

Jodhpur Development Autho., Jodhpur Vs. State Consumer Disp. Red. Forum and ors

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Court : Rajasthan Jodhpur

Decided On : Oct-11-2011

Appellant : Jodhpur Development Autho., Jodhpur

Respondent : State Consumer Disp. Red. Forum and ors

Judgement :

S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/2011

1/53IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR ORDER Jodhpur Development Authority, vs. Jodhpur State Consumer Disputes Redressal Forum & Ors.S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) DATE OF : PRESENT HON'BLE DR. JUSTICE VINEET KOTHARI REPORTABLE Mr. M.C.Bhoot, Sr. Advocate along with Mr. Surendra Singh, for the petitioner. Mr. Himanshu Maheshwari, for the respondents. BY THE COURT:

1. The petitioner, Jodhpur Development Authority, through its 11th October, 2011Commissioner, has approached this Court by way of present batch of writ petitions, inter alia, claiming the quashing of judgment and order dated 26/10/2009 passed by the District Consumer Dispute Redressal Forum, Jodhpur on a complaint filed under Section 12 of the Consumer Protection Act, 1986 and further

appellate order dated S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/20112/536/1/2010 passed by the State Commission dismissing the appeal of petitioner, Jodhpur Development Authority and by way of interim relief, it is prayed that the Divisional Commissioner Respondent no.3 may be restrained from executing the said judgment and order or otherwise taking any action against the JDA, Jodhpur in compliance thereof. FACTUAL MATRIX

2. The facts giving rise to these writ petitions by a public body, Jodhpur Development Authority (`JDA' for short) which substituted the Urban Improvement Trust, Jodhpur ( `UIT' for short) under the Jodhpur Development Authority Act, 2009, are as under. 3. The land comprising of 46 khasras in khasra no. 771, 769 and 805/769 and khasra no. 751/43 in Jodhpur was set apart for residential purposes and placed under the disposal of UIT, Jodhpur in 1974. Certain persons disputed the said land to be government land and claimed that they purchased the land from khatedars and got the land converted under the relevant rules and obtained Pattas from the Land Conversion Officer, Jodhpur. S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/20113/534. Shorn of unnecessary details about litigations about these lands, the relevant facts would require mention of a resolution passed on 9/1/1997 (Ex.1) by UIT, Jodhpur and 17 members of the UIT headed by Mr. Damodar Bang as Chairman of the UIT, Jodhpur attended the said meeting and inter alia it was decided that out of aforesaid 46 khasras leaving aside khasra no. 751/43 for the residential colony Polo Link Society, for remaining khasra no. 771, 805/769, 809/771, 810/771, 811/771, 813/771 and 813/1/771 a map be prepared for developing this land and after leaving place for public garden, roads and after removal of encroachments, patta holders may surrender their respective title in favour of UIT & they would be reallocated the same as residential plots after realizing a sum of Rs. 560/- per sq. mtr. so that said residential colony of these lands may be developed to be named as `Samanvay Nagar' and `Shyam Nagar'. Broadly, it was decided that 20% - 25% of land would be reduced from their surrendered measurement of land, which will provide land for development of

roads etc.5.The bone of contention in the present case between the parties is the part of this Resolution dated 9/1/1997 which said that if there is S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/20114/53any encroachment on any plot of land in these two colonies known as `Samanvay Nagar' and `Shyam Nagar', the liability to remove such encroachment will be that of the lessee or patta holder himself and UIT, Jodhpur will only provide all possible cooperation for the same.6.It is not in dispute that complainant respondent was given a 99years lease by the petitioner Jodhpur Development Authority (the then UIT, Jodhpur) upon surrender of original title deed in favour of UIT, Jodhpur and illustratively taking the facts of Civil Writ Petition No. 11316/2010, the respondent no. 4 Shri Lakhpat Dhankani was given allotment of plot no. 35/2 measuring 343.35 sq.mtr. in khasra no. 771 vide allotment letter Ex.3 dated 26/3/2004.In the said allotment letter dated 26/3/2004, the UIT, Jodhpur clarified that after developing roads and removal of encroachment from the plot of land in question, the demarcation of exact location of plot would be made and as a result of that site plan attached with the lease deed may also require amendment which will be acceptable to the allottee. Accordingly, for the area of land measuring 60x45 ft. allottee respondent no. 4 was called upon to deposit the sum of Rs.2,13,710/-, which he deposited and condition no. 10 of the said allotment letter S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/20115/53further required that the allottee shall have to raise construction within five years from the date of giving of the possession, otherwise, the land will revert back to the UIT. Thereafter, 99 years lease deed was executed between the parties on 31/3/2004.7.The complainant respondent no.4 filed complaint under Section12 of the Consumer Protection Act against the UIT, Jodhpur vide Ex.5 that despite lease deed executed and full money taken, the respondent UIT has failed to demarcate the exact plot of land and after removal of encroachment, has failed to handover the physical possession of the plot no. 336 and, therefore, the actual possession may be directed to be given to the complainant and if it is not possible to give possession of the said plot of land, alternative plot of same measurement

in same locality for the price already paid may be allotted to him. Damages on account of harassment and litigation etc. was also claimed amounting to Rs.63,000/-. The UIT contested the said complaint before the District Consumer Disputes Redressal Forum respondent no.2 and relied upon the aforesaid condition in the Resolution dated 9/1/1997 that liability to remove the encroachment was on the complainant himself and, therefore, there S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/20116/53 was no deficiency in service given by the respondent UIT, Jodhpur. It was also contended that the complainant was neither the 'consumer' nor the UIT, Jodhpur was a 'service' provider under the said Consumer Protection Act of 1986 and, therefore, the complaint deserves to be rejected. The plea that the complainant was not a 'consumer' and UIT, Jodhpur was not a 'service' provider was, however, not raised in reply filed on behalf of the UIT, Jodhpur vide Ex.6. The District Consumer Disputes Redressal Forum vide its judgment dated 26/10/2009 held that the UIT, Jodhpur (now Jodhpur Development Authority) is guilty of providing defective service to the complainant and, therefore, directed that physical and vacant possession of the plot of land in question should be handed over to the complainant and in case it is not possible due to any encroachment on the said plot of land, an alternative plot in the same locality of the same measurement may be allotted to the complainant and possession of the same may be handed over to him. Compensation of Rs. 53,000/- was also awarded in favour of complainant and the Divisional Commissioner respondent no. 3 was directed to hold inquiry against the responsible officers and employees of UIT, Jodhpur for deficiency in service and recover such S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/20117/53 damages from their salary.8. The petitioner, Jodhpur Development Authority, filed an appeal under Section 15 of the Consumer Protection Act against the said judgment dated 26/10/2009 before the State Commission.9. In para no.9 of the said memo of appeal Ex.8, the JDA, Jodhpur also raised an objection that neither the complainant was a 'consumer' nor the petitioner UIT/JDA, Jodhpur was

