

(2004) 03 NCDRC CK 0123

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

TMT. MARAGATHAM

APPELLANT

Vs

SHANMUGAPURAM, PALANI

RESPONDENT

Date of Decision: March 19, 2004

Citation: 2004 2 CPR 114 : 2004 3 CLT 467 : 2004 4 CPJ 139

Hon'ble Judges: A.Raman , R.Vanaroja J.

Final Decision: Appeal allowed

Judgement

1. THE complainant's case is that in the Encumbrance Certificate [E.C.] issued by the opposite party, only the sale transaction dated 15.2.1989 registered under document No. 1-210-389-390-163/1989 alone has been shown. Similarly, in the E.C. issued to one Pichaikannu of Palani Sivagiripatti, only the above transaction dated 15.2.1989 has been shown. THE complainant, similarly, before selling the property, obtained an E.C. for the period from 1.11.1992 to 14.7.1994. In that E.C., only the sale agreement executed by Dhanalakshmi Ammal in favour of Sivan of Kumbakonam alone is mentioned. When the complainant wanted to sell it to one Rajkumar, the said Rajkumar applied for an E.C. from 1.1.1981 to 17.12.1996 and in that E.C., only the encumbrance mentioned in paragraphs 4, 6 and 8 have been mentioned. Believing the same, the said Rajkumar purchased the property for Rs. 89,000/- and got it registered. When the said Rajkumar went to take possession, one Ameer Amsa, son of Mohammed Sultan of Palani, claiming that the property belonged to him, showed the sale deed. THEREfore, the said Rajkumar again went and applied for another E.C. on 1.8.1997 in which only the encumbrances mentioned in Paragraphs 6, 8 and 9 were shown. THEREfore, the said Rajkumar filed a suit against the complainant in O.S. No. 201/1997 on the ground that the complainant has cheated him. THE complainant thereafter settled the matter by paying several thousands of rupees. Thus the opposite party has issued an E.C. without verifying the records. On account of the action of the opposite party, the complainant has been put to considerable loss, expenses, harassment and loss of prestige. Hence the complainant prays for compensation in a sum of Rs. 3 lakhs.

2. THE opposite party filed a version contending that if there are any omissions in the entries in the Encumbrance Certificate, the opposite party is not responsible, nor can be made liable. This Forum has no jurisdiction. Under Section 137(1) of the Indian Registration Act, they cannot be made liable.

The lower Forum, by its order dated 3.3.1999 dismissed the complaint. Hence this appeal by the complainant.

An inexcusable lapse had taken place in the office of Joint Sub-Registrar, Palani. A reading of the complaint and the documents produced, especially Exhibits A-1 to A-10 shows that there has been lack of care and negligence on the part of the opposite party in issuing the Encumbrance Certificate. As public servants who are responsible and are invested with powers to act according to a particular statute, they have failed to discharge the duties satisfactorily. But what we find in this case is abandonment of duty and lack of care. For, the office of the Sub-Registrar has issued the E.C. without verifying the records. They have issued a certificate, omitting a transaction relating to the property thereby resulting in much hardship, monetary loss, loss of property and credibility to the complainant. Day in and day out, transactions of sale concerning the properties take place throughout the State. They are done only on the basis and on the strength of the Encumbrance Certificates issued by the Registration Department. Therefore, it is all the more necessary that the Registration Department should be careful in discharging their duties. It is no doubt true that they are discharging a statutory duty. But they are expected to discharge their duties in such a manner that it does not cause inconvenience or loss to the public. But what we see in this case is an abandonment of their responsibility. They have failed to observe all care and caution. There is thus indifference in the discharge of duties.

3. THE National Commission has held in its decision rendered in First Appeal No. 59 of 1993 dated 13th January, 1995 in the case of Government of Tamil Nadu & Ors. v. V. Brahmananda Rao @ V. B. Anand, that "in granting an Encumbrance Certificate which is applied for from the Registration Office, the Registration officials are performing only what is purely a statutory function enjoined on them by the concerned statute and they are not performing any service for consideration. Hence no relationship of provider of service and hirer of such service can be spelt out as between the Registration Department and any person who has obtained such a

certificate on payment of the prescribed fee". But it was a case where the E.C. was obtained by a third party. Here, admittedly, the complainant has stated that it was her husband who had applied for the E.C. In paragraph 12 it is also stated that one Rajkumar had applied for issue of an E.C. THE complainant and Rajkumar are beneficiaries. THEREfore, a service can be spelt out between the Registration Department and any person who has obtained such certificate on payment of prescribed fee. In this case, the certificate has been applied for or on her behalf. THEREfore, in this case, the payment has been made only by the complainant's husband and the buyer and it is the complainant's husband and the buyer who applied for it. THEREfore, the complainant can maintain the complaint in view of the rulings of the National Commission. THERE is thus deficiency in service.

Therefore, it follows that the complaint is maintainable. The complainant has been driven to the Civil Court and then to this Forum on account of the negligence of the opposite party. Though the complainant has claimed for a sum of Rs. 3,00,000/- as damages, it cannot be granted. In the circumstances, we hold that the appeal deserves to be accepted and in the peculiar circumstances, directing the respondent/opposite party to pay to the complainant a compensation of Rs. 10,000/-.

4. IN the result, this appeal is allowed setting aside the order of the lower Forum. It is further ordered that the respondent/opposite party shall pay a sum of Rs. 10,000/- as compensation for deficiency in service, along with a cost of Rs. 1,000/- to the appellant/complainant. Time for compliance : Two months. The State Government will take necessary action to recover it personally from the then incumbent of the post, No. 1 Joint Sub-Registrar, Palani. Appeal allowed.