

(1999) 11 CAL CK 0008
In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction W.P. No. 3056 of 1998

West Bengal Electronics Industry Development Corporation Ltd. APPELLANT

Vs

State Commission and Others RESPONDENT

Date of Decision : 24-11-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Consumer Protection Act, 1986 — Section 17, 2(O), 3

Citation : AIR 2000 Cal 80 : (2000) 1 CALLT 178 : 104 CWN 317

Hon'ble Judges : Gitesh Ranjan Bhattacharjee, J

Bench : Single Bench

Advocate : Mr. Jayanta Banerjee, Mr. Samir Kr. Chakraborty and Mr. D.J. Barua, for the Appellant; Mr. Ashok De and Mr. Gaurab Kr. Basu, for the Respondent

Judgement

G.R. Bhattacharjee, J.—In this writ petition the writ petitioner, the West Bengal Electronics Industry Development Corporation Limited (WBEIDC, for short) which is a Government of West Bengal undertaking has challenged the order of the State Consumer Disputes Redressal Commission, West Bengal (Consumer Commission, for short) dated 29.12.97 by which the Consumer Commission directed the WBEIDC to execute and register lease deed in respect of plot No. Y-II in the Salt Lake Electronics Complex, Sector-V, Bidhannagar, Calcutta-91 within one month in favour of M/s. Silicon Valley Electronics Pvt. Ltd., the respondent No. 2 here in. The said order was passed by the Consumer Commission on a complaint filed by the complainant M/s. Silicon Valley Electronics Pvt. Ltd. (Silicon Valley, for short) represented by its Managing Director, Dr. Satyajit Chakraborty against the WBEIDC u/s 17 of the Consumer Protection Act, 1986.

2. The case of the complainant Silicon Valley Is stated hereafter: Dr. SatyaJIt Chakraborty, the Managing Director of Silicon Valley is a Canadian citizen of Indian origin and Is settled in Canada. The West Bengal Government Invited the NRIs and impressed upon them the need to Invest In West Bengal and meted out

assurances that such investors in West Bengal would be given certain privileges which prima facie appeared to the complainant as an attractive package and the complainant started taking initiative to Invest in West Bengal and at that time WBEIDC offered him a plot of land with various services and gave him a brochure wherein it was stated that WBEIDC would be allotting plots of land In Salt Lake city for promoting and developing Electronic Industry and Services. The complainant on approach was assured of a fully developed land with power connection, water supply and drainage outlet at the door-step of each plot and that the land would be available at 1/6th of the current market rate. The WBEIDC Issued a letter of allotment dated 11.4.88 In favour of Silicon Valley In respect of land measuring 2514 acre in plot No. Y-11 in Salt Lake Electronics Complex In Bidhannagar Inter alla fixing the premium of Rs. 2.51.400/- for the allotted land and stipulating that the allottee was required to execute a lease deed for 99 years after payment of the said amount and there after the allottee and the WBEIDC would be called lessee and lessor respectively. The complainant paid the entire premium money of Rs. 2.51.400/- and informal possession of the plot was also delivered to the complainant on 11th August. 1988. The complainant applied to WBEIDC by letter dated 8.9.90 for delayed registration of land and WBEIDC gave written permission for delayed registration by Us letter dated 10.9.90. Another plot of neighbouring land being Y-12 was allotted in favour of SatyaJit Engineering Works Pvt. Ltd.-of which also Dr. Satyajit Chakraborty was the Managing Director. By a letter dated 23.4.93 B. Dasgupta, Executive Director of WBEIDC gave written permission to open a Postgraduate Institution of Management for Imparting knowledge in computerised management, electronics and computer related subjects at plot No. Y-11 and plot No. Y-12. In spite of repeated requests and reminders by the Silicon Valley to execute and register the lease deed in respect of plot No. Y-11 the WBEIDC failed and neglected to register the lease deed and thereafter suddenly the WBEIDC by its letter dated the 17th July. 1995 cancelled the allotment of the plot No. Y-11. The Silicon Valley then moved the Consumer Commission. I have already noted that the Silicon Valley obtained the desired order from the Consumer Commission and thereafter the WBEIDC has filed the present writ petition challenging the said order of the Consumer Commission. What is stated above Is the case of Silicon Valley.