a 'trader' or 'service' provider as defined in the Consumer Protection Act and, therefore, the complaint deserves to be rejected as not maintainable.¹⁰ By the judgment and order dated 6/1/2010 dismissing the appeal of Jodhpur Development Authority, Jodhpur, the State Commission also affirmed the order of District Consumer Disputes Redressal Forum, however, amount of compensation was reduced from Rs.53,000/- to Rs. 20,000/- only and thus, for statistical purposes, the appeal was partly allowed to this extent.¹¹ Being aggrieved of these two orders, the Jodhpur Development S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/2011¹⁸/53 Authority, Jodhpur has approached this Court way of present writ petition & other connected writ petitions.¹² Before coming to the rival contentions, it would also be necessary to take note of the fact that in one of the similar cases as arising at the instance of respondent no.4, Mr. Lakhpat Dhankani for the same scheme under the same Resolution, another lease was executed in favour of one Mr. Laxman Khetani, who is said to have been a member of UIT, Jodhpur at the relevant point of time. In his case, when the District Consumer Disputes Redressal Forum similarly granted relief to the complainant- Laxman Khetani vide order dated 25/11/2006 in complaint case no. 253/2006 (Laxman Khetani vs. Secretary, UIT, Jodhpur), the appeal filed by the UIT, Jodhpur namely; appeal no. 415/2007 came to be dismissed by the State Consumer Disputes Redressal Forum on 5/3/2008 vide Ex. R/4/2. The revision petition against the said order of State Commission under Section 21 (b) of the Consumer Protection Act before the National Commission, New Delhi came to be filed by UIT and besides assailing the orders on merits, the point relating to applicability of Consumer Protection Act was also raised in the memo S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/2011¹⁹/53 of revision petition vide ground no. (b) of the said memo vide Ex. R/4/3. The National Commission also dismissed the revision petition of the Jodhpur Development Authority vide order Annex.R/4/4 dated 15/4/2010 by a detailed order running into 8 pages. The following extract from the order passed by the National Commission in that matter is reproduced below for ready reference in

which quoting from the order of State Commission, the National Commission held that the petitioner UIT/JDA is clearly guilty of deficiency in service and changing its stand from time to time to wriggle out of its commitment and since possession of plot of land was not handed over to the respondent complainant, there is no merit in the revision petition and same was accordingly dismissed. The State Commission in its order has also held that the condition imposed in the resolution dated 9/1/1997 that the allottees/ lease holders will themselves be liable to remove the encroachment was not palatable and no such condition could be imposed on the lessees. Said relevant portion of the order of the State Commission quoted by the National Commission & its own order is reproduced below for ready reference: We fail to understand how this condition S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/2011 10/53 could be imposed by the appellant. This appears to be a unilateral decision taken by the Trust without taking the allottees into confidence. The allottees should have been informed of the decision. It is a one side stand, which could not be made applicable to the complainant. Even otherwise such a resolution was never brought to the notice of the learned forum. If we look at the allotment letters issued in relation to the plots in question, we find that no such condition was imposed. On the contrary it was made clear that the physical demarcation would be possible only after the trespassers are removed from the site. This shows that the possession was to be handed over after shifting the trespassers. The letters dated 14th May, 2004 and 2nd June, 2004 further go to show that the concerned officers were asked to assist the complainant in taking the physical possession of land in question. As the possession has not yet been handed over to the complainant, the order passed by the learned Forum cannot be said to be perverse or illegal. The learned Forum has rightly awarded the amount of compensation to the complainant and it has also rightly fastened the responsibility on the erring officers because of not handing over the possession after removing the trespassers. Instead of taking a suitable action against the trespassers the S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt:

11/10/201111/53 allottees are being asked to remove them at their own level, which shows the callous attitude of the officers in not providing the required relief. In fact the officers of the Trust have failed to discharge their duties in a right perspective. We also note that the complainant has unnecessarily been dragged to this Commission by filing appeal, knowing fully well that the stand taken before the Forum was contrary to the record. Nothing has come on record that the petitioner had in any way provided any help to the respondent in the eviction of the encroachment. We agree with the view taken by the fora below. Petitioner is clearly guilty of deficiency in service. Petitioner has been changing its stand from time to time to wriggle out of his commitment. Possession was not handed over to the respondent even after receiving full payment. No merit. Dismissed. Sd/(ASHOK BHAN, J) President Sd/(S.K.NAIK) Member

13.A Special Leave Petition was filed by the Jodhpur S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/201112/53 Development Authority under Article 136 of the Constitution of India before the Hon'ble Supreme Court of India against the judgment and order of National Commission, which SLP No. 499437/2010 (Jodhpur Development Authority vs. Laxman Khetani) was also summarily dismissed by the Apex Court on 6/9/2010.

14. CONTENTIONS OF PETITIONER JDA/UIT

14. Learned counsel for the petitioner- JDA, Mr. M.C.Bhoot, vehemently submitted as under: (i) That the complainant respondent was bound by the condition contained in the Resolution dated 9/1/1997-Ex.1, which was not brought to the notice of the National Commission or Hon'ble Supreme Court in the case of Laxman Khetani, therefore, JDA cannot be held responsible for removal of encroachment, if any, on the plot of land once lease deed was executed in favour of the complainant, as per the said Resolution and it was his responsibility altogether and, therefore, the impugned judgment of District Consumer Disputes Redressal Forum as well as State Consumer Disputes Redressal S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/201113/53 Commission are bad in law and deserve to be quashed. (ii) That neither the complainant is a 'consumer' as defined in Section 2(d) of the Act nor

