

(2003) 11 NCDRC CK 0037

In the National Consumer Disputes Redressal Commission

RABINDRA KUMAR NANDA

APPELLANT

Vs

MUKUNDA CH. RAY

RESPONDENT

Date of Decision : 17-11-2003

Acts Referred:

Citation : 2004 1 CPC 620 : 2004 2 CPJ 245

Hon'ble Judges : D.M.Patnaik , Pramodnath Das J.

Final Decision : Appeal allowed

Judgement

1. THIS is an appeal against the order of the District Forum, Jaipur directing the appellant to sink a fresh bore well on the land of the complainant and to pay compensation.

2. THE case of the complainant is he dug a bore well on his plot No. 528 under Khata No. 133 in his village. Present appellant as the Contractor did the work. This was done in the month of July, 1998. But this project failed when no water could be drawn during the month of April, 1999, for which he alleged to have sustained loss in agriculture to the tune of Rs. 2,00,000/-. O.P. No. 1 in the version admitted to have dug the well which was completed by 26.11.1998 on which date an electric submersible pump was installed and it functioned satisfactorily. The complainant accepted this by way of satisfaction note and in taken of such satisfaction he signed the relevant papers for releasing the subsidy through Agriculture Officer O.P. No. 3. O.P. Nos. 2 and 3 who were the Agriculture Officers stated that they observed all formalities and issued the work order to the present appellant. They supported the case of the appellant about the successful digging of the well. The Agriculture Officer pleaded because of the completion of the project and satisfaction noted by the complainant the APICOL was recommended through the District Agriculture Officer to release the subsidy of Rs. 36,940/- in favour of the complainant.

Heard Mr. K.N. Sinha, the learned Counsel for the appellant and Mr. P.K. Das the learned Counsel for the complainant. None present for the respondent Nos. 2 and 3. Perused the materials on record. While judging the case the Forum below

mainly relied on the report of the Pleader Commission who inspected the well in question. He reported that in fact the well was sunk but not over Plot No. 528 but over Plot No. 537. On going through the report of the Pleader Commission we accept the case of the present appellant that in fact the Commission was not equipped with the particulars with regard to the record of right in respect of Plot No. 528 or 537. He only found there was no sign of bore well on Plot No. 528. But there was some remnants having been left over Plot No. 537. The District Forum has jumped to the conclusion that the complainant was deficient in service having dug the well over Plot No. 537. This conclusion is wholly unacceptable to us. The question is how a dug well could be sunk on Plot No. 537. The position of the place over Plot No. 538 for the dug well at the spot must have been shown by the complainant who knew whether the place on which he was sinking the well was either on Plot Nos. 528 or 537. Except an Amin or a survey knowing person under no circumstances it could be pointed out without measurement and identification, the location of the well either on Plot Nos. 528 and 537. The complainant has not mentioned anything in the complaint petition that the present appellant committed mistake and knowingly dug a well over Plot No. 537. There is no pleading to that effect. Under no circumstances a Contractor for that matter the appellant could have been in a position to know whether he was digging a well over Plot No. 528 or 537. This must have been shown at the instance of the complainant who was alone competent to say on which plot he was to dig the well. Merely because the Commission did not find the well to have not been dug over Plot No. 528 that would not conclusively prove that the present appellant knowingly dug the well over Plot No. 537. This is entirely the responsibility of the complainant. Therefore, we do not find the judgment is sustainable in the eye of law. Accordingly we allow the appeal and dismiss the complaint petition. No cost. Appeal allowed.