

(2024) 11 NCDRC CK 0072

National Consumer Disputes Redressal Commission

Case No: Revision Petition No. 3856 Of 2017

Urban Improvement Trust
Through Secretary

APPELLANT

Vs

Sunder Lal

RESPONDENT

Date of Decision: Nov. 22, 2024

Acts Referred:

- Consumer Protection Act, 1986 - Section 19, 21, 21(b)

Hon'ble Judges: Subhash Chandra, Presiding Member; Avm J. Rajendra, Avsm Vsm (Retd.), Member

Bench: Division Bench

Advocate: Aruneshwar Gupta, Abhishek Sharma

Final Decision: Dismissed

Judgement

Subhash Chandra, Presiding Member

1. This review petition under Section 19 the Consumer Protection Act, 1986 (in short, the "Act") is directed against the order dated 23.08.2017 of the Rajasthan State Consumer Disputes Redressal Commission, Circuit Bench, Bikaner (in short, the "State Commission") in Appeal no. 08 of 2017 dismissing the appeal against order of the District Consumer Disputes Redressal Forum, Bikaner (in short, "District Forum") in Complaint No. 148/2010 dated 24.04.2014.

2. We have heard the learned counsel for the petitioner and perused the records. Respondent remained unrepresented despite notice and was placed ex parte. The delay of 08 days in the filing of the appeal was considered in light of the application seeking condonation of the delay and for the reasons stated therein, the delay was condoned in the

interest of justice.

3. The relevant facts of the case, in brief, are that respondent was allotted a residential plot (No. II-F-305) in petitioner's residential plots scheme "Murlidhar Vyas Expansion Scheme" on 03.04.1986 measuring 15 x 30 ft. (450 sq ft) and handed over possession. On 14.08.2007 an alternate Plot (No. VII-384) of same dimensions was allotted in view of the previous plot having been encroached by squatters. Vide letter dated 06.10.2008 petitioner was asked to complete formalities which he failed to do and hence the plot could not be allotted. Complaint No. 148 of 2010 was filed before the District Forum by the respondent seeking allotment of this plot within 7 days failing which with compensation @ Rs 5,000/- per month. The complaint was allowed on the ground that the petitioner was a "consumer". Thereafter, on 07.10.2014, petitioner requested for reallocation of a plot in Ashok Nagar Residential Scheme and was allotted Plot No. F-20. However, no sale deed was executed. However, he filed a contempt petition on 07.04.2015 against the petitioners which was dismissed by the State Commission, Jaipur on grounds of delay of 287 days. A review (RP 1722 of 2015) was filed before the National Commission on 06.07.2015 which was dismissed in limine. Against order of the District Forum upholding contempt, petitioners approached the Supreme Court in SLP which was dismissed in limine on 27.11.2015 on grounds of delay. Petitioners approached State Commission against District Commission's order dated 30.09.2015 in Appeal no. 08/2017 which came to be dismissed vide the impugned order.

4. It is the petitioner's case that the plot allotted in Murlidhar Vyas Scheme could not be allotted in view of land ownership disputes and hence an alternate allotment was made to the respondent. Thereafter, at his request, another plot was allotted in Ashok Nagar Residential Scheme. However, he failed to take possession and execute the sale deed. The order to allot a plot in the Murlidhar Vyas Scheme was stated to be not feasible in view of land title issues.

5. Per contra, the contention of the respondent is that he could not take possession of the plot since he was residing in Meerut at that time and could not complete the formalities. His contention before the lower fora is for allotment of a plot in the Murlidhar Vyas Scheme even though he had been offered allotment in Ashok Nagar Residential Scheme.

6. It is evident from the record that the petitioner had contended before the District Forum that the respondent was not a "consumer" under the Act since no sale deed had been executed under Rule 20 of the Rajasthan Urban Improvement Trust (Disposal of Urban Land) Rules, 1974. The District Forum has, however, held that the respondent was a "consumer" under the ambit of the Consumer Protection Act. In view of the fact that an allotment of a plot had been made by the petitioner, the finding of the District Forum cannot be faulted. Its finding that the alternative plot No. 7-384 in Murlidhar Vyas Scheme be handed over to the respondent has been upheld in appeal by the State Commission.

7. From the records it is apparent that the petitioner has challenged the impugned order on the very same grounds which were raised before the District Forum as well as the State Commission in appeal. The concurrent findings on facts of these two foras are based on evidence led by the parties and documents on record. The present revision petition is therefore an attempt by the petitioner to urge this Commission to re-assess, re-appreciate the evidence which cannot be done in revisional jurisdiction. Learned counsel for the petitioner has failed to show that the findings in the impugned order are perverse on grounds of either material irregularity or jurisdictional issues.

8. This Commission, in exercise of its revisional jurisdiction, is not required to re-assess and re-appreciate the evidence on record when the findings of the lower fora are concurrent on facts. It can interfere with the concurrent findings of the fora below only on the grounds that the findings are either perverse or that the fora below have acted without jurisdiction. Findings can be concluded to be perverse only when they are based on either evidence that have not been produced or based on conjecture or surmises i.e. evidence which are either not part of the record or when material evidence on record is not considered. The power of this Commission to review under Section 21 of the Act is therefore, limited to cases where some prima facie error appears in the impugned order. Different interpretation of same sets of facts has been held to be not permissible by the Hon'ble Supreme Court.

7. The Hon'ble Supreme Court in *Rubi (Chandra) Dutta* (2011) 11 SCC 269 dated 18.03.2011 has held that:

"23. Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two Fora."

8. The Hon'ble Supreme Court in *Lourdes Society Snehanjali Girls Hostel and Ors vs H & R Johnson (India) Ltd., and Ors.*, (2016) 8 SCC 286 dated 02.08.2016 reiterated this position and held as under:

"17. The National Commission has to exercise the jurisdiction vested in it only if the State Commission or the District Forum has either failed to exercise their jurisdiction or exercised when the same was not vested in them or exceeded their jurisdiction by acting illegally or

with material irregularity. In the instant case, the National Commission has certainly exceeded its jurisdiction by setting aside the concurrent finding of fact recorded in the order passed by the State Commission which is based upon valid and cogent reasons.”

9. The Hon'ble Supreme Court in its judgment dated 05.04.2019 in the case of *T Ramalingeswara Rao (Dead) Through LRs & Ors Vs. N Madhava Rao and Ors*, Civil Appeal No. 3408 of 2019 dated 05.04.2019 held as under:

“12. When the two Courts below have recorded concurrent findings of fact against the Plaintiffs, which are based on appreciation of facts and evidence, in our view, such findings being concurrent in nature are binding on the High court. It is only when such findings are found to be against any provision of law or against the pleading or evidence or are found to be perverse, a case for interference may call for by the High Court in its second appellate jurisdiction.”

10. The foras below have pronounced orders which are detailed and have dealt with all the contentions of the petitioner which have been raised before us in this revision petition. It is also seen that the orders of these fora are based on evidence on record. In view of the settled proposition of law that where two interpretations of evidence are possible, concurrent findings based on evidence have to be accepted and such findings cannot be substituted in revisional jurisdiction, this petition is liable to fail.

11. We therefore, find no illegality or infirmity or perversity in the impugned order warranting any interference of this Commission. The present revision petition is, therefore, found to be without merits and is accordingly dismissed.

12. There shall be no order as to costs. Pending IAs, if any, stand disposed by this order.