the petitioner JDA is a 'trader' or 'service provider' as defined under Section 2(q) of the Act, nor any service has been provided to the complainant as defined under Section 2(o) of the Act and, therefore, the complaint filed under Section 12 of the Consumer Protection Act was not maintainable and this issue having not been decided by the State Commission, this Court in the present writ petitions can decide these questions and same deserve to be decided in favour of petitioner JDA.(iii)That the alternative remedy by way of civil suit for possession could be availed by the complainant and in execution of decree only he could get the possession from third party, if it was found that he was in possession of the said land and resort could not be made to the Consumer Protection Act, 1986.(iv)That prayer of allotment of alternative plot could not be simply made at all by the complainant, as there was a clear stipulation S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/2011 14/53 in the Resolution dated 9/1/1997 that in case the allottee does not want to accept the allotment, he may seek the refund of his money for said plot and, therefore, the District Forum has erred in directing the allotment of alternative plot of land to the respondent complainant.(v)That the petitioner JDA was only bound to provide the necessary cooperation and support to the complainant-lessee, if he avails legal remedy for removal of encroachment and petitioner JDA is not bound in law to remove such encroachment and since in the said area 'Kachhi Basti' known as 'Rajiv Gandhi Kachhi Basti' has come up in which around 3000 poor people are living, it is not possible for the petitioner JDA to remove such encroachments and handover the vacant possession of the plot of land in question to the complainant and, therefore, the execution as directed by the District Forum and State Commission cannot be undertaken and no damages could have been awarded against the employees of Jodhpur Development Authority to be recovered from their salaries.

CONTENTIONS OF RESPONDENT ALLOTTEES S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/2011 15/53

15. On the other hand, Mr. Himanshu Maheshwari, learned counsel appearing for the respondent-complainant vehemently submitted as under: (i) That the issue

regarding coverage of complainant and petitioner JDA by the provisions of Consumer Protection Act, 1986 stands concluded by the Apex Court of the country with the dismissal of SLP against the order of National Commission in the case of Jodhpur Development Authority vs. Laxman Khetani, who is similarly situated person of the same scheme and in the same locality & even by series of other judgments cited hereinafter and, therefore, this issue cannot be reopened in the present writ petition.(ii) In the alternative, he urged that the petitioner JDA/UIT, Jodhpur is undoubtedly a 'service' provider to the extent of taking a surrender of title by allottees under the residential colony schemes framed by it for 'Samanvay Nagar' and 'Shyam Nagar' and then allotting such plots and taking full price thereof @ Rs. 560/- per sq.mtr. & of which possession after proper demarcation, identification with the removal of the encroachments, if any, was to be given by the JDA/UIT to the complainant. The JDA/UIT has a statutory obligation S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/2011 16/53 of removal of encroachments of persons without any right, title or interest and handover the vacant and peaceful possession of the allotted plot of land to the complainant respondent and it cannot refuse to do so nor it can abdicate the same function to the allottee himself as it has power as well as legal obligation to do so under Section 67 of the JDA Act, 2009 as well as under the old UIT Act.(iii) Mr. Himanshu Maheshwari also submitted that in other writ petitions also in PIL jurisdiction as well as learned Single Judge of this Court have directed time and again the petitioner JDA/UIT to remove the encroachment in the form of 'Rajiv Gandhi Kachhi Basti' from these two residential localities known as 'Samanvay Nagar' and 'Shyam Nagar' existing on the aforesaid land but it is surprising that JDA being a Public Body instead of complying with the directions of this Court is contesting the said position and has simply refused to abide by these directions despite having lost at all the judicial forums including upto Supreme Court, as aforesaid.(iv) Learned counsel for the respondent complainant also submitted that since the lease land which vested in the UIT/JDA is S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum &

Ors. Judgment dt: 11/10/2011 17/53 also 'goods' as defined under Section 2(i) of the Act of 1986 which refers to the definition of Sale of Goods Act and since JDA deals with the said plot of land as goods sold in the trade or its 'stock' of land bank, therefore, the petitioner JDA is not only a 'service provider' which is a widely defined term under Section 2(o) of the Act but it can also be construed to be 'trader' dealing with 'goods' and on account of defective 'goods' or 'defect in services', the District Forum and the State Commission have rightly directed the Jodhpur Development Authority either to handover the vacant possession of the plot of land to the complainant and also to pay damages and in the alternative to allot alternative plot of land to the complainant on the same terms.¹⁶ I have heard the learned counsels at length, perused the record of the case, relevant provisions of the enactments and the judgments cited at the bar.¹⁷ The principal contention raised by the learned counsel for the petitioner JDA, Mr. M.C. Bhoot, that the Consumer Protection Act is not applicable to the petitioner in the present case as the complainant S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/2011 18/53 was not a 'consumer' nor the Jodhpur Development Authority was a 'service provider' was negated and concluded against the petitioner JDA in the judgments relied upon by the learned counsel for the petitioner himself.

CASE LAWS RELIED UPON BY PETITIONER JDA/UIT DISCUSSED¹⁸. Mr. M.C. Bhoot relied upon the decision of Hon'ble Supreme Court in the case of UT Chandigarh Administration & anr. vs. Amarjeet Singh & ors- (2009) 4 SCC 660, in which relying upon the previous decision in the case of Municipal Corporation, Chandigarh vs. Shantikunj Investment (P) Ltd. (2006) 4 SCC 109, the Apex Court has distinguished the two types of development and allotment of sites for the purpose of housing colonies and the Hon'ble Apex Court has held that where a public development authority invites the applications for allotment of sites in a lay out to be formed or for houses to be constructed and delivered, fails to deliver possession by forming the layout of sites or by constructing the houses within the stipulated period, the delay may amount to a deficiency in service by S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur

vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/2011 19/53 treating the development authority as a service provider and the allottee as the consumer. On the other hand, in an existing site where such land or plot of land as an immovable property is put up for sale or lease by public auction by the owner (including private residential colony developers) and the sale/lease is confirmed in favour of the highest bidder, the resultant contract relates to sale or lease of immovable property and there is no hiring or availing of services by the person bidding at the auction nor the seller or lessor, a trader who sells or distributes 'goods' and, therefore, while the first category would be covered by the provisions of Consumer Protection Act, the second category would not be so covered. To extract the relevant portion from para 19 from the decision of Apex court in UT Chandigarh Administration & anr. vs. Amarjeet Singh & ors (supra) would be useful: Where a developer carries on the activity of development of land and invites applications for allotment of sites in a developed layout, it will amount to 'service', that when possession of the allotted site is not delivered within the stipulated period, the delay may amount to a deficiency or denial of service, and S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/2011 20/53 that any claim in regard to such delay is not in regard to the immovable property but in regard to the deficiency in rendering service of a particular standard, quality or grade. The activity of a developer, that is development of land into layout of sites, inviting applications for allotment by assuring formation of a lay out with amenities and delivery of the allotted sites within a stipulated time at a particular price, is completely different from the auction of existing sites either on sale or lease. In a scheme for development and allotment, the allottee has no choice of the site allotted. He has no choice in regard to the price to be paid. The development authority decides which site should be allotted to him. The development authority fixes the uniform price with reference to the size of plots. In most development schemes, the applications are invited and allotments are made long before the actual development of the lay out or formation of sites. Further the development scheme casts an obligation on the development authority to provide specified amenities. (The present case falls in this category). Alternatively the developer

