
(2014) 08 NCDRC CK 0016

In the National Consumer Disputes Redressal Commission

Vivek Gyan Uday Foundation

APPELLANT

Vs

U P Awasevam Vikas Parishad

RESPONDENT

Date of Decision : 20-08-2014

Acts Referred:

Citation : 2014 3 CPR 827

Hon'ble Judges : V.K.JAIN , B.C.Gupta J.

Final Decision : Complaint dismissed

Judgement

1. THE petitioner society participated in an auction conducted by respondent no. 1, U.P. Awas Evam Vikas Parishad for sale of plot no. CC -1 at Nehru Nagar Yajana. The bid of the petitioner was accepted for a consideration of Rs. 2,22,64,210/- in addition to a sum of Rs. 41,50,000/- towards cost of the old structure, boundary wall and 47 standing trees in the said plot. According to the complainant, it made initial payment of Rs. 22,02,000/- to respondent no. 1, followed by several other payments made from time to time.

2. VIDE letter dated 21.03.2009, sent to U.P. Awas Evam Vikas Parishad, the complainant claimed that the amount of Rs. 41,50,000/- sought for the cost of the old structure, boundary wall, trees etc. was atleast ten times higher than the actual value and therefore the valuation of the aforesaid old structure, trees etc. should be revised.

3. IT appears that there is a dispute between the U.P. Awas Evam Vikas Parishad on the one hand and the Government of Uttarakhand on the other hand with respect to the ownership of the certain properties. Vide order dated 07.12.2006, the Government of Uttarakhand, directed the Commissioner of Garhwal Mandal/ Kumau Mandal to seal all the disputed properties of U.P. Awas Evam Vikas Parishad situated in Uttarakhand and not to allow any sale, construction or development work on the same till further orders. The said order contains no reference to specific properties, but the learned counsel for the complainant submits that the plot in question was one of the properties, which were affected by order dated 07.12.2006. This was followed by another order dated

18.02.2010, issued by the Secretary, Government of Uttarakhand, staying the auction and sale of properties of U.P. Awas Evam Vikas Parishad, till further orders. Writ Petition No. 01(MS) of 2012 was filed by U.P. Awas Evam Vikas Parishad challenging the aforesaid order dated 07.12.2006 and 18.02.2010. Vide interim order dated 03.01.2012, the Hon"ble High Court of Uttarakhand, noticing that the land in question was situated in the territory of Uttarakhand and taking a prima facie view that in view of Section 43 of the U.P. Reorganisation Act, 2000, the control on such property will be of Uttarakhand and not of Uttar Pradesh, declined to interfere with the aforesaid orders. The writ petition however was kept pending and is still pending before the Hon"ble High Court. It is an admitted position that there was default on the part of the complainant in making payment to U.P. Awas Evam Vikas Parishad. Annexure 1 to the affidavit of the complainant dated 14.08.2014 indicates several defaults in making payment to respondent no. 1. Since, the defaults were umpteen, we need not refer to them in detail. It would be sufficient to note that there was default in payment of the amount which fell due on 20.03.2007, 20.06.2007, 20.09.2007, 20.12.2007. Upto 20.12.2007, the amount payable to respondent no. 1 was Rs. 1,11,32,105/- . As against that payment made by the complainant was Rs. 1,02,23,792/- upto 25.03.2008. Annexure 1 to the affidavit further shows that as on 31.12.2008, the total amount due was Rs. 1,83,85,230/- , as against which payment made was Rs. 1,57,26,691/- . Upto 31.12.2009, the amount due was Rs. 2,14,32,318/- without penal interest. As against that the amount made by the complainant was Rs. 1,84,76,691/- . Even thereafter there were default in payment of as many as 44 instalments.

4. VIDE cancellation order dated 06.03.2013, respondent no. 1, noticing the persistent defaults committed by the complainant, decided to refund the amount deposited by the complainant after deducting 10% of the amount towards token money. On receipt of the aforesaid letter the complainant sent a legal notice to U.P. Awas Evam Vikas Parishad on 23.03.2013 disputing the validity of the cancellation. The said legal notice was responded by respondent no. 1 vide its reply dated 04.04.2013. It was stated in the response that there was no dispute with respect to property in question between Govt. of UP and the Government of Uttarakhand. The complainant was also intimated that the allotment could still be restored in its name, subject to the complainant depositing the balance amount and the token money.

