
(2007) 01 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

YUGAL Kishore Mahajan-

APPELLANT

Vs

Estate Officer, U.T., Chandigarh

RESPONDENT

Date of Decision : 31-01-2007

Acts Referred:

Citation : 2007 2 CPJ 448

Hon'ble Judges : MajGenS.P.Kapoor , Devinderjit Dhatt J.

Final Decision : Appeal partly allowed

Judgement

1. THIS is an appeal against the order of District Consumer Disputes Redressal Forum-II, U.T., Chandigarh (for short hereinafter to be referred as District Forum) dated 13.9.2006 in Complaint Case No. 31 of 2006 : Sh. Yugal Kishore Mahajan v. Estate Officer, U.T., Chandigarh.

2. BRIEFLY the averments made by the complainant are that the complainant is the original allottee of House No. 3328, Sector 15-D, Chandigarh since 20.3.1979. The complainant completed all formalities regarding conversion of his house from leasehold to freehold and accordingly submitted his application form for conversion to the OP on 10.3.1999 along with a banker's cheque for Rs. 20,200 for which he was issued receipt after checking all documents. The complainant also paid all the dues to the OP and he was even issued a No Dues Certificate but the conversion letter was not issued till the filing of the complaint. It has been averred that the No Dues Certificate is valid only for one year and if the house owner does not get the conversion of his house from leasehold to freehold then he is liable to pay the ground rent. It has been further stated in the complaint that the OP sent two letters dated 21.2.2000 (Annexure C-3) and 6.4.2000 (Annexure C-4) demanding a sum of Rs. 2,850 and Rs. 2,926 respectively for the ground rent. On 19.10.1995 without assigning any reason, the OP returned the conversion paper to him vide letter (Annexure C-5). Alleging rejection of conversion papers at this belated stage without giving any reason is deficiency in service, this complaint has been filed praying for following directions : (i) That the respondent be directed to issue conversion letter to the

complainant. (ii) That entire record of the respondent may be summoned. (iii) That the complainant may be duly compensated for mental and physical harassment and financial loss he incurred over the years. (iv) That the respondent may be directed to bear legal expenses of the complainant to the tune of Rs. 11,000.

The version of the OP is that the complaint is wholly time barred. On merit, it has been stated that No Dues Certificate issued vide OP letter dated 5.11.1998 clearly mentions that only premium of the plot including ground rent stands paid up to 1.7.1998 subject to check by audit and, therefore, the administration is competent to legally charge the ground rent beyond the said period till the submission of the conversion papers. It has been stated that the amount demanded from the complainant vide various letters was legally due to be paid by the complainant but the complainant failed to clear the dues.

The learned District Forum in their analysis of the complaint after perusal of Rule 4D of the Chandigarh Conversion of Residential Lease Hold Land Tenure into Freehold land Tenure Rules, 1996 observed that it alludes to the result that were to follow on account of conversion of leasehold property into freehold property and that there is no doubt that as a result of conversion from leasehold property into freehold property, payment of ground rent consequently was to stop. It further observed in the case in hand, property of the complainant as yet was not converted from leasehold to freehold. The learned District Forum also made a note that No Dues Certificate issued was subject to check by audit and revision. The learned District Forum, therefore, held that the No Dues Certificate did not exempt the complainant from the payment of legitimate/rightful dues of the OP. The learned District Forum has also noted that the complainant has not come up with any evidence showing that no amount on account of ground rent etc. as reflected and demanded in letter Annexures C-3 and C-4 as well as other letters sent by the OP were not due from him. Thus, submission of application itself supported by requisite fee for conversion and annexing the requisite documents along with the application did not give the complainant any enforceable right. Discussing the point of limitation, the learned District Forum observed that cause of action to the complainant first arose on 10.3.99 when he submitted the application for conversion and it also arose on 21.2.2000 when the OP vide letter Annexure C-3 asked the complainant to deposit a sum of Rs. 2,850 on account of ground rent. However, the complainant has filed the complaint on 19.1.2006, which is clearly and apparently beyond the period of limitation and, therefore, the learned District Forum held that on grounds of limitation, the complainant is not entitled to relief sought by him in the complaint.

