

(2024) 11 NCDRC CK 0075

National Consumer Disputes Redressal Commission

Case No: Revision Petition No. 1176 Of 2017

Rathindra Chakrabarty

APPELLANT

Vs

Dinesh Sikdar

RESPONDENT

Date of Decision: Nov. 22, 2024

Acts Referred:

- Consumer Protection Act, 1986 - Section 21, 21(1)(b)

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

Bench: Division Bench

Advocate: A Subhashini, Parth Awasthi

Final Decision: Disposed Of

Judgement

Subhash Chandra, Presiding Member

1. This Review Petition has been filed under Section 21(1)(b) of the Consumer Protection Act, 1986 (in short, the 'Act') against order dated 09.02.2017 in First Appeal No. 1150 of 2015 of the West Bengal State Consumer Disputes Redressal Commission, Kolkata (in short, 'State Commission') dismissing the appeal filed against order dated 29.01.2015 in CC No. 379 of 2014 of the District Consumer Disputes Redressal Forum, 24 Parganas, Barasat (in short, the 'District Forum').

2. We have heard the learned counsel for the parties and perused the records.

3. Briefly put, the admitted facts of the case are that an Agreement was executed between the parties on 25.03.2012 regarding the construction of a two storied building by the respondent herein for the petitioner on land purchased from the respondent. Agreement, titled "Contract Paper" on the letter head of respondent required the respondent to obtain a

sanctioned plan from the Barasat Municipality. Some details regarding payments and description of work also find mention in this document. A document purported to be the monthly payment of Rs 10,000/- totalling to Rs 1,40,000/- made by the petitioner to the respondent commencing from May 2012 till June 2013 has been filed by the petitioner. The same is not denied by the respondent. The building was completed and handed over to the petitioner who has thereafter raised issues of poor quality of construction and lack of building plans from the concerned Municipal authorities.

4. Petitioner moved the District Forum alleging poor construction quality and claiming that there was no approval of the building plan obtained by the respondent from the Barasat Municipality. It was prayed that the respondent obtain post facto approval from the Barasat Municipality, the sub-standard building be ordered to be demolished and a fresh building constructed and defects removed and the cost of litigation be paid as decided by the District Forum. The allegations were denied and the complaint resisted by the respondent and was decided on contest. The District Forum dismissed the complaint holding that payments by the petitioner to the respondent had not been established through proper money receipts and as the Barasat Municipality had not been made a party to the complaint, no order could be issued against the said Municipality. Appeal before the State Commission was also dismissed on the ground that even though construction had been done without authority, it was the petitioner who was liable for not obtaining the same and a prayer for post approval of un-authorised construction or demolition of an illegal construction could not be agitated before a Consumer Forum. Hence that order of the District Forum was upheld.

5. From the foregoing, it is manifest that there was an Agreement titled "Contract Paper" between the parties whereby construction of a two storied building was agreed upon between the parties on 25.03.2012. Some details of scope of the contract in terms of rooms and certain specifications were agreed upon. This document is not disputed. Respondent contended in his reply before the District Forum regarding payments received as a consequence of this arrangement. It was submitted that the petitioner paid only Rs 1,25,000/- against the expense of Rs 4,01,380/- incurred and that the balance was paid in monthly instalments of Rs 10,000/- per month. Respondent has denied that the quality of construction was poor. It is not in dispute that the building in question was completed and handed over to the petitioner. No building plan approved by the Barasat Municipality has however been brought on the record by the respondent who admittedly constructed the building against consideration received.

6. The District Forum has held that as the Barasat Municipality was not impleaded in the array of parties, no order could be passed against it. The State Commission has held that even though construction was done without approval, it was the petitioner who was responsible for the same and that the prayer for demolition of an illegal construction could not be brought before consumer fora.

7. 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. As laid down by the Hon'ble Supreme Court in *Rubi (Chandra) Dutta (2011) 11 SCC 269* decided on 18.03.2011, *Lourdes Society Snehanjali Girls Hostel and Ors vs H & R Johnson (India) Ltd., and Ors (2016) 8 SCC 286* decided on 02.08.2016 and *T Ramalingeswara Rao (Dead) Through LRs & Ors Vs. N Madhava Rao and Ors, Civil Appeal No. 3408 of 2019* decided on 05.04.2019, revisional jurisdiction is warranted to be exercised in cases of concurrent findings on facts by the lower fora only where there is either a jurisdictional error or a material irregularity resulting in miscarriage of justice.

