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Court : Rajasthan State Consumer Disputes Redressal Commission SCDRC Jaipur

Decided On : Jan-05-1990

Judge : S.K.M. Lodha, President &Amp; the Honourable Mr. Damodar Thanvi, Member

Appeal No. : Complaint Case No. 90 of 1989

Appellant : Shankar Birmiwal

Respondent : Jaipur Development Authority and Another

Judgement :

S.K.M. Lodha, President:

(1) Shankar Birmiwal has filed this complaint against the opposite-parties on 16.10.89 under Sec. 12 read with Sec. 17 of the Consumer Protection Act. 1986 ("the Act" herein) for various reliefs. The complainant who is a practising lawyer gave a bid on 29.7.87 in the auction of a plot which was held by Jaipur Development Authority (JDA). The complainant was declared the highest bidder. He deposited the Rs. 60,619/- within time. Remaining three fourth amount was to be deposited on the confirmation of sale for which a demand note was to be issued by opposite-party No. 1. This was to be done in accordance with demand note-cum-confirmation of sale letter dated 31.7.87. The power of attorney holder submitted cheques before the Secretary for a sum of Rs. 1,81,857.25 on 29.9.87.

The cheques were not accepted on the ground that part payment cannot be accepted. Thereafter an application was submitted before opposite- party No. 1 for the correction of the demand note. It may be mentioned that the demand note dated 31.7.87 which was issued envisaged an amount of Rs. 794.35 (Sahari Jamabandi) and Rs. 25/- (Site Map fees). Thus a balance of Rs. 1,82,676.60 was demanded. The complain- ant submitted the cheques after deducting the aforesaid two amounts as these amounts could not have been demanded by opposite-party No. 1. However, demand note was not corrected and contrary to it despite reminders opposite-party No. 1 informed the complain- ant by its letter dated 6.2.88 that the amount deposited by him stands forfeited and the auction of the plot was cancelled. An appeal was filed before the JDA, Tribunal. The Tribunal held in its order dated 3.8.88 that the Sahari Jamanbandi amount could not have been demanded by the authority nor a sum of Rs. 25/- demanded as site plan charges could be demanded as opposite-party No. l had no legal authority to demand such amounts. The appeal was however dismissed by the JDA, Tribunal on 3.8.88. Thereupon, the complain- ant filed Writ Petition No. 2700/1988 in the Rajasthan High Court, Jaipur Bench, Jaipur. The writ petition was dismissed on 21.12.88. After that the complainant had filed a Special Leave Petition before the Supreme Court of India, which is said to be still pending. The complainant has filed this complaint praying that the complainant has suffered tentative loss to the tune of Rs. 1,00,000/- in addition to the interest amount besides the mental agony. The following reliefs have also been sought:

"1. that a specific direction be issued against the respondent to handover the possession of the plot after granting the patta and allow him to raise construction so as to have the user of the plot that the complainant has prayed for the award of costs amounting Rs. 10,000/-."

(2) Photo Stat copies of the documents Anx. l to Anx. 5 were submitted. True copy of the order of the High Court marked as Anx. 6 was also submitted. After registering the complaint it was ordered that a notice may be issued to the complainant to appear before the State Commission to satisfy that the complaint can be entertained and heard by the State Commission despite the order dated 21.12.88 passed by the Rajasthan High Court, Jaipur Bench. Jaipur in D.B. Civil

Miscellaneous Writ Petition No. 2700/1988. In pursuance of that appearance has been put on behalf of the complainant by Shri P.C. Jain, Advocate. Learned Counsel for the complainant was heard on the question regarding the maintainability of the complaint.