5. VIDE letter dated 04.05.2013, the complainant, wrote to respondent no. 1 that since there was a defect in the title of the plot and the board was unable to execute a registered sale deed in their favour, the entire money deposited by them be refunded alongwith interest at the rate of 24% per annum. Thereafter, the entire amount deposited by the complainant was refunded to it without any deduction though no interest was paid. The learned counsel for the petitioner submits that as would be seen by the file noting, this was done on account of stay against registration of the sale deed. Being aggrieved from the failure of respondent no. 1 to pay interest on the amount which it had deposited, the

complainant had approached this Commission, seeking Rs. 3,50,93,349/ - towards interest at the rate of 18% per annum and Rs. 1,25,00,000/ - towards compensation, thereby making a total sum of Rs. 4,75,93,349/ -.

6. IT is thus seen that the complainant committed persistent defaults in making payment to U.P. Awas Evam Vikas Parishad. Admittedly, the defaults were umpteen and a substantial amount was still payable to respondent no. 1 at the time the allotment came to be cancelled vide order dated 06.03.2013. The contention of the learned counsel for the complainant is that it was on account of the stay order passed by the Government of Uttarakhand that payment was not made by the complainant to respondent no. 1. In other words, the case of the complainant, as propounded by its counsel is that had there been no stay order passed by the State of Uttarakhand, the complainant would have made payment to respondent no. 1 in terms of the terms and conditions on which the plot was purchased in the auction. The learned counsel further submits that the complainant had repeatedly been asking respondent no. 1 to inform it about the title to the aforesaid plot. We, however, can not accept the aforesaid contention. There is no document to show that the plot in question was affected by the order dated 07.12.2006, issued by Govt. of Uttarakhand. The respondent no. 1 has consistently maintained in its letter that the property in question was not affected prior to issue of the order passed in the year 2012, whereby execution of sale deed was stayed by Uttarakhand Govt. As per complainant's own letter dated 25.05.2012, the said order was passed on 12.04.2012. However, the complainant committed default in payment much much earlier. Had the complainant made payment in time, the sale deed in its favour would have been executed prior to 12.04.2012. Therefore, it cannot be said that the complainant defaulted in making payment due to stay against execution of the sale deed. As far as the orders dated 07.12.2006 and 18.02.2010 are concerned, they did not affect the complainant since either the auction was held prior to 07.12.2006 as is claimed by the respondent no. 1 or the said respondent went ahead with the auction, despite said order. At no stage, prior to writing letter dated 25.05.2012, the complainant claimed that it was not making payment because of the orders dated 07.12.2006 and 18.02.2010.

7. THE complainant despite having agreed to pay a sum of Rs. 41,50,000/ - for old structure, tree etc., later on disputed the aforesaid valuation, which in our opinion it could not have done. Vide letter dated 19.12.2006, respondent no. 1 informed the complainant that it would have to pay, inter -alia, a sum of Rs. 41,50,000/ - towards the cost of the old structural boundary wall and 47 trees, which stood on the land in question. The petitioner having made several payments to the respondent no. 1 even after receipt of the aforesaid letter, could not have disputed the valuation of the old structure boundary wall etc. If the valuation given by respondent no. 1 was not acceptable to the petitioner, nothing prevented it from saying so and it ought not to have made further payments even after receipt of the aforesaid letter dated 19.12.2006. The valuation of the old structure and boundary wall was disputed by the complainant for the first

time on 21.03.2009. A perusal of annexure 1 to the affidavit of the complainant would show that as many as 13 payments were made by the complainant to respondent no. 1, between 19.12.2006 and 21.03.2009. The respondent no. 1, in our view was fully justified in cancelling the allotment on account of several defaults committed by the complainant in making payments of the amount which was due from it to respondent no. 1.

8. THE next question which arises for our consideration is as to whether the complainant was justified in defaulting in payments of the amount which fell due to U.P. Awas Evam Vikas Parishad on account of the orders passed by the Uttarakhand Government. We pointedly ask the learned counsel for the complainant as to when the complainant came to know of the aforesaid orders. The learned counsel submits that he can not give the exact date, but vide letter dated 25.05.2012, they had brought this aspect to the notice of U.P. Awas Evam Vikas Parishad. A perusal of annexure 1 to the affidavit filed by the complainant would show that the first default in making payment was committed by the petitioner in March, 2007. The amount of Rs. 22,50,000/- which fell due on 20.03.2007 was paid on 20.12.2007. The amount which fell due on 20.06.2007 was paid on 18.07.2007. The amount which fell due on 20.09.2007 was paid on 26.10.2007 and the amount due on 20.12.2007 was paid in several instalments between January, 2008 to March, 2008. As on 25.03.2008, there was a shortfall of more than Rs. 9 lakhs. This was followed by further defaults in making payments to respondent no. 1. As on 31.12.2008, there was a shortfall of about Rs. 26 lakhs in making payment to respondent no. 1, whereas as on 31.12.2009, there was a shortfall of about Rs. 30 lakhs in making payments. Therefore, it would not be correct to say that the petitioner defaulted in making payment on account of the stay orders passed by the Uttarakhand Government. The respondent no. 1, on account of persistent default by the complainant in making the payment, was fully justified in cancelling the allotment and refunding the amount which the complainant had deposited with it. There was no obligation on the part of respondent no. 1 to pay any interest to a person, who made default in making payment as per the terms and conditions of the bid given by him.