3. The WBEIDC entered Into a lease agreement with the Government of West Bengal for 999 years in respect of land measuring 8755621 acres in Sector V of Bidhan nagar and the land was demised by the Government of West Bengal to the WBEIDC as lessee to enable the lessee to set up an Industrial Complex for Electronic Industries on certain terms and condition mentioned in the lease agreement. The lessee WBEIDC was given the power to sub-divide or sublet the demised land or the building to be constructed for the purpose of setting up of different units of Electronic Industries, but such sub-division or subletting must be In conformity with the concerned master plan. It is in exercise of this power to sub-divide or sublet the demised land, the WBEIDC allotted plot No. Y-11 in

favour of the Silicon Valley. It is the case of the writ petitioner, WBEIDC In the writ petition that after allotment of the industrial plot Silicon Valley the allottee miserably failed to comply with the provision of clause (b) and that WBEIDC tried their best to register the allotted plot of land In favour of Silicon Valley but the Silicon Valley did not come forward with clean hand for registration of the document and thereafter the writ petitioner under compelling circumstances cancelled the allotment of the plot No. Y-11 in terms of clause (f) of the conditions of the allotment letter. Clause (e) of the allotment letter as referred to above requires the lessee to take possession of the plot immediately after the date of execution of the lease deed and the lessee was obligated under the said clause (e) to complete the construction of the factory building at his own expense within three years from the date of the lease agreement, conforming to the rules and formalities of the concerned authorities and to the satisfaction of the lessor. Clause (f) of the conditions of the allotment letter provides that in the event of the failure of the lessee to complete construction of the factory building within the stipulated date, the lease deed will be liable to be revoked, etc. Clause (k) of the said conditions provides that the lessee shall not use or allow to be used the land and/or structure thereon for any purpose other than for setting up of Electronic Industries without the prior written permission of the lessor or other prescribed authority. The writ petitioner WBEIDC has however contended that the letters purportedly Issued by B. Dasgupta, Its Executive Director for the postponement of the registration of the lease deed and for permission to run Post-graduate Institution of Management are all collusive documents and the said B. Dasgupta has since Joined the Institution of the complainant. The question whether those documents were collusive documents is Indeed question of facts which are not considered appropriate for Inquiry In the writ petition. The fact remains that prima facie those letters issued by a competent authority on behalf of the WBEIDC exist. It Is also to be noted that both the clause (e) and clause (f) of the conditions of allotment relied upon by the writ petitioner come Into play after the lease deed Is executed. Admittedly In the present case no formal lease deed has yet been executed or registered. Be that as It may, when the allottee has paid the entire premium money and Is ready to get the lease deed executed and registered, the cancellation of the allotment of the plot. In the facts and circumstances projected, does not seem to be Justified and that being so I find no reason to Interfere with the Impugned order of the consumer Commission. It is however needless to mention that the petitioner's right to cancel the allotment for a valid reason, if any, will remain unaffected and may be Invoked if occasion so arises after the execution and registration of the lease deed as has been Indicated in the Impugned order of the Consumer Commission Itself.

4. The learned Advocate for the respondent has contended that the writ petition itself Is not maintainable because the petitioner has his alternative remedy in the form of an appeal under the Consumer Commission Act, 1986. the petitioner has come up before this court in Us writ Jurisdiction without taking recourse to the alternative remedy available under the Consumer Protection Act. On the other

hand the learned Advocate for the writ petitioner has submitted that the alternative remedy is no bar for approaching the writ court in an appropriate case. Both sides have also referred to certain decisions in this regard. There is no doubt that alternative remedy by itself is not necessarily a bar in all cases for the writ court to entertain a matter although the petitioner has not availed of the alternative remedy. Since however in the present case the very Jurisdiction of the Consumer Commission has been challenged in the writ petition, I think, the writ court should decide the same instead of non-suiting the petitioner on the ground of availability of alternative remedy alone.

5. What has been very strenuously contended on behalf of the writ petitioner is that no Consumer Forum or Commission can have Jurisdiction to entertain the present matter which does not come within the ambit of the Consumer Protection Act and for that reason alone the Impugned order of the Consumer Commission is liable to be set aside and quashed. On the other hand it is contended on behalf of the respondent Silicon Valley that the matter comes squarely within the scope of the Consumer Protection Act inasmuch as the allotment of plot for the purpose of development of Electronic Industries comes within the ambit of the definition of "service" as contained in section 2(0) of the Consumer Protection Act which runs thus : "2(0). "Service" means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or, both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personnel service." The learned Advocate for the petitioner submits that the matter is entirely a contractual one and Silicon Valley should approach the civil court for specific performance of contract, if aggrieved by the action of the writ petitioner but the Consumer Commission has no Jurisdiction to entertain or decide that matter. It is true that the matter is contractual but that by itself cannot be the reason why the Consumer Protection Act will not apply in the case, if from the facts and circumstances it is found to be applicable here. Section 3 of the Act makes it clear that the provisions of the Act are in addition to and not in derogation of the provisions of any other law. The learned Advocate for the petitioner has referred to certain single Bench decisions of this court, namely, *Larson and Toubro Ltd. and Another Vs. State Consumer Disputes Redressal Commission and Others*, , and *The Calcutta Metropolitan Development Authority Vs. Union of India and others*, . It is to be noted here that the said decisions were given in the facts of the respective cases. On the other hand, as cited by the learned Advocate for the respondent, we have before us the decision of the National Consumer Disputes Redressal Commission (in *GERWA v. Af/s. Gulmohar Estate Ltd.* 1(1997) CPJ 11 (NC) where it was held that the construction of a house or flat is for the benefit of a person for whom it is constructed and he may do so himself or hire the services of a builder and the arrangement being for consideration is a service as defined in the Consumer Protection Act, 1986, as