(3) Learned Counsel for the complainant pressed that the complaint is maintainable as opposite-party No.l renders service to the public of which complainant is a member and that the service rendered by the complainant suffers from "deficiency" as defined in Sec. 2(1)(g) of the Act. He submitted that the powers under the Act can be exercised by the State Commission as according to Sec. 3 of the Act, are in addition to and not in derogation of the provisions of any other law for the time being in force. He, therefore, urged that though the complainant was unsuccessful before the JDA, Tribunal and in the High Court still he can pursue his remedy by filing the complaint before the authority established under the Act. We have bestowed our most anxious and thoughtful consideration to the arguments advanced by the learned Counsel for the complainant. It may be recalled that JDA, Tribunal has dismissed the appeal of the complainant on 3.8.88. In the writ petition the complainant challenged the order contained in letter dated 6.2.88 issued by opposite-party No. 1 in which it was stated that the amount deposited by the complainant stands forfeited and the auction of the plot was cancelled. This was challenged in the writ petition. The Division Bench of the Rajasthan High Court, Jaipur Bench, Jaipur in its order dated 21.12.88 observed as follows :-

"..... As already stated earlier the question as to whether the petitioner was willing or not to deposit the amount and whether was willing to pay 3/4th amount of the bid is a question of fact. Similarly whether l/4th amount would be forfeited or not, we express no opinion and it will be fear (?) the Civil Court to decide if a suit is filed by the petitioner. We are of the opinion that if deemed proper the petitioner may file a suit for specific performance of the contract in the Civil Court."

(4) In view of this finding the writ petition was dismissed with no order as to costs.

(5) In Consumer Unity and Protection Centre v. Nadiad Muncipality and others (Original Petition No. 7/88 decided on May 10, 1989 by the National Commission)

the complaint was permitted to be withdrawn on the ground that as the matter was subjudice before the High Court it would not be appropriate that the National Commission should go into the merits of the petition. In M/s. Suraj Steel Hazari Bagh v. Shri R. P. Sharma (First Appeal No. 4/88 decided on July 25, 1989 by the National Commission) it was held that the matter was purely in the realm of breach of contract and it did not constitute a "consumer dispute" as envisaged by the provisions of the Act and that the complainant should have been referred by the State Commission to pursue his ordinary remedy by way of instituting a Civil suit and no relief should have been granted to him under the Act. Again in M.L. Joseph v. State Bank of India Trichur (Original Petition No. 12/89 decided on Aug. 23, 1989 by the National Commission) it was held that the matter in that case fell in the realm of a civil dispute which has to be settled by a Civil Court In the aforesaid order it is stated as under:-

"It is seen from the counter affidavit that a suit is pending before the Sub-Court Trichur. It is also disclosed by the records that the petitioner had approached the High Court of Kerala with the writ petition seeking almost similar or identical reliefs and that the writ petition has been dismissed by the High Court after making some observations."

(6) In the facts and circumstances of that case the National Commission opined that it was not possible to grant any relief to the petitioner in those proceedings with liberty to seek his relief from the Civil Court either in the proceedings that are already pending before the Sub-Court, Trichur or any other independent proceedings open to him as may be in law. In view of this the petition was dismissed.

(7) In the case on hand, the complainant filed the writ petition in the Rajasthan High Court, Jaipur Bench. Jaipur challenging the order mentioned in the letter dated 6.2.88 issued by opposite-party No. 1. The writ petition was dismissed observing that the petitioner may file a suit for specific performance of the contract in the Civil Court if he deems proper. In view of the direction given by the Rajasthan High Court, Jaipur Bench, Jaipur in its order dated 21.12.88 and the principles laid down by the National Commission, New Delhi in regard to such

matters like that of the complainants, we are of opinion that the matter falls within the realm of a Civil Court and it will not be appropriate for the State Commission to entertain and decide the complaint. Sec. 3 of the Act cannot be availed of by the complainant in this case. It would not be possible for us to grant any relief to the complainant under the provisions of the Act. The matter in respect of which the complaint has been filed, the complainant should approach a Civil Court for appropriate redress as ordered by the Rajasthan High Court, Jaipur Bench, Jaipur in its order dated 21.12.88.

(8) Without prejudice to his right to resort to any such remedy the complaint is rejected. Complaint rejected.

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