3. COMING to the issue on merit, the learned District Forum observed that retention of conversion paper submitted by the complainant vide letter dated 4.3.1999 does not amount to deficiency in service for the reason that the OP from time-to-time had been writing letters to the complainant to clear the outstanding amount/dues and even in the No Dues Certificate issued on 5.11.98,

the OP had reserved the right to claim any due amount that was found outstanding. Based on its analysis as recorded above, the learned District Forum dismissed the complaint being meritless. Aggrieved by this order of the learned District Forum, the complainant has filed this appeal. The appeal having been taken on board, record of complaint case was summoned from the District Forum and notice was sent to the respondent/OP. Mr. Somesh Gupta, Advocate appeared on behalf of the appellant/complainant whereas Mr. Rajinder Singh, Deputy District Attorney represented the respondent/OP.

4. MR. Somesh Gupta, Advocate, learned Counsel for the appellant/complainant submitting on the point of limitation drew our attention to Annexure C-5 dated 19.10.2005 vide which the papers submitted by the appellant/complainant were returned. He emphasised that this is the date on which the cause of action arose and thereafter, the complaint was filed on 19.1.2006 and, therefore, the complaint is well within the period of limitation. The next submission of the learned Counsel for the appellant/complainant was that No Dues Certificate was issued by the respondent/OP on 15.11.1998 after thoroughly checking its record and, thereafter, demanding amount of Rs. 2,850 vide Annexure C-3 and Rs. 2,926 vide Annexure C-4 is illegal and deficiency on the part of the respondent/OP. He further pointed out that the bankers cheque amounting to Rs. 20,200 paid as the conversion charges was returned back to the complainant in original by the OP, which goes to prove that this cheque was never taken into bank account of the OP, which goes to prove that the OP never started the process of conversion of his house from leasehold to freehold. He, however, clarified that this cheque in original was again deposited with the learned District Forum along with additional evidence and still continues to be on record of the complaint case. He strongly contended that non-conversion of the house from leasehold to freehold and return of the papers regarding the same on 19.10.1995 by the OP without any justification, clearly amounts to deficiency in service. He, therefore, prayed that the complaint be allowed and the impugned order be set aside. On the point of limitation, Mr. Rajinder Singh, Government Pleader for the respondent/OP submitted that the learned District Forum was right in coming to the conclusion that the complaint is hopelessly time barred because the cause of action to the complainant arose in March 1999 whereas he filed the present complaint on 19.1.2006. On the issue of conversion, Mr. Rajinder Singh submitted that the conversion of the house of the appellant/complainant from leasehold to freehold was not done as the appellant/complainant was in arrears of payment. He emphasised that there is no deficiency in service on the part of the OP as the conversion was refused on the ground that the appellant/OP had been reminding the complainant vide numerous letters to make the payment, which the appellant/complainant failed to do. The learned Govt. Pleader for the respondent/OP also at this stage made a statement before the Bench that even if the appellant/complainant makes payment due on account of ground rent and interest thereon along with conversion charges, the respondent/OP will issue the conversion order for the house of the appellant/complainant from leasehold to

freehold. In response, Mr. Somesh Gupta, Advocate learned Counsel for the appellant/complainant submitted before the Bench that the appellant/Complainant is ready to make the payments, which are due towards ground rent as well as interest thereon and will also pay the conversion charges. He further submitted that since the cheque of Rs. 20,200 had been retained by the respondent/OP up from 10.3.1999 to 19.10.2005, thus denying the benefit of this amount to the appellant/complainant, he be compensated on this account by the award of interest as per guidelines laid down by the Hon''ble Apex Court.

5. WE have gone through the record of the complaint case as well as the impugned order and have heard the learned Counsel for the parties.