well as the Division Bench decision of the Punjab & Haryana High Court in Haryana Urban Development Authority Vs. Smt. Raj Dulhari and Others, and the Supreme Court decision In Lucknow Development Authority Vs. M.K. Gupta, . In the said Punjab & Haryana decision it was held that the person who makes an application for allotment of plot In a scheme notified by Haryana Urban Development Authority can be treated as "consumer" and that the function discharged by such authority can be regarded as "service" within the meaning of the Consumer Protection Act.

6. In the Supreme Court decision in Lucknow Development Authority Vs. M.K. Gupta, , it has been observed thus by the Supreme Court In connection with the Consumer Protection Act, 1986 : "Although the legislation is a milestone in the history of the socio-economic legislation and is directed towards achieving public benefit we shall first examine if on a plain reading of the provisions unaided by any external aid of Interpretation it applies to building or construction activity carried on by the statutory authority or private builder or contractor and extends even to such bodies whose ancillary function is to allot a plot or construct a flat,"

In another place in that decision the Supreme Court has observed thus :

"It was therefore urged that the applicability of the Act having been confined to moveable goods only a complaint filed for any defect in relation to Immovable goods such as a house or building or allotment of site could not have been entertained by the Commission. The submission does not appear to be well founded." .

Yet in another place the Supreme Court has observed thus :

"Therefore If such authority undertakes to construct building or allot houses or building sites to citizens of the State either as amenity or as benefit then It amounts to rendering of service and will be covered In the "expression service made available to potential users". A person who applies for allotment of a building site or for a flat constructed by the development authority or enters into an agreement with a builder or a contractor Is a potential user and nature of transaction Is covered In the expression "service of any description". It further Indicates that the definition is not exhaustive. The Inclusive clause succeeded In widening Its scope but not exhausting the services which could be covered In earlier part. So any service except when It Is free of charge or under a constraint of personnel service is Included in It."

In view of the aforesaid Supreme Court decision it is therefore evident and rather crystal clear that allotment of developed site under any particular scheme prepared for a particular purpose would definitely come within the definition of "service" as contained In the Consumer Protection Act, 1986.

7. Here in the present case, the Government of West Bengal as lessor demised vast tract of land to the lessee, the WBEIDC which is a Government undertaking for the purpose of setting up and developing an Industrial complex for electronic

industries with power to sub-divide the land and sublet plots out of that land to others for the same purpose In conformity with the master plan to be submitted by the lessee who is required to arrange for sewerage treatment and disposal, internal roads, power supply and water supply at their own cost, etc, as stipulated in the agreement of lease between the Government of West Bengal and the WBEIDC. Pursuant to that purpose, and in accordance with the scheme undertaken for the purpose the land was developed and divided Into plots and the plots were allotted to deserving and competent parties for setting up of electronic Industries in the concerned plots within the framework of the contemplated scheme. It is not just transferring a plot of land by its owner to any transferee who wants to take the land for any purpose of his own choice. It is rather an arrangement under a well thought of scheme to develop electronic Industries through competent persons or agencies with an assurance of Infrastructure like the facilities of electricity, drainage etc. Therefore the arrangement Is not a mere arrangement for transfer of a plot of land. Qualitatively It is something different from a mere transfer. The arrangement projects an orientation based on service-related factors, and allotment of plot Is a part of that orientation. Therefore in view of the scope of the Consumer Protection Act and the declination of the relevant terms contained there In and in view of the Supreme Court decision In Lucknow Development Authority v. S.K. Gupta (supra) the responsibility undertaken by the WBEIDC to make allotment of plots to the deserving candidates for setting up and development of electronic industries falls within the ambit of "service" as defined in the Consumer Protection Act and therefore the matter comes within the scope of the Consumer protection Act, 1986. Accordingly, I find no reason to Interfere with the impugned order of the Consumer Commission. The writ petition Is therefore found liable to be dismissed and the same Is dismissed hereby. No cost is however ordered.

8. Petition dismissed