
(2014) 07 NCDRC CK 0023

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

Kuwait Airways Corporation

APPELLANT

Vs

RAJAGOPAL AND COMPANY

RESPONDENT

Date of Decision: July 4, 2014

Citation: 2014 3 CPJ 441

Hon'ble Judges: J.M.MALIK J.

Judgement

1. KUWAIT Airlines Corporation, the complainant, filed this complaint in this Commission on 1.10.2000, against their Advocates, namely, Rajagopal & Co. and its two Advocate -Partners, namely, Ms. Rekha Rajagopal and Mr. Pradeep Rajagopal, wherein it was alleged that OPs have resorted to unfair trade practice and deceptive practice and demanded refund of money allegedly collected as taxes and their professional fees. The relevant facts of this case are these. The complainant operates its office from a portion of the building known as Chateau Windsor at 86, Veer Nariman Road, Mumbai. The complainant took on lease, flat No. 2 (right wing) on the first floor of this building vide a tenancy agreement dated 6.9.1967 from the erstwhile owners of the building. On 15.2.1998, the Assistant Engineer (Buildings), A -Ward, Centralised Ward Offices Building under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966 (MRTP Act) issued a notice against the complainant alleging that the complainant, without taking the permission, necessary under the MRTP Act, had changed the use of the land from residential to commercial. A copy of the notice was placed on record as Annexure -A.

2. THEREAFTER , the complainant approached the OPs for legal advice and assistance in this matter. Ms. Rekha Rajagopal advised the complainant that this was

in gross violation of MRTP Act and they are also likely to receive a notice from the Bombay Municipal Corporation. They also advised the complainant to initiate and regularize at the earliest. They also advised the complainant that it would be wise to pay off the tax and penalty at the earliest in order to avoid any further levy of penalties, demolition and eviction. They also advised the complainant that it had an option to initiate legal proceedings and tried to obtain stay. Mrs. Rekha Rajagopal, OP2, opined that it would be a temporary relief and would involve lot of time and expenditure. She further informed that the rate of tax would be calculated on the rateable value tax from the proceeding year. A copy of the letter dated 9.2.1999 has been placed on record as Annexure -B. The relevant file was forwarded to the OPs vide letter dated 19.2.1999. A copy of the said letter has been placed on record as Annexure -C. A meeting was also held in Bombay office between the officials of the complainant and OP2. A copy of the minutes of the said meeting has been placed on record as Annexure -D.

Vide letter dated 17.3.1999, the OPs further advised the complainant that the Corporation was to in violation of: (A) MRTP Act, 1996; (B) Bombay Municipal Corporation Act, 1888 (BMC Act) Section 167; and (C) Maharashtra Tax on Residential Premises, 1974 and mentioned the period of violation as 1967 -1999.

3. THE OPs demanded the payment of Rs. 33,00,000 towards tax and professional fees for the regularization. The said amount was paid vide letter dated 17.3.1999, a copy of which was placed on record as Annexure -E. Annexure - E is a crucial document. Its original was not produced because the same was not available. However, the same is hereby reproduced as under:

Rajagopal & CompanyAdvocates

March 17, 1999

To

Mr. Fahad Al -AjmiLawyer - -Legal DeptKuwait Airways CorporationP.O. Box 394,
Safat -13004, Kuwait

Dear Sir,

Re: Chateau Windsor Premises - -Regularisation from Residential to Commercial premises.

I am in receipt of your letter through fax transmission, dated 17.3.1999 bearing Ref. DL/DX/99.

Violation of provisions of law:

1. Maharashtra Regional Town Planning Act, 1966, Sec. 63(1)
2. Bombay Municipal Corporation Act, 1888, Sec. 167
3. Maharashtra Tax on Residential Premises, 1974. Period of Violation - 1967 to 1999

The taxes payable are computed on the basis of area of flat as recorded in the Municipal Register.

Rates of taxes shall be calculated on the basis of rateable value for non -residential premises as per slab levied by State Government of Maharashtra for various periods inclusive of 1967 to 1999.

Regards

Sd/ -Mrs. Rekha Rajagopal".

4. IT is further explained that during the period 25.3.1999 to 24.4.1999, a total amount of Rs. 33,00,000 was paid to the OPs which was duly acknowledged by OP2 vide letter dated 11.3.2000, placed on record as Annexure - H, which runs as follows:

"Rajagopal & CompanyAdvocates

March 11, 2000

To

Mr. Fahad Al -AjmiLawyer - -Legal DepartmentKuwait Airways CorporationP.O. Box 394, Safat -13004, Kuwait

Dear Mr. Fahad,

Re: Chateau Windsor

In pursuance of the telephonic conversation, I have to state that:

1. A sum of Rs. 33 lacs inclusive of Professional fees (Thirty -three lacs) was received by my office on behalf of the Corporation towards obtaining regularization of flat No. 2, 1st Floor of Chateau Windsor premises from residential to commercial for the period 1967 to 1999 onwards.
2. The receipts for all the moneys received have been signed for by my office staff at various dates.

