

**(2004) 04 NCDRC CK 0047**

**In the National Consumer Disputes Redressal Commission**

LAKSHI CHAUHAN

APPELLANT

Vs

DURG JILA GRIHA NIRMAN SAHAKARI SAMITI MARYADIT

RESPONDENT

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**Date of Decision :** 02-04-2004

**Acts Referred:**

**Citation :** 2004 1 CPC 681 : 2004 4 CPJ 477

**Hon'ble Judges :** V.K.Agrawal , Veena Misra , R.S.Awasthis J.

**Final Decision :** Appeal allowed

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**Judgement**

1. THIS appeal, under Section 15 of the Consumer Protection Act, 1986, (hereinafter called the "Act" for convenience) is directed against the order dated 1.10.1999 in Complaint No. 64/1999 by District Consumer Disputes Redressal Forum, Rajnandgaon (hereinafter called the "District Forum" for short) dismissing the complaint on the ground that District Forum has no jurisdiction to hear and decide the complaint in view of Section 64(1)(B) of the Co-operative Societies Act, 1960 (hereinafter called the "Societies Act" for short).

2. ADMITTEDLY the complainants/appellants are the members of respondent No. 1 Co-operative Society. They were allotted different plots by the respondent. The main grievance of the complainants in the complaint was that respondent society did not carry out certain works relating to construction of roads, drains and also for providing electricity supply. In view of the above, according to the complainants, respondent committed deficiency in service. The complainants, therefore, approached District Forum and filed the complaint under Section 12 of the Act. The complaint was resisted inter alia on the ground that in view of Section 64(1)(B) of Societies Act, the jurisdiction of the District Forum was barred.

Learned District Forum in the impugned order upheld the objections as above of the respondent society and held that it has no jurisdiction to hear and decide the complaint. The complaint was, therefore, dismissed.

3. LEARNED Counsel for complainants/appellants assailed the impugned order. It

was submitted that the complainants being the allottees of the plots as members of the society, were entitled to the benefit of the services and facilities promised under the agreement by the parties. It was, therefore, submitted that under Section 3 of the Act, the complaint was competent. It was further submitted that bar under Section 82 of Societies Act operated only against the Civil and Revenue Courts and consequently did not operate against other authorities such as District Forum. It was submitted that learned District Forum fell into error in holding that it was not competent to hear and decide the complaint. As against the above, learned Counsel for respondent No. 1-Co-operative Society strenuously supported the impugned order. It was submitted that in view of express bar under Section 82 of the Societies Act, District Forum has no jurisdiction, as was rightly held by the District Forum.

4. THE question that arises for consideration is; as to whether the jurisdiction of Consumer Fora is barred to hear and decide the dispute raised in the complaint? Section 64 of the Co-operative Societies Act reads as below : "64. Disputes-(1) Notwithstanding any thing contained in any other law for the time being in force, any dispute touching the constitution, management or business of a society or the liquidation of a society shall be referred to the Registrar by any of the parties to the dispute if the parties thereto are among the following : (a) a society, its committee, any past committee, any past or present officer, any part or present agent, any past or present servant or a nominee, heirs or legal representatives of any deceased officer, deceased agent or deceased servant of the society or the liquidator of the society; (b) a member, past member or a person claiming through a member, past member or deceased member, of a society or of a society which is a member of the society."

It may also be mentioned that Section 82 of the Societies Act, creates a bar and it is laid down therein that Civil or Revenue Court will have no jurisdiction in relation to a dispute which is referable to the Registrar or nominated person by the Board. Therefore, the dispute raised in the complaint regarding the management or business of the society could be referred to the Registrar under Section 64 of the Societies Act. However, even if that be so, jurisdiction of only Civil and Revenue Court was expressly barred under Section 82 of the Societies Act. It does not appear that the jurisdiction of the Consumer Fora was also barred, especially in view of Section 3 of the Act which lays down that the provisions of the Act shall be in addition to and not in derogation of any other law for the time being in force. Thus, it is clear that the remedy provided under the Act is in addition to other legal remedies that may be available to the complainant. In the present case, the complainants have raised a consumer dispute. There is no express bar regarding jurisdiction of Consumer Fora under Section 82 of the Societies Act. Therefore, the jurisdiction of the Consumer Fora is not barred. The Consumer Forum is, therefore, competent to hear and decide the complaint.

5. REFERENCE may also be made to the decision of National Commission in Smt.

Kalavati & Ors. v. M/s. United Vaish Co-operative Thrift & Credit Society Ltd., I (2002) CPJ 71 (NC)=2001 (3) CPR 194 (NC). In the said case a question arose as to whether the jurisdiction of Consumer Forum was barred in view of Section 93 of the Delhi Co-operative Societies Act, 1972. The said provision was substantially similar to Section 82 of Societies Act and barred the jurisdiction of Civil and Revenue Courts in respect of matters mentioned therein. The National Commission in that case laid down that as District Forum was neither a Civil nor Revenue Court, Section 93 of the Delhi Co-operative Societies Act would not come in the way of District Forum assuming jurisdiction. It was further observed therein that Section 3 of the Act is worded in widest terms and that there is no doubt that the provisions of the Act are in addition to and not in derogation of any other law for the time being in force.

6. IN the above context the order of the State Commission of Gujarat in Chuval Consumer Protection Society & Anr. v. Anand Corporation & Ors., 2003 (1) CPR 602, also deserves reference wherein it was laid down that bar of jurisdiction under the "Societies Act" operates against Civil and Revenue Court and there was no exclusion of jurisdiction of any other authority. In view of the above, it is clear that the District Forum fell in error in holding that its jurisdiction is barred in view of Section 82 of Societies Act, and in dismissing the complaint, on that ground.

The appeal is allowed. The impugned order is set aside. The complaint is sent back to District Forum for its decision on its merit after affording due opportunity of hearing both the parties. The parties shall appear before the District Forum on 24.4.2004 without notice. Appeal allowed.