
(1996) 04 NCDRC CK 0034

In the National Consumer Disputes Redressal Commission

PONDICHERRY CENTRAL GOVERNMENT EMPLOYEES CO-
OPERATIVE HOUSING SOCIETY

APPELLANT

Vs

S.SABESAN

RESPONDENT

Date of Decision : 18-04-1996

Acts Referred:

Citation : 1996 2 CPJ 301 : 1996 3 CPR 236

Hon'ble Judges : David Annoussamy , A.Veerapandian J.

Final Decision : Appeal partly allowed

Judgement

1. THESE two appeals have been heard together and disposed of by this common order.

2. BOTH the appeals have been filed by the same opposite party. The complainants applied for allotment of house plots and to that effect they have paid admission fee. (Dr. S. Sabesan paid Rs. 20/- and Dr. K. Krishnamoorthy, paid Rs. 102/-) and a share capital (Dr. S. Sabesan paid Rs. 1,000/- and Dr. K. Krishnamoorthy Rs. 918/-) and also the cost of the plot of Rs. 21,240/- each. It was the understanding that the opposite party will allot a plot to each of them within 30 days from 15.3.91 on the basis of the drawal of lots. But such drawal was not held and no specific allotment of plots was made, even though the opposite party has accepted the registration for allotment of house plots.

Aggrieved by that fact the complainants approached the District Forum with the following prayers :- Appeal No. 14/96 1. Regular allotment of house plot, under the scheme cited above. 2. In case the scheme has not come into being so far, the officials concerned may be directed to pay back the entire amount, paid for the purpose (Rs. 22,260/-) plus the interest (24%) as on date. 3. Also, a sum of Rs. 1,000/- incurred by him to meet the expenditures in the entire process may be paid. Appeal No. 15/96 1. Regular allotment of house plot, under the scheme cited above. 2. In case the scheme has not come into being so far, the officials concerned may be directed to pay back the entire amount (Rs. 22,240/-) paid for the purpose plus the interest, as on date. 3. Also a sum of Rs. 1,000/-

incurred by him to meet the expenditure in the entire process may be paid.

3. THE case of the opposite party was that they were ready to allot the plot, but that the matter has gone beyond their control on account of some administrative difficulties and pleaded that even though they were eager to allot the plots they were not in a position to do so. THE District Forum by order dated 29.11.95 came to the conclusion that there was a deficiency in service inasmuch as the plots were not allotted as promised and directed the opposite party to refund the amount of Rs. 21,240/- with interest @ 16.5% p.a. and also compensation to the tune of Rs. 5,000/- with cost of Rs. 500/-. These orders are assailed on three grounds : The first one is that there is a bar of jurisdiction in respect of matters in which the Co/- operative Societies are involved. The second is that there is no provider of service and beneficiary of service in the case of a Co-operative Society since the complainants themselves are part and parcel of the Co-operative Society and therefore cannot sue the Co-operative Society. The third ground is that the Forum has granted by way of compensation an amount superior to what was claimed by the complainants.

4. LET us take first the bar of jurisdiction. The learned Counsel for the appellant placed reliance on Section 84 of the Pondicherry Co-operative Societies Act, 1972 and also Section 144 of the same Act and also on a decision of the State Commission, Karnataka in *The Kulve Gram Seva Shahkari Sangha Ltd. v. Mahabaleshwar Ramaknshna Bhat*, III (1994) CPJ 500 in which it was held that the Co-operative Societies Act prohibits the settlement of dispute arising between the member and a Society touching business of the Society by any Forum other than the Registrar of Co-operative Societies. The sections referred to above read as follows : "Section 84(1)-If any dispute touching the Constitution of the Committee or the management or the business of a registered Society (other than a dispute regarding disciplinary action by the Society or its Committee against a paid servant of the Society) arises - (a) Among members, past members and persons claiming through members, past members and deceased members; or (b) between a member, past member or person claiming through a member, past member or deceased member and the Society, its committee or any officer, agent or servant of the society; or (c) between the Society or its Committee and any past Committee, any officer, agents or servants, or any past office, past agent or past servant, or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased servant of the Society; or (d) between the Society and any other registered Society; such dispute shall be referred to the Registrar for decision."

Section 144 : "No order or award passed, decision or action taken or direction issued under this Act by an Arbitrator, a Liquidator, the Registrar or an officer authorised or empowered by him, the Tribunal or the Government or any officer subordinate to them, shall be liable to be called in question in any Court." In order to find out whether these provisions take out the jurisdiction of the machinery created under the Consumer Protection Act we have to keep in mind

Sub-section 1(4) and Section 3 of that Act which respectively read as follows :
1(4) "Save as otherwise expressly provided by the Central Government by notification, this Act shall apply to all goods and services." 3. "Act not in derogation of any other law - The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force."
It results from the above provisions that the jurisdiction of the machinery would be barred only when there is an express and unequivocal bar. Let us examine whether the section of the Pondicherry Co-operative Societies Act embodies any such bar. The phrase "such dispute shall be referred to the Registrar for decision" appearing in Section 84 of the Pondicherry Co-operative Societies Act purports only to confer jurisdiction, but does not exclude jurisdiction of other adjudicatory bodies. In the normal course Members of a Co-operative Society are expected to get disputes settled by reference to the Registrar and the parties may also find the course quite convenient. But the above said provision in the teeth of Sub-section 1(4) and Section 3 of the Consumer Protection Act cannot be construed as barring the jurisdiction of the machinery under the Act. The second provision namely Section 144 refers to an order or award of decision passed by the Authorities contemplated under the Act. It excludes appellate jurisdiction to any Court. In this case, there is no action taken as specified under Section 144 of the Act. What is complained of is the absence of allotment of a plot contrary to the promise made. Therefore, Section 144 of the Pondicherry Co-operative Societies Act, 1972 does not in any manner take out the present matter from the jurisdiction of the machinery created under the Consumer Protection Act. We are, therefore, unable to accept the contention of the learned Counsel for the Appellant.

5. THE next ground urged is that the relationship between the parties are such as there is no relation of provider and consumer of service as contemplated in the Consumer Protection Act, that the relationship is rather that of a society and its members. THE opposite party would admit that the complainants were not original members of the Central Government Employees Co-operative Housing Society, that they registered themselves as members only upon an offer of giving plots of a society which has been in existence for several years, it is also seen that the Registration Form for allotment of plot is dated 6.4.91 and the receipt for payment of share and admission fee is dated 10.4.91. Further the circular of the opposite party referred to in Registration Form which set the process in motion is not produced. It is to be noted that this plea was not at all taken by the opposite party before the Forum. THE relationship between the parties is a mixed question of fact of law and cannot be gone into for the first time in appeal. We have necessarily to reject it.

6. AS far as the third ground is concerned it can be seen clearly from the comparison of the reliefs prayed for in paras abstracted above and the reliefs afforded by the Forum by way of compensation, that the Forum awarded Rs. 5,000/- when the claim was only Rs. 1,000/-. The complainants would state that before the Forum they have filed a reply to the counter statement in which they

asked for Rs. 1,00,000/- as special damage. But they admit that this reply was filed only before the Court after the arguments were over and it is also seen that it did not reach the other party. Therefore, it cannot be taken as part and parcel of the demand on the complaint. We, therefore, find that the learned Counsel for the opposite party is perfectly justified in contending that the amount given by the Forum over and above what was asked by the complainants is unjustified. In the result, the appeals are allowed in part. The amount of damages is reduced from Rs. 5,000/- to Rs. 1,000/- and the rest of the order is confirmed. No costs. Appeal partly allowed.