

SUPREME COURT OF INDIA

Improvement Trust, Ludhiana

Vs.

Shakti Co-Operative House

C.A.No.1866 of 2002

(D.K. Jain and R.M. Lodha JJ.)

13.04.2009

JUDGEMENT

D.K. Jain, J.

1. This appeal by special leave is directed against the order dated 22nd March, 2001 passed by the National Consumer Disputes