3. Kindly note that said premises was valued at Rs. 1,30,00,000 (Rupees one crore thirty lacs) on the said date. The Corporation would have incurred a penalty along with eviction totaling to about Rs. 1,10,00,000 (Rupees one crore ten lacs).

It was in this background that the case was handed over to my office. Your former Solicitors, Mulla & Mulla had even opined that it would not be possible for them to have obtained the said regularization. The same has already been explained vide my letter dated 17.3.1999. Your office letter dated 19.2.1999 authorised me in regularizing the user of the said premises from Residential to Commercial.

I have already forwarded to you the BMC Inspection extract dated 15.5.1999 in this regard, wherein it is clearly stated that the above mentioned property, flat No. 2, is used as an office. The same has been regularized and is now legally in order.

Thanking you,

Sd/ -Mrs. Rekha Rajagopal".

However, this document of infinite significance, is a photocopy simpliciter and not the main document. No information was received by the complainant about the payment of the said amount. On enquiry, the OPs forwarded two documents to the complainant. The first was the extract pertaining to the property tax and the second extract was a letter dated 19.5.1999, written by OP2 to the Ward Officer wherein a request was made that the notice should be withdrawn. The complainant thought that the OPs were taking action.

5. THE complainant, vide letters dated 31.8.1999, 2.9.2000 and 10.11.1999 asked for original receipts for payment made to the authorities by the OPs. However, all those letters went unresponded. Thereafter, the complainant received the above said letter dated 11.3.2000 and correspondence went on between the parties. The OPs did not give the details of the taxes deposited by them. The complainant approached the Ward Officer but came to know that till that date, neither the user had been restored nor any document authorizing the commercial use had been submitted. Copies of these letters were annexed as Annexure -L, collectively. It is further averred that the Assistant Assessor and Collector of the A -ward was also asked to clarify the position but he could not. No specific reply was received from the OPs. On 13.5.2002, OP2 admitted of having taken no steps towards regularization of user.

6. IT is alleged that even after the period of fifteen months, the OPs actually had not rendered any service for which they had already obtained professional remuneration in advance. They could not account for the said amount. The OP2 deliberately misinformed the complainant that a notice under the BMC would be received shortly. A study of these acts and Sections clearly indicate that they are independent and the valuation for property tax or the nature of tax paid, whether, residential or commercial, has no bearing on regularization of user. All those regulations and sections were wrongly interpreted by OP2. The justification regarding the penalty to the tune of Rs. 1,10,00,000 (Rupees one crore ten lacs) along with eviction based on valuation of premises at Rs. 1,30,00,000 (Rupees one crore thirty lacs) was a deliberate lie to suppress further queries from the complainant. Copy of letter dated 15.5.2000, copy of representation to the Municipal Commissioner, BMC, copy of letter from the landlord addressed to the BMC were also placed on record, as Annexures Q, R and S, respectively. Vide letter dated 12.8.2000, the complainant made a demand on the OPs for refund of Rs. 33,00,000. Copy of the said letter has been placed on record as Annexure T.

Ultimately, this complaint was filed with the following prayers:

- (a) direct the opposite parties to return to the complainant an amount of INR 33 lacs being the total amount charged and received by the opposite parties from the complainant.
- (b) direct the opposite parties to pay to the complainant interest @ 24% on INR 33 lacs calculated from 25.3.1999 till the date of payment.
- (c) direct the opposite parties to pay the costs of these proceedings to the complainant; and
- (d) pass any other or further orders as this Hon"ble Commission may deem fit and proper in the facts and circumstances.

7. THE OPs have denied all these allegations. During the arguments, the learned Counsel for the complainant admitted that he was unable to produce the original documents. Since the original documents have not seen the light of the day, therefore, no value can be pinned with the photocopies/true copies, simpliciter. Such like evidence is of frail character. As a matter of fact, there is not a rag of

evidence to implicate them in this matter. We do not have even a shred of proof. The complainant has failed to produce the receipts of the amount of Rs. 33,00,000, allegedly signed by the staff of OPs. It is difficult to fathom as to why the amount was sent in cash. Kuwait Airlines Corporation should have sent the money through Cheque instead of sending the same in cash. No explanation is forthcoming. There is no other evidence which may go to bolster the case of the complainant.

8. WE have perused Annexure - H (quoted above) which purports to have been signed by, Mrs. Rekha Rajagopal. Mrs. Rekha Rajagopal has categorically denied her signatures on this document. The possibility of its being manipulated cannot be ruled out. No application was moved for leading secondary evidence. Even if it is assumed that all the moneys were received and signed by office staff of Mrs. Rekha Rajagopal, those receipts were withheld for the reasons best known to the complainant, the production of the receipts would have gone a long way to elicit the factual position of this case. In their absence, the position does not begin to jell. It would have gone a long way to animate life in this dead case. In order to prove the case, the complainant should have produced solid and unflappable evidence. The complainant has made a vain attempt to make bricks without straw. It must be mentioned here that the complainant has wasted fourteen years" of time of this Commission, on one pretext or the other. The main reason for the delay is that the original documents were reported to be untraceable. Due to lack of submission of original documents, the case of the complainant goes in a tizzy and the same is hereby dismissed. No order as to costs.