processed immediately and further it be issued in time bound manner and also that with regard to additional violations, Estate Officer, U. T. Chandigarh was at liberty to take action in accordance with law. Therefore, Chief Administrator passed strictures against Assistant Estate Officer for not issuing NOC and giving report that the Shop-cum-flat had been cancelled or resumed vide order dated 2. 7. 90, although, that order had been withdrawn vide order dated 15. 10. 1990 i. e. after about three months. In the order dated 15. 10. 1990 it is mentioned that Sh. Kesar Singh son of the allottee had appeared before the Estate Officer and stated that he came to know about the resumption of his SCF No. 16, Sector-9-D,

Chandigarh for building violations, although he had submitted revised plan for getting the violations regulated which were sanctionable and his plan was pending with the Architect Department and he could not attend the office on 2. 7. 1990 due to illness. He had further shown his plan deposit security receipt vide which he had submitted the plan. Accordingly in view of this explanation, Estate Officer ordered that cancellation order was withdrawn for all intents and purposes and need not be issued. However, the case was kept pending till the sanction of his revised plan. Therefore, the order dated 2. 7. 1990 had become null and void vide order dated 15. 10. 1990. The matter was kept pending only till the sanction of revised plan by the office but as far as order vide which cancellation or resumption was withdrawn had become final. The Estate Officer in its order dated 4. 6. 2006 stated that there was definitely functional lapse on the part of office not to decide the case either by getting violations sanctioned/rectified or by deciding the case on merits. . He had further observed that the site could not be termed as resumed as on date. Therefore, Asstt. Estate Officer had clearly admitted that there was functional lapse on the part of officials of Estate Office and in fact order dated 2. 7. 1990 had already been cancelled vide order dated 15. 10. 1990 and the matter was kept pending for the purpose of sanctioning of revised building plan. For no fault of the appellant, Estate office took about 11 months for granting NOC and it was only granted when appellant No. 1 was successful in appeal filed against non-grant of NOC.

Smt. Nachhattar Kaur had applied for grant of NOC on 11. 8. 2005 and it was actually granted on 6. 7. 2006. In the meantime, the rate of stamp duty on the gift deed had increased because on 11. 8. 2005 the rate on stamp duty was Rs. 45,000 per square yard and registration fee was Rs. 1,000 while on 6. 7. 2006 the rate of stamp duty was Rs. 72,000 per square yard and rate of registration fee was Rs. 10,200. Thus, appellant No. 1 had to incur extra expenses to the tune of Rs. 1,61,210 as difference in the rate of stamp duty and registration fee on 93. 7 sq. yards. This amount she had to incur extra due to negligence or fault of officials of Estate Office including Assistant Estate Officer exercising the powers of Estate Officer who was posted at that time. The appellants had also suffered mental tension and harassment due to negligence of officials of Estate Office for which they are liable to pay Rs. 2 lakhs as compensation. It is clear case of gross negligence on the part of officials of Estate Office as they had made report against the written record available on the file. It amounts to deficiency in service.

7. THEREFORE, appeal is accepted with costs of Rs. 5,000 and the respondent is directed to pay a sum of Rs. 1,61,210 on account of difference in the rate of stamp duty on gift deed and registration fee besides Rs. 2 lakhs as compensation on account of mental agony and harassment, etc. This amount shall be recovered personally from the officials of Estate Office who were negligent/deficient in performing their duty. The appellants are also entitled to interest @ 12% p. a. on the amount of Rs. 1,61,210 from the date of payment i. e. execution of gift deed dated 6. 7. 2006 and on the amount of Rs. 2 lakhs from the date of order. Copies

of this order be communicated to the parties, free of charge. Appeal allowed.