represents that he would provide certain amenities, in the Brochure or advertisement. In a public auction of sites, the position is completely different. A person interested can inspect the sites offered and choose the S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/201121/53site which he wants to acquire and participate in the auction only in regard to such site. Before bidding in the auction, he knows or is in a position to ascertain, the condition and situation of the site. He knows about the existence or lack of amenities. The auction is on 'as is where is basis'. With such knowledge, he participates in the auction and offers a particular bid. There is no compulsion that he should offer a particular price. When the sites auctioned are existing sites, without any assurance/representation relating to amenities, there is no question of deficiency of service or denial of service. Where the bidder has a choice and option in regard to the site and price and when there is no assurance of any facility or amenity, the question of the owner of the site becoming a service provider, does not arise.¹⁹ Similarly, in Secretary, Bhubaneswar Development Authority vs. Susanta Kumar Misra (2009) 4 SCC 684, the Hon'ble Apex Court held that any forum under the Consumer Protection Act, 1986 before granting any relief to a complainant, should be satisfied that the complaint relates to any of the matters specified in Section 2(1) (c) of the Act and that the complainant has alleged and S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/201122/53made out either unfair or restrictive trade practice by a trader, or defects in the goods sold, or any deficiency in a service rendered and upholding the liability to pay interest by the lessee, the Court concluded that a lessee signs without protest an agreement agreeing to pay interest at a given rate from a given date in given circumstances and does not contend that the term relating to installments or interest is invalid or inequitable, it is not open to the Consumer Forum to grant any relief.²⁰ In the earlier decision in the case of Municipal Corporation, Chandigarh vs. Shantikunj Investment (P) Ltd. (supra), the Hon'ble Supreme Court held that in a case where the private party contends that since under Rule 12

(2) of the Chandigarh Lease-hold of Sites and Building Rules, 1973, the first installment fell due one year after the date of allotment, the said rule should be construed to mean that there was an implied covenant that the authorities would provide all necessary amenities in the meantime, which according to complainant included the roads, water supply, etc. and, therefore, since such amenities were not provided, the allottee did not pay the installment due to be paid, negating the contention of the complainant allottee, S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/201123/53the Hon'ble Supreme Court held that the allottees could not take upon themselves not to pay the lease amount and take recourse to say that since all the facilities were not provided, they were not under any obligation to pay the installment, interest and penalty, if any, as provided under the Act and the Rules since providing of all the facilities or amenities were never the condition precedent. The Apex Court, however, allowed the High court, where the matter was remanded back, that since some of the sectors have been fully developed and some sectors have been less developed and it is not possible to work out the factual matrix, the High Court may grant the allottees the proportionate relief for the sectors for which facilities like kutchha road, drainage, drinking water, sewerage, street lighting have not been provided.²¹In the present case before this Court, it is beyond pale of doubtthat the allotment made in favour of respondent complainant was not in the nature of sale of plot of land in an existing site by the developer in a public auction where such sites could be examined by the intending bidder and upon public auction held on 'as-is-where-is basis', if they are purchasing such plot of land with open eyes, they S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/201124/53cannot raise any grievance about not giving the possession within the time schedule. On the other hand, the petitioner JDA itself knew that there are encroachments on the land in question, still the lands were required to be surrendered by the title holders and 20-25% lesser land was allotted back to such applicants upon payment of price to be fixed by the UIT/JDA and a proper layout plan was to be prepared and possession of

such land in question was required to be given to such allottees after removal of encroachments & demarcation of plots and allottees were further required to complete the construction within a period of five years from the date of demarcation of exact plot of land and giving of vacant possession. Therefore, this kind of development of land and allotment of plots clearly fell within the first category of cases as held by the Hon'ble Supreme Court in the case of UT Chandigarh Administration vs. Amarjeet Singh (supra) and, therefore, there is no shadow of doubt in the present case that JDA would be covered within the ambit and scope of Consumer Protection Act as a 'service provider' and the complainant would be a 'consumer' and, thus, applicability of the Consumer Protection Act in the present case is unequivocal and clear. S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/201125/5322. Moreover, this issue having been raised by the petitioner JDA/UIT before the State Commission, National Commission and Supreme Court of India in one of these matters in the case of Laxman Khetani, as aforesaid, and with the dismissal of SLP No. 499437/2010 (Jodhpur Development Authority vs. Laxman Khetani) on 6/9/2010 against the judgment of National Commission dated 15/4/2010 in Revision Petition no.4161/2009, this issue is not even open for the JDA to be raised before this Court. In fact, this court could not have been called upon to decide this issue once the Hon'ble Supreme Court in one of the group matters has already concluded the same by dismissal of SLP, however, even upon examination of this question on merits, this Court, in view that aforesaid Supreme Court decision in UT Chandigarh vs. Amarjeet Singh, is of the clear view that provisions of the Consumer Protection Act did apply and were rightly applied to the present case.²³ Now coming to the merits of the contentions raised before the for a under the Consumer Protection Act and this Court that in view of the condition in the resolution dated 9/1/1997-Ex.1 that lessees would themselves be liable to remove such encroachments, if any, on their S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/201126/53 allotted/leased plot of land and JDA/UIT would only cooperate in the matter and, therefore, for failure to give