6. THERE are basically two issues that need to be discussed. Firstly, is the complaint barred by limitation? and secondly, has the OP committed any deficiency in service by refusing to issue conversion order of the house of the appellant/complainant from leasehold to freehold? As regards the point of limitation, we do not agree with the view of the learned District Forum that the cause of action arose on the date of filing the conversion application. In fact cause of action arose to the appellant/complainant first when the respondent/ OP asked the complainant to pay an amount of Rs. 2,850 vide Annxure C-3. From the record, it is clear that it continued till 11.5.2005 i.e. the date up to which the respondent/OP regularly asked the complainant to pay arrears of ground rent and interest. Finally the cause of action arose on 19.10.2005 when the case of conversion of the house of the appellant/complainant was finally closed by the respondent/OP. Since the complainant had filed the complaint on 19.1.2006, we are of the clear view that here is a case where the cause of action arose as on 21.2.2000 and continued till 19.10.2005. In this view of the matter, we find that the complaint, which was filed on 19.1.2006 cannot be treated to be barred by limitation. Therefore, this decision of the learned District Forum in the impugned order cannot be legally upheld and therefore, needs to be set aside.

Coming next to the issue of deficiency in service, it is an admitted fact that the complainant had filed his application for conversion of his house from leasehold to freehold on 10.3.99 along with the No Dues Certificate as well as the cheque for conversion charges and other relevant documents. However, it is also on record that the respondent/OP had asked the complainant to pay an amount of Rs. 2,850 vide its letter dated 21.2.2000 (Annexure C-3) but the complainant chose to keep quiet. It is also on record that hereafter, the respondent/OP wrote to the appellant/complainant on 6.4.2000, 3.5.2000, 19.12.2000, 25.8.2003, 11.2.2004, 2.11.2004 and 11.5.2005 asking the appellant/complainant to clear the ground rent and interest so that his request for conversion could be processed further but there is nothing on record to prove that the complainant either challenged the amount claimed by the respondent/OP or paid the same. In this view of the fact that the OP had been regularly demanding due amount from the appellant/complainant and the appellant/complainant had all along been keeping quiet on the issue by neither rebutting the amount claimed or nor by

making any payments, the respondent/OP cannot be held guilty for any deficiency in service in not passing the conversion order and to this extent, there is no force in the pleadings of the appellant/complainant.

7. HOWEVER, it has been brought/come to our notice that the respondent/OP retained the bankers cheque in original with it and did not deposit it in its account as the conversion money. The respondent/OP on 19.10.2005 returned this cheque in original back to the appellant/complainant by which time its validity had lapsed. By retaining the cheque in the office till 19.10.2005 both the complainant as well as the OP have lost interest that would have accrued on this amount. In view of the foregoing discussion, we find that the complaint has been filed within the period of limitation. However, there is no deficiency on the part of the respondent/OP in non-issuance of the conversion order of the house of the appellant/complainant from leasehold to freehold. Consequently, the appeal is partly allowed and the decision of the learned District Forum that the complaint is time barred is set aside and the rest of the impugned order is upheld. This notwithstanding in view of the statements made by the Counsel for the parties before the Bench, the respondent/OP is also directed to issue the conversion order of House No. 3328, Sector 15-D, Chandigarh belonging to the appellant/complainant from leasehold to freehold on receipt of due amount of the ground rent along with interest and conversion charges for the complainant within a period of one month from the date of receipt of the amount. It is also directed that the interest @ 6% per annum on the amount of Rs. 20,200 from 10.3.99 till 19.10.95 be adjusted in the amount to be paid by the appellant/complainant to the respondent/OP as the appellant/complainant has been denied the benefit of this amount due to the respondent/OP withholding this cheque in the original with it. The office is directed to return this cheque, which is on the record of learned District Forum, in original, to the appellant/complainant after obtaining a receipt for the same along with a photocopy of the cheque in question for revalidating the same. The appeal is disposed of in the aforesaid terms.

8. COPIES of this order be sent to the parties free of charge. Appeal partly allowed.