
(2004) 01 NCDRC CK 0059

In the National Consumer Disputes Redressal Commission

TAHSILDAR, TAHSILDAR OFFICE, CUDDALORE

APPELLANT

Vs

D. KANAKAVALLI

RESPONDENT

Date of Decision : 08-01-2004

Acts Referred:

Citation : 2004 1 CPR 611 : 2004 2 CLT 153 : 2004 2 CPJ 461

Hon'ble Judges : A.Raman , R.Vanaroja J.

Final Decision : Appeal allowed

Judgement

1. IN the present appeal, the complainant's case is thus: The complainant applied to the opposite party for sub-division and paid a sum of Rs. 40/- as the fees for the same. But in spite of the same, the opposite party did not come to inspect or survey the property. On account of the inaction on the part of the opposite party in not carrying out the survey operation, the complainant is put to hardship and mental agony. Hence the complainant prayed for a direction to the opposite party to effect sub-division of her land and to pay a sum of Rs. 5,000/- as compensation for the deficiency of service and mental agony with cost of Rs. 300/-.

2. THE opposite party has stated in his version as follows: THERE are documents available to show that any application was received for survey. If any payment has been made by the complainant, she should have sent the challan to the concerned Tahsildar along with an application. THE petition submitted by the complainant dated 24.8.1994 to the Collector on his Grievance Day was taken up wherein a direction was given to the complainant to approach the concerned Tahsildar. But the complainant failed to contact the Tahsildar and take steps. Again when the complainant sent another letter dated 14.11.194, she refused to give any statement. THEREfore, in such circumstances, there is no deficiency of service and hence the opposite party prayed that the complaint may be dismisses with costs. In our opinion, it is not necessary to go into the facts of the case to find out whether there is any deficiency of service or not. The Tahsildar is a Government servant entrusted with certain duties. The Tamil Nadu Survey and

Boundaries Act vests with the Revenue Officials certain powers. Surveying a land is done pursuant to the same and not solely on the application of parties. It is as a part of the sovereign duties, such functions are performed by the Government under the provisions of this Act through the revenue officials. Here, there is no question of hiring of any service. With reference to the opposite party, the complainant cannot be equated to a consumer. If the service of anyone is hired and if in that process a deficiency occurs, it can be argued that the complainant would fall within the ambit of Section 2 of the Consumer Protection Act. Section 2, while defining a "consumer", explains that a person who buys any goods for consideration or any person who hires any services for consideration will be, for the purposes of the Act, deemed as consumers. Therefore, the Tahsildar being a statutory authority who is vested with certain powers under the Tamil Nadu survey and boundaries Act or under the Board Standing Orders, cannot be held to do any service to the complainant on hire. If a proper application is filed, then, necessary action would be taken by the Revenue Department to have the property surveyed. According to the opposite party, there is no proper application and that when the complainant appeared in person she has also refused to give any statement. Failing to do any statutory duty may not amount to deficiency in service as provided under the Consumer Protection Act. The Government, in pursuance of the empowerment under various Statutes, discharges several functions of which surveying of land for the purpose of revenue records and collection of land revenue is one. If the complainant wants to survey her lands she has to follow the procedure and if such a statutory function is not performed, her remedy will be only to approach the Civil Court or the High Court by way of filing writ petition for issuance of mandamus or other reliefs. The complainant has to satisfy that she is the owner of the land; she has to produce the title deed, kist receipt, adangal extract or copy of "A" Register along with her application to the concerned officials. Therefore, assuming that she has paid a sum of Rs. 40/-, that does not bring a change in the character or the relief asked for, and it is only a payment to be made under the rules enacted under the Act. It is not a voluntary payment, in the sense, that a buyer pays to get some goods or to hire the services. It is a mandatory payment which is required to be made for the purpose of surveying and the officials are vested with the power to do certain acts on behalf of the Government. Therefore, the mere payment of Rs. 40/-, even assuming it to be for the purpose of surveying, cannot put the complainant on a better pedestal nor could she claim to be treated as a "consumer" in relation to the State. It is the function of the State which is discharged by the opposite party for which certain procedure is formulated. Therefore, if the procedure is not complied with, the officer incharge is entitled to overlook the request or discard the same. Even assuming that such a procedure is complied with, the complainant cannot claim any vested right that it should be done and since the statutory functions and other duties are performed by reason of various circulars and notifications, it cannot make them as purveyors of service. Consequently we feel that the complaint is misconceived and ought not to have been allowed.

In the result, the appeal is allowed and the order passed by the District Forum is set aside. The parties are directed to bear their own costs throughout. Appeal allowed.