vacant & peaceful possession of the land after demarcation of the plot of land after removal of encroachment, the same did not amount to deficiency in service on the part of the UIT/JDA, this Court is of the clear opinion that such a condition itself in the Resolution dated 9/1/1997 was void and against the public policy and cannot be enforced against the complainants in view of the statutory as well as contractual obligation upon the UIT/JDA to remove such encroachments by rank trespassers and clearly demarcate and identify the plot of land in question and then handover the vacant & peaceful possession of the same to allottees/complainants. It may be noted here that the complainants had surrendered their title documents of the land in favour of the JDA/UIT and land of lesser measurement was allotted to them & that too upon payment of price or premium fixed by the UIT/JDA, which admittedly was paid by the complainants but the UIT/JDA has failed to remove the encroachment of 'kachhi Basti' known as 'Rajiv Gandhi Kachhi Basti' from the said land and after clear demarcation and identification, the plots of land were never handed over to the complainant-respondents. In the face of the same, filing of the S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/2011 27/53 complaint in the present case for defective services provided by the UIT/JDA was perfectly justified and the District Consumer Disputes Redressal Forum and State Commission cannot be faulted in giving the relief to the complainants and directing the UIT/JDA to either hand over the vacant and peaceful possession of the assigned & allotted plot of land or in the alternative to allot and handover alternative plot of land of same size in the same locality, at the same price and also to pay compensation and damages. 24. Section 67 of the Jodhpur Development Authority Act, 2009 clearly provides for removal of encroachment on the public land and makes it a cognizable offence, punishable with not less than one month and upto two years of imprisonment and fine which may extend to Rs. 20,000/-. Sub-section

(3) of Section 67 clearly empowers the JDA or any officer authorized by it in this behalf to remove any such obstruction or encroachment and the expenses of such removal shall be paid by the person who had caused the said obstruction or encroachment. The said provision even provides for attachment of property found

on such land and confiscation thereof. S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/201128/5325. In view of these provisions, it is undeniable that there was a statutory obligation on the part of JDA/UIT, which has a separately constituted Encroachment Removal Wing with a large number of staff with it to remove such encroachments by rank trespassers over the land in question. EARLIER ORDERS OF THIS COURT²⁶. As a matter of fact, this Court in some of the writ petitions in PIL jurisdiction and otherwise have directed on number of occasions the petitioner JDA/UIT to remove such encroachments of rank trespassers for this very case of encroachments and it would be appropriate to reproduce one such order given in Writ petition no. 6172/2006 Rajiv Gandhi Colony Hitkari Samiti & Ors. vs. State of Rajasthan & Ors. dated 29/4/2010 : It is made clear that if such litigations on the basis of title of the persons, are pending in the court of law or have been decided against the UIT/JDA, obviously till such litigations take final shape, such plaintiffs or decree holders cannot be removed from S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/201129/53 the land in question to the extent of area of the land over which there is evidence of title in their favour. However, it is made clear that other than such persons, all persons who have illegally encroached over the land merely on the basis of his/her so called possession over the said land, will be treated as rank trespasser and such illegal encroachments deserve to be removed from the said place immediately. This Court is not inclined to have any misplaced sympathy with such rank trespassers or encroachees irrespective of the length of their possession over the land in question while being conscious of the fact that they may be poor people and loss may be caused to them by such removal from the land in question.

10. cases of It is further made clear except in the litigation or decree against the State/UIT/JDA on the basis of title of plaintiff, no other stay order of any Court or Tribunal subordinate to High Court shall come in the way of the respondent- JDA or its officials and other officers of the State in removing such illegal encroachments, for which this Court has consistently given directions time and

again including the last date i.e. 21.04.2010 in the present case.

13. Since there does not appear to be any legal impediment in the way of the responsible S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/201130/53officials of the JDA, Jodhpur and other Government Departments who are directed to work in tandem with JDA, Jodhpur for removal of such encroachments, the directions have already been given in this regard, and are reiterated and they are expected to be followed with more vigour and force, if necessary.

14. While referring to the decision dated 24/25.05.2003 of then UIT referred to at page 170 of the application filed today by the JDA with a report for shifting of these encroachees to an alternative location has also been framed by the said Trust, however, the learned counsel do not have any such scheme available with him. He prayed for sometime to produce that also. In the light of this submission, it is directed that if any such scheme is already available with the JDA, Jodhpur they are free to shift the illegal encroachees and they may also notify in the local newspaper to this effect that unless there is a litigation pending with State/JDA on the basis of title over the land as claimed by the persons/plaintiffs in respect of portion of this land in question, they will be removed forcibly and/or shifted to such alternative land. However, the JDA is not entitled to sit over the matter and not remove these illegal encroachments by rank trespassers on this S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/201131/53ground that they do not have readily an alternative land available to them for such shifting.²⁷In a Public Interest Litigation Petition (D.B.Civil Writ PetitionNo. 3736/2000 Jugal Kishore vs. UIT & Ors.), the Division Bench of this Court dealing with the same colony, namely; Samanvay Nagar and Shyam Nagar, as is involved in the present case, held as under:-The writ petition is alleged to be a public interest litigation by a public minded citizen for restraining the UIT From parting with the lands placed at its disposal by the State Government in pursuance of Annexure-2, resolution No.8

dated 9.1.96 and Annexure-3 resolution No.13

(12) dated 9.1.97 and the Press Note, Annexure-4 for giving effect to the aforesaid resolution. The contention of the learned counsel for the petitioner is that the UIT has no authority to pass the resolutions in questions for fixing the price of the land which has been placed at its disposal in 1978. In doing so, it is not discharging its functions of developing the land in accordance with the provisions and objects of Urban Improvement Trust Act, 1959..... S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/201132/53 Having examined the contentions raised before us and perusing the resolutions, we are of the opinion that it is apparently, we are of the opinion that it is apparently an attempt by the UIT, Jodhpur to minimise the litigation and to settle the disputes raised by the persons claiming to be in possession of the land on the basis of their title by requiring them to surrender the land to the UIT resulting in perfecting the title of UIT and subjecting the occupants to the title of UIT and in view of settling such disputes without litigation, the claimants who surrendered such land to UIT, were to be allotted the same land at a price determined under the resolution. Thus the resolution in terms settles the disputes about the title of the UIT in lieu of allotting the land to the persons surrendering the claim to title to the UIT and obtaining right continued possession and is under a title from UIT on payment of a price fixed under the resolution. The perusal of section 96 of the Urban Improvement Act also leaves no room of doubt that it is not a pre-condition for settling a dispute that it must be pending before any court. As was suggested by learned counsel for the petitioner it is enough if there is a bona fide debatable claim, raised by a claimant to S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/201133/53 the land in question. In such event the Urban Improvement Trust has necessary authority to settle such disputes to prevent litigation by securing its own title perfected by surrender of the and in its favour and in lieu thereof to allot the land, which is not falling within the zone of specific purpose excluded from Resolution, by the UIT on its own terms. In these circumstances, we do not see that any question of public