8. In the instant case the District Forum has adjudicated the complaint on the basis of the "Contract Paper" or agreement dated 25.03.2012. There is a specific mention in the documents that the respondent shall obtain the building plan sanctioned from Barasat Municipality. The District Forum has however, held that the petitioner/ complainant erred in not impleading Barasat Municipality and hence, no action can be ordered against the Municipality. The primary issue in the complaint before the District Forum was with regard to deficiency in service relating to non-obtaining a Building Plan sanctioned by the local Municipality and poor quality construction. From a bare reading of the order of the District Form it is apparent that it has fallen into error of not adjudicating on the issue of deficiency in service as reckoned on the basis of an agreement between the parties as per which a service had been agreed upon based on a consideration. Admittedly, there is no Building Plan sanction obtained. The District Forum, in not adjudicating this matter, has committed a material irregularity.

9. There is an admission in the order of the District Forum that the Building Plan though not available or not brought on record could not be considered because Barasat Municipality was not impleaded as a party by the complainant. It is therefore, admitted that the Building was illegal. In view of the specific requirement in the agreement between the parties that the respondent would obtain a sanctioned Building Plan, which was admittedly not done, deficiency in service is writ large on its part.

10. The State Commission, in appeal challenging the order of the District Forum, held that it was the petitioner who was liable for not obtaining the Building Plan sanctioned and therefore liable for action and in getting an illegal building constructed. It also held that the issue of demolition of such a building by the Municipality did not lie before the State

Commission. Having recognised the petitioner as a 'consumer' within the meaning of the Act, the relief prayed for before the State Commission was required to be considered in the limited context of whether there existed a promise to provide a service by the respondent to the petitioner against payment, promised payment or partially paid and promised. The agreement dated 25.03.2012 is explicit in the obligation placed on the respondent in this regard. It is noteworthy that the document was executed between the parties on the letter head of the respondent. As per this document, which is admitted, there was a specific obligation on the part of the respondent to obtain the Building Plan sanction. It needs no iteration that the Building Plan duly sanctioned by the local municipal authorities is an essential document for the house owner with regard to various legal rights pertaining to the property. The State Commission has clearly fallen into an error in adjudicating the issues without considering the pivotal significance of this document. The conclusion that the petitioner was liable for obtaining the Building Plan sanction is not supported by any document and the State Commission's finding is therefore, not justified. Accordingly, the State Commission's order dated 19.01.2017 is based on surmises and conjectures and therefore constitute material irregularity. An order that is non-speaking is not justiciable must be held to be arbitrary and perverse.

11. In view of the discussion above, the orders of both the District Forum in Consumer Complaint and the State Commission in appeal must be held to be arbitrary and perverse.

12. In view of the foregoing discussion, we consider it appropriate that the case warrants interference under Section 21(1)(b) of the Act. Accordingly, the following directions are issued:

- (i) the orders of the District Forum and the State Commission are set aside.
- (ii) Respondent is directed to obtain a building plan sanction as per the bye-laws of the Barasat Municipality under the relevant Municipal Act and Rules and to rectify the construction of the building in question as per the same, if required by demolishing the building in part or full, at his own cost within a reasonable period of time, but not exceeding 4 months from the date of this order.
- (iii) The District Forum shall appoint a local Engineer Commissioner who is a registered civil engineer at the cost of the respondent to supervise and certify the same.
- (iv) The respondent shall pay the petitioner compensation @ 7.5% from the date of handing over possession till the rectification of the shortcomings as directed above till the date of handing over of the building with a sanctioned building plan along with a completion certificate from the Barasat Municipality.
- (v) Respondent shall also pay litigation cost of Rs 25,000/- to the petitioner within 45 days of this order.

The revision petition is disposed of in the above terms. Pending IAs, if any, stand disposed of with this order.