

(1997) 07 NCDRC CK 0085

In the National Consumer Disputes Redressal Commission

S.K.GUPTA

APPELLANT

Vs

Sanjay Jain

RESPONDENT

Date of Decision : 07-07-1997

Acts Referred:

Citation : 1997 2 CPC 519 : 1997 2 CPJ 587 : 1998 1 CLT 110

Hon'ble Judges : M.R.Agnihotri , Sushil Paul , A.D.Malik J.

Final Decision : Complaint dismissed

Judgement

1. THIS appeal has been filed by one S.K. Gupta, Municipal Councilor, Municipal Committee, Gurgaon against the order dated 8th November, 1996 passed by District Forum, Gurgaon, whereby complaint of one Sanjay Jain, resident of House No. 10, Sector 14, Urban Estate, Gurgaon has been accepted and the learned District Forum has directed HUDA, Gurgaon "to close the disputed passage to the park forthwith."

2. COMPLAINANT-Sanjay Jain approached the District Forum, Gurgaon with a grievance that he was the owner in possession of House No. 10, Sector 14, Gurgaon and in the front of his house there was a Municipal park to which the entry was from a path-way between House Nos. 115 and 116 of Sector 10. Despite this entry open, HUDA "has illegally opened an unapproved entry in the park, which is just near to his house and the people visiting the park through that illegal entry, parked their vehicles in front of the house of the complainant, which is causing him great harassment." In order to ensure that the path of the park between house Nos. 115 and 116 was used by visitors and in order to stop their entry by the other path, which was just closed to his house, complainant approached the HUDA authorities for having the original path developed. However, when no concrete results were achieved, he approached the District Forum for the redressal of aforesaid grievance. In the complaint filed by him, he impleaded only HUDA as opposite party. This complaint No. 541 was decided on 18th June, 1996 with the observation that the complainant should pursue his remedy in the HUDA's office. But when HUDA did not oblige him by taking any

action, he again approached the District Forum by filing the present complaint No.216 on 7th October, 1996. In this complaint HUDA alone has been impleaded as opposite party. During the trial of the complaint the learned Counsel appearing on behalf of HUDA pleaded, that the matter was under active consideration of HUDA and certain correspondence between Estate Officer, Gurgaon and the Executive Engineer, Horticulture Division and the District Town Planner, Gurgaon was also referred. After examining the matter the learned District Forum allowed the complaint by issuing the aforesaid directions to HUDA to close the disputed passage to the park forthwith. Feeling aggrieved against the aforesaid order, Mr. S.K. Gupta, Municipal Councillor appellant in the present case has appeared in person and contended that though number of persons were visiting the park for morning and evening walk etc. and the direction issued by the learned District Forum had the effect of restraining them from visiting the park through the path way, yet not a single person of the public individually or in representative capacity was impleaded as opposite party to the complaint, which has prejudiced the residents of the locality for putting up their defence before the learned District Forum. On merits, it has been pleaded that about 75 persons who were residents of the locality had represented in writing to file appeal against the order dated 8th November, 1996 passed by learned District Forum, Gurgaon, as closure of the "said wicket gate to the park" was adversely affecting the larger public interest and was causing great hardship to them. Since it was an ex-parte order and the appellant S.K. Gupta and his 74 signatories to the representation dated 1st February, 1997 were not parties to the case, there is delay of 17 days in filing the appeal. Alongwith the appeal application for condonation of delay has also been filed in which it has been stated that since the appellant had come to know about the order only on 1st February, 1997, limitation for filing the appeal should be taken from the date of knowledge and not from the date of passing of the order. While entertaining the appeal on 14th February, 1997 notice was issued alongwith the application for condonation of delay. In response thereto, complainant Sanjay Jain has appeared personally and has filed his written submissions. By way of preliminary objection Mr. Sanjay Jain has pleaded that the appeal was not maintainable as the appellant-S.K. Gupta was not a party to the complaint and as such he has no locus-standi to file the present appeal. In support of his case he has filed a number of documents alongwith cross-representation dated 12th July, 1996 signed by about 50 persons, requesting the District Forum, Gurgaon to expeditiously execute the order of the HUDA passed on 20th July, 1993 as "it would be in our (public) interest." In addition to that, copy of the order dated 13th February, 1997 passed by learned Civil Judge (Junior Division), Gurgaon, disposing of the application for temporary injunction in a suit for permanent injunction for restraining HUDA from opening the gate on a certain point shown in the plaint, has also been placed on record.

After hearing the parties and having gone through the record we are of the considered view, that even though by accepting the application for condonation

of delay the appeal can be entertained as the appellant was not party to the complaint and had no knowledge of the impugned order, yet in exercise of our jurisdiction under Section 17-B of the Consumer Protection Act, we treat these proceedings as Revision and dispose of the same accordingly. A close scrutiny of the record shows that the real grievance of the complainant is against the general public, as a number of persons pass by the side of the complainant's house causing him nuisance and by parking their vehicles in front of their house they almost block the entry of the complainant and his vehicles to his own house. All this is being done by the members of the public when they pass through the gate-in-dispute to the park, for which the complainant had approached HUDA and later on District Forum to ensure that the gate was closed and the frequent entry of the visitors stopped to the park.

3. FROM the above facts it is amply evident that the very nature of the grievance is outside the scope of the consumer jurisdiction and the learned District Forum should not have entertained the complaint much less allowing it by passing a mandatory order. It has by now been settled, that the disputes to the immovable property affecting members of general public are neither amenable to the jurisdiction under the Consumer Protection Act nor can they be adjudicated satisfactorily by Tribunals having limited jurisdiction. Otherwise also, disputes of complicated nature where a number of persons are interested on both sides and the decision whereof is going to affect members of general public one way or the other, should be left for the decision by the Civil Courts and the complainants should be relegated to have recourse of that remedy by civil suits, if so advised. Consequently, as the learned District Forum has exercised jurisdiction, which is not vested in it under the Consumer Protection Act we set aside the impugned order and relegate the complainant to have recourse before the Civil Court; refraining ourselves from commenting on the merits of the case so that no party should feel prejudiced before the Civil Court. Resultantly, the complaint is dismissed with no order as to costs. Complaint dismissed.