interest is involved in adopting the procedure countenanced by statutory provision. We do not find reference made to any particular instance of entertaining bogus claims under the guise of existing title in abuse of its authority conferred through resolutions in questions. If specific instances of abuse of power is brought to notice the same can be examined but no exercise of groping in dark can be made. The court will not ordinarily be entertaining petition on vague allegations that such and such resolutions are contrary to the limits of authority conferred on the UIT. In reply to the petition it has been clearly stated by the respondent UIT that particularly one of the case which we have referred to above, speaks for itself about the nature of dispute which was pending litigation and which has been included in the press-note. Moreover it is the case of S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/2011^{34/53} the respondents and those facts have not been denied that most parcels of the and under the press note are prone to litigation on account of the long possession held by different persons claiming title in the land and constructions have come existence for long time, on such land. As a result, we do not find any merit in this writ petition and the same is hereby rejected.²⁸ Thus, the context in which the Division Bench of this court also dealt with the aforesaid PIL petition and held that the UIT could make such allotment even upon perfecting its title upon surrendering the title deed by the earlier title holders and allot the same to them, it is clear that not handing over of the vacant possession of the demarcated plot of land to the complainant respondents resulted in defective service provided by the UIT/JDA the 'service provider'.²⁹ Therefore, this Court is of the clear opinion that the said condition in the Resolution dated 9/1/1997 is ultra vires and contrary to its statutory obligation of removal of encroachments and handover the vacant and peaceful possession of the land to the allottees. In the absence of same, the directions of District Consumer Disputes S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/2011^{35/53} Redressal Forum and State Commission under the Act of 1986 to hand over the alternative plot of land in the same locality also cannot be said to be without jurisdiction but on the

contrary is just and proper.³⁰ As far as question of damages as awarded by the State Commission is concerned, some of the case law relied upon by the learned counsel for the complainant, Mr. Himanshu Maheshwari clearly supports such award of

damages. INDIAN CASE LAW REGARDING COMPENSATION & DAMAGES: ³¹ In Secretary, Thirumurugan Cooperative Agricultural Credit Society vs. M. Lalitha & Ors. - (2004) 1 SCC 305, the complainant approached the Hon'ble Supreme Court with the following case: The respondents, being the members of the appellant-society, had pledged paddy bags for obtaining loan. The appellant-society issued notices to S.B. CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/2011 36/53 the respondents demanding payment of loan amount with interest thereon. The respondents filed petitions in the District Consumer Disputes Redressal Forum, Thiruchirapally seeking direction to the appellant to release the paddy bags pledged on receipt of the loan amount or in the alternative to direct the appellant to pay the market value of the paddy bags with interest thereon from the date of pledging till the date of release and also to pass an order for compensation for mental agony and suffering. The appellant contested the claims of the respondents before the District Forum raising a preliminary objection that Consumer Forum had no jurisdiction to decide the dispute between members and cooperative society in view of Section 90 of the Tamil Nadu Cooperative Societies Act, 1983. The Hon'ble Supreme upheld the applicability of Consumer Protection Act 1986 to the Housing Cooperative Society covered under the provisions of T.N. Cooperative Societies Act, 1983 and held in para 12, 18 & 19 as under: 12. Having due regard to the scheme of the Act and purpose sought to be achieved to protect the interest of the consumers better, the provisions are to be interpreted broadly, positively and purposefully in S.B. CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/2011 37/53 the context of the present case to give meaning to additional/extended jurisdiction, particularly when Section 3 seeks to provide remedy under the Act in addition to other remedies provided under other

Acts unless there is a clear bar. Under the 1986 Act the court has to consider as regards the additional jurisdiction conferred on the Consumer Forums and not their exclusion.

18. The remedies that are available to an aggrieved party under the 1986 Act are wider. For instance in addition to granting a specific relief the forums under the 1986 Act have jurisdiction to award compensation for the mental agony, suffering, etc., which possibly could not be given under the Act in relation to dispute under Section 90 of the Act. Merely because the rights and liabilities are created between the members and the management of the society under the Act and forums are provided, it cannot take away or exclude the jurisdiction conferred on the forums under the 1986 Act expressly and intentionally to serve a definite cause in terms of the objects and reasons of the 1986 Act. When the decision of Dhulabhai's case was rendered the provisions similar to 1986 Act providing additional remedies to parties were neither available nor S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/201138/53considered. If the argument of the learned counsel for the appellant is accepted it leads to taking away the additional remedies and forums expressly provided under the 1986 Act, which is not acceptable. Dhulabhai v. State of M.P., (1968) 3 SCR 662 : AIR 1969 SC 78, explained and distinguished. Chairman, Thiruvalluvar Transport Corpn. v. Consumer Protection Council. (1995) 2 SCC 479, distinguished. Lucknow Development Authority v. M.K.Gupta, (1994) 1 SCC 243; Fair Air Engineers (P) Ltd. v. N.K.Modi, (1996) 6 SCC 385; Spring Meadows Hospital v. Harjol Ahluwalia, (1998) 4 SCC 39; State of Karnataka v. Vishwabharathi House Building Coop. Society, (2003) 2 SCC 412, relied on.

19. If the parties approach both the forums created under the Act and the 1986 Act, the question of conflict of decisions may not arise. It is for the forum under the 1986 Act to leave the parties either to proceed or avail the remedies before the other forums, depending on the facts and circumstances of the case.³²In Lucknow Development Authority vs. M.K.Gupta (1994) 1 S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule)

Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/201139/53SCC 243, the Hon'ble Supreme Court held as under: The common characteristics of goods and services are that they are supplied at a price to cover the costs and generate profit or income for the seller of goods or provider of services. But the defect in one and deficiency in other may have to be removed and compensated differently. The former is, normally, capable of being replaced and repaired whereas the other may be required to be compensated by award of the just equivalent of the value or damages for loss. 'Goods' have been defined by clause (i) and have been assigned the same meaning as in Sale of Goods Act, 1930. But the submission that the applicability of the Act having been confined to movable 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 is not well founded. The consumer respondents were aggrieved either by delay in delivery of possession of house or use of substandard material etc. and therefore they claimed deficiency in service rendered by the appellants. The jurisdiction of the Commission could not be ousted on ground that even though it was service it related to immovable property. S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/201140/53 The legislative intention is clear to protect a consumer against services rendered by statutory bodies. The legislature expanded the meaning of the word 'service' in Section 2(o) to even such facilities as are available to a consumer in connection with banking, financing etc. Each of these activities are discharged both by statutory and private bodies. In absence of any indication, express or implied, there is no reason to hold that authorities created by the statute are beyond purview of the Act. The test is not if a person against whom complaint is made is a statutory body but whether the nature of the duty and function performed by it is service or even facility. The Act requires provider of service to be more objective and care taking. It is still more in public services. When private undertakings are taken over by the Government or corporations are created to discharge what is otherwise State's function, one of the inherent objectives of such social welfare measures is to provide better, efficient and cheaper services to the people. Any attempt, therefore, to exclude

services offered by statutory or officials bodies to the common man would be against the provisions of the Act and spirit behind it. A government or semi-government body or a local authority is as much amenable to the Act as any other S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/201141/53private body rendering similar service. Construction of a house or flat is for the benefit of person for whom it is constructed. He may do it himself or hire services of a builder or contractor. The latter being for consideration is service as defined in the Act. Similarly when a statutory authority develops land or allots a site or constructs a house for the benefit of common man it is as much service as by a bidder or contractor. The one is contractual service and other statutory service. If the service is defective or it is not what was represented then it would be unfair trade practice as defined in the Act. Any defect in construction activity would be denial of comfort and service to a consumer. When possession of property is not delivered within stipulated period the delay so caused is denial of service. Such disputes or claims are not in respect of immovable property as argued but deficiency in rendering of service of particular standard, quality or grade. Such deficiencies or omissions are defined in sub-clause (ii) or clause (r) of Section 2 as unfair trade practice. If a builder of a house uses substandard material in construction of a building or makes false or misleading representation about the condition of the house then it is denial of the facility or benefit of which a consumer is entitled to claim S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/201142/53value under the Act. When the contractor or builder undertakes to erect a house or flat then it is inherent in it that he shall perform his obligation as agreed to.33.While dealing with the accountability of public authorities for their arbitrary and even ultra vires actions, the Hon'ble Supreme Court upholding the compensation awarded against such Housing Cooperative Society by the fora under the Consumer Protection Act, held in para no.5 and 8 in case of Lucknow Development Authority vs. M.K.Gupta (supra) as under:-8. The administrative law of accountability of public authorities for their arbitrary and even ultra vires actions has taken many strides. It is now

accepted that the State is liable to compensate for loss or injury suffered by a citizen due to arbitrary actions of its employees. It is not necessary, 'to consider whether there is any rational dividing line between the so-called sovereign and proprietary or commercial functions for determining the liability of the State'. In any case the law has always maintained that the public authorities who are entrusted with statutory function cannot act negligently. Under our S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/201143/53 Constitution sovereignty vests in the people. Every limb of the constitutional machinery is obliged to be people oriented. No functionary in exercise of statutory power can claim immunity, except to the extent protected by the statute itself. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behavior before authorities created under the statute like the commission or the courts entrusted with responsibility of maintaining the rule of law. Each hierarchy in the Act is empowered to entertain a complaint by the consumer for value of the goods or services and compensation.

5. This takes us to the larger issue if the public authorities under different enactments are amenable to jurisdiction under the Act. It was vehemently argued that the local authorities or government bodies develop land and construct houses in discharge of their statutory function, therefore, they could not be subjected to the provisions of the Act. The learned counsel urged that if the ambit of the Act would be widened to include even such authorities it would submitted that the entire objective of vitally affect the the Act is to functioning of official bodies. The learned counsel S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/201144/53 protect a consumer against malpractices in business. The argument proceeded on complete misapprehension of the purpose of Act and even its explicit language. In fact the Act requires provider of service to be more objective and care taking. It is still more so in public services. When private undertakings are taken over by the Government or corporations are created to otherwise State's function, one objectives discharge what is of the inherent of such social welfare measures is

to provide better, efficient and cheaper services to the people. Any attempt, therefore, to exclude services offered by statutory or official bodies to the common man would be against the provisions of the Act and the spirit behind it. ENGLISH CASE LAW ON COMPENSATION & DAMAGES³⁴. Now certain references to English Law on the compensation under the Torts law can also be discussed in the context of present case. Compensation includes both the just equivalent for loss of goods or services and also for sufferance of injustice. In a case S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/2011^{45/53} where the Commission directed the Bangalore Development Authority to pay Rs.2446 to the consumer for the expenses incurred by him in getting the lease-cum-sale agreement registered as it was additional expenditure for alternative site allotted to him. No misfeasance was found. The moment the authority came to know of the mistake committed by it, it took immediate action by allotting alternative site to the respondent. It was compensation for exact loss suffered by the respondent. It arose in due discharge of duties. For such acts or omissions the loss suffered has to be made good by the authority itself. But when the sufferance is due to malafide or oppressive or capricious acts etc. of a public servant, then the nature of liability changes. The Commission under the Act could determine such amount if in its opinion the consumer suffered injury due to what is called misfeasance of the officers by the English Courts. Even in England where award of exemplary or aggravated damages for insult etc. to a person has now been held to be punitive, exception has been carved out if the injury is due to, 'oppressive, arbitrary or unconstitutional action by servants of the Government' (Salmond and Heuston on the Law of Torts). Misfeasance in public office is explained by Wade in his book on Administrative Law thus: S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/2011^{46/53} Even where there is no ministerial duty as above, and even where no recognized tort such as trespass, nuisance, or negligence is committed, public authorities or officers may be liable in damages for malicious, deliberate or injurious wrong-doing. There is thus a tort which has been called misfeasance in

public office, and which includes malicious abuse of power, deliberate causing maladministration, and injury. perhaps also other unlawful acts Lord Hailsham in *Cassell & Co. Ltd. v. Broome* (1972 AC 1027) on the principle that, an award of exemplary damages can serve a useful purpose in vindicating the strength of law'. An ordinary citizen or a common man is hardly equipped to match the might of the State or its instrumentalities. That is provided by the rule of law. It acts as a check on arbitrary and capricious exercise of power. In *Rookes v. Barnard* (1964 AC 1129) it was observed by Lord Devlin, 'the servants of the government are also the servants of the people and the use of their power must always be subordinate to their duty of service'. A public functionary if he acts maliciously or oppressively and the exercise of power results in harassment and S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/2011 47/53 agony then it is not an exercise of power but its abuse. No law provides protection against it. He who is responsible for it must suffer it. In *Farrington vs. Thomson* (1959 UR

