

(1993) 03 NCDRC CK 0046

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

THIRU DHARMAN

APPELLANT

Vs

STATE OF TAMIL NADU

RESPONDENT

Date of Decision: March 1, 1993

Citation: 1993 2 CPJ 1029

Hon'ble Judges: S.A.Kader , R.N.Manickam , Ramani Mathuranayagam J.

Final Decision: Complaint dismissed

Judgement

1. THESE two complaints are connected matters and are taken up for hearing on the question of maintainability.

2. THE complainants are fishermen and the Government framed a scheme for their uplift. At the request of the Fish Farmers Development Agency, the Executive Engineer, PWD sanctioned lease of two tanks called Netteri & Chakramallur for a period of 10 years. A selection committee selected the complainants in O.P. 40/93 as leases of fishing right in Netteri tank and the complainants in O.P. 41/93 as leases for Chakramallur tank for 10 years, and gave them training in fish culture. THE complainants claim to have purchased fish seeds and started fish culture in these tanks where boards were put up against trespass and unauthorized fishing. But the Tehsildar refused to recognize these leases by PWD and Boards were removed resulting in force fishing of all. According to the Tehsildar the Revenue Department alone has the right to lease out the fishing rights. On account of this inter-departmental rivalry the complainants are put to heavy loss. Hence the complaints.

It has been held in a catena of judicial decisions that fishery is immovable property (Parbutty v. Madho 3 Cal 876; Fadu v. Glovr 19 Cal 544 FB; Ram Gopal v. Nurumudin 30 Cal; Shipu v. Gupi 31 Cal 119). It has been held by the Supreme Court in Anand Behera v. State of Orissa (1955 (3) SCR 9191) that a right to enter upon land and to carry away fish from a lake is a right to profits a pendre and that it amounts immovable property in India as a benefit arising from land. The lessons in these cases are therefore leases of immovable property as a benefit arising from land. The lessor in these cases are therefore lessor of immovable property coming within the ambit of the Transfer of Property Act and the rights and liabilities of parties are governed by Section 108 of the said Act. It has been held by this Commission as well as by the National Commission that leases of immovable property do not come within the purview of the Act. The complaints are not, therefore maintainable.

We may also point out that the complainants have not hired the services of the opposite parties for consideration and are not therefore consumers within the meaning of Section 2(1)(d)(ii) of the C.P. Act.

3. WE therefore hold that these complainants are not maintainable and dismiss the same. Complaint dismissed.