9. HAD the complainant made payment to the respondent no. 1 in time and stopped payment on coming to know the dispute between the Government of Uttarakhand on one hand and the U.P. Awas Evam Vikas Parishad on the other hand, we could see some justification in the complainant stopping further payments but, in the case before us, there were several defaults committed by the complainant even before the stay order had come to its notice. In fact, according to the complainant, it also made payments to respondent no. 1 in March, 2013, which happened after it had come to know of the dispute between respondent no. 1 and the Government of Uttarakhand.

10. THUS , whichever way we take, we find the complainant to be in default, without any justification. Firstly, it disputed the value of old structure and trees on the plot, despite having already offered to such valuation. Then, there were

persistent defaults in making payment right from the beginning, even prior to it having come to know of the orders issued by U.P. Govt. In any case, even if we presume, despite no much material being available before us, that the complainant defaulted in payment due to aforesaid orders, we find a contradiction in the said position, because even after coming to know of the aforesaid orders, the complainant did make further payment, though not all the payment which had fallen due by that time.

11. AS regards dispute to the title of the aforesaid plot, we are prima facie of the view that U.P. Awas Evam Vikas Parishad could not have put to auction a plot, if the ownership did not vest in it. But, the difficulty is that the ownership of the plot in question has not been adjudicated either by the Hon'ble High Court of Uttarakhand where the writ petition filed by U.P. Awas Evam Vikas Parishad is still pending or by any other adjudicatory authority such as a Civil Court. It is possible that the court may ultimately hold that the plot in question belonged to Uttarakhand Government and therefore U.P. Awas Evam Vikas Parishad had no right to put it to auction, but it is also equally possible that the Court may eventually hold that the plot in question belonged to the U.P. Awas Evam Vikas Parishad, which it had full legal rights to sell by way of auction. This is more so when the writ petition filed by the U.P. Awas Evam Vikas Parishad is still pending.

12. IN these circumstances, in our opinion, we can not entertain the complaint seeking interest on the amount which the complainant had deposited with respondent no. 1 and which was later refunded to it nor can it claim any compensation, so long as the dispute between U.P. Awas Evam Vikas Parishad and the Government of Uttarakhand with respect to the title of the plot is pending. In our opinion, if the Hon'ble High Court of Uttarakhand or any other adjudicatory forum ultimately holds that the plot in question was owned by U.P. Awas Evam Vikas Parishad, and not by the Government of Uttarakhand, the complainant would not be entitled to interest on the amount which it had deposited with the respondent no. 1 and which was later refunded to it nor will it be entitled to any compensation. If, however, it is eventually held that U.P. Awas Evam Vikas Parishad had no legal right to the plot, which was put to auction and was purchased by the complainant, the complainant could be justified in seeking interest on the amount which it had deposited with respondent no. 1 and which was later refunded to it without any interest. This could be for the reason that U.P. Awas Evam Vikas Parishad had no legal right to put the aforesaid plot to auction.

13. FOR the reasons stated hereinabove, we find the complaint to be premature at this stage. The complaint is accordingly rejected. We, however, grant liberty to the complainant to file a fresh complaint for ventilation of its grievance in case it is eventually held by a competent forum that the plot in question belonged to Government of Uttarakhand and U.P. Awas Evam Vikas Parishad had no legal right to put it to auction. The learned counsel for the complainant submits that his apprehension is that if filed in a later stage, the complaint may be rejected as

barred by limitation. We make it clear that in our opinion, the complaint if filed on account of a competent forum holding that U.P. Awas Evam Vikas Parishad had no legal right to plot in question, would not be barred by limitation, as the cause of action for filing such a complaint would arise only after such a decision is rendered.