286) the Supreme Court of Victoria awarded damages for exercising a power the authorities knew they did not possess. A licensing inspector and a police officer ordered the plaintiff to close his hotel and cease supplying liquor. He obeyed and filed a suit for the resultant loss. The Court observed: "No I take it to be perfectly clear, that if a public officer abuses his office, either by an act of omission or commission, and the consequence of that is an injury to an individual, an action may be maintained against such public officer." In *Wood v. Blair* (The Times, July 3, 4, 5, 1957 [Hallet J & Court of Appeal]) a dairy farmer's manageress contracted typhoid fever and the local authority served notices forbidding him to sell milk, except under certain conditions. These notices were S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/2011 48/53 void, and the farmer was awarded damages on the ground that the notices were invalid and that the plaintiff was entitled to damages for misfeasance. This was done even though the finding was that the officers had acted from the best motives.³⁵ It is unfortunate that matters which require immediate attention linger on and the man in the street is made to run

from one end to other with no result. The culture of window clearance appears to be totally dead. Even in ordinary matters a common man who has neither the political backing nor the financial strength to match the inaction in public oriented departments gets frustrated and it erodes the credibility in the system. Public administration, no doubt involves a vast amount of administrative discretion which shields the action of administrative authority. But where it is found that exercise of discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover. When a citizen seeks to recover compensation from a public authority in respect of injuries suffered by him for capricious exercise of power and the Consumer Forum finds it duly proved then it has a statutory S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/201149/53obligation to award the same.36.Similarly, Division Bench of Calcutta High Court in the case ofMandira Mookerjee vs. District Consumer Disputes Redressal Forum AIR 2005 Calcutta 108, held as under:The flat being an immovable property, may not come within the definition of `goods' within the meaning of S.2(1) of the 1986 Act to mean, goods as defined in the sale of Goods Act, 1930. But since the transaction contemplated, though related to immovable property, consists of various other obligations and performance and services in relations to thereto comprising series of contracts combined into one, the property sought to be transferred having an element of immovable property would not preclude the other part of the contract which may consist of the performances or services which the writ petitioner or the owner is obliged to perform or provide, the jurisdiction of the Consumer Forum cannot be excluded.Again dealing with the contention of jurisdiction of District S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/201150/53Consumer Disputes Redressal Forum and the Civil Courts, the Calcutta High Court observed as under:-The Civil Court can try all kinds of suits even then specific forums are created with specific purpose related to specific matters. There is no bar in establishing parallel forum or by express or implied provisions to bar the

jurisdiction of the Civil Court through legislation. The legislation of the 1986 Act is a valid piece of legislation creating specific Forum for specific purpose in relation to specific matters. The Court is not supposed to limit the jurisdiction conferred upon it by the wisdom of the legislature unless it offends any statute or some other law. We are, however, of the view that these provisions of 1986 Act do not offend any statute or any other law. Our attention has not been drawn to any such situation. On the other hand, Section 3 of the 1986 Act provides that the provisions of the said Act shall be in addition to and not in derogation of the provisions of any other law.³⁷This Court respectfully agrees with the aforesaid views of English Courts, Apex Court of our country & Calcutta High Court. S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/2011^{51/53}CONCLUSION³⁸.Thus, this Court finds no force in the present writ petitions filed by the Jodhpur Development Authority and same are liable to be dismissed and are accordingly dismissed.³⁹The following directions are issued:-(i)That the respondent no. 3 Divisional Commissioner, Jodhpur shall undertake execution of the judgments of District Consumer Forum and State Commission as regards fixing of responsibility on the officials of JDA and recovering the damages from their salaries as directed by Forum and report the said compliance to this court within a period of three months.(ii)That unless the petitioner JDA is able to comply with the directions given by the State Commission under the Consumer Protection Act, 1986 within a period of three months from today and remove the encroachments of rank trespassers over the land in S.B.CIVIL WRIT PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule) Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal Forum & Ors. Judgment dt: 11/10/2011^{52/53}question allotted to the respondent complainants or in the alternative allot alternative plot of land of same size in same locality at same price and hand over the same to the respondent complainants within three months, the matter may be placed before this court in January 2012 for initiating appropriate action against the officials of petitioner JDA & for this purpose the matter shall be treated as pending.⁴⁰The writ petitions are accordingly dismissed. No costs.(DR.VINEET KOTHARI), J. item no. s/42 to s/53 baweja/- S.B.CIVIL WRIT

PETITION NO. 11316/2010 & 11 other connected writ petitions (See Schedule)
Jodhpur Development Authority, Jodhpur vs. State Consumer Disputes Redressal
Forum & Ors. Judgment dt: 11/10/201153/53SCHEDULE

(1) S.B. Civil Writ Petition No.11308/2010 J.D.A., Jodhpur v. State Consumer
Dispute. Red. Forum & Ors. & (2) S.B. Civil Writ Petition No.11309/2010 J.D.A.,
Jodhpur v. State Consumer Dispute. Red. Forum & Ors. & (3) S.B. Civil Writ
Petition No.11310/2010 J.D.A., Jodhpur v. State Consumer Dispute. Red. Forum
& Ors. & (4) S.B. Civil Writ Petition No.11311/2010 J.D.A., Jodhpur v. State
Consumer Dispute. Red. Forum & Ors. & (5) S.B. Civil Writ Petition
No.11312/2010 J.D.A., Jodhpur v. State Consumer Dispute. Red. Forum & Ors. &
(6) S.B. Civil Writ Petition No.11313/2010 J.D.A., Jodhpur v. State Consumer
Dispute. Red. Forum & Ors. & (7) S.B. Civil Writ Petition No.11314/2010 J.D.A.,
Jodhpur v. State Consumer Dispute. Red. Forum & Ors. & (8) S.B. Civil Writ
Petition No.11315/2010 J.D.A., Jodhpur v. State Consumer Dispute. Red. Forum
& Ors. & (9) S.B. Civil Writ Petition No.11317/2010 J.D.A., Jodhpur v. State
Consumer Dispute. Red. Forum & Ors. & (10) S.B. Civil Writ Petition
No.11318/2010 J.D.A., Jodhpur v. State Consumer Dispute. Red. Forum & Ors. &
(11) S.B. Civil Writ Petition No.11319/2010 J.D.A., Jodhpur v. State Consumer
Dispute. Red. Forum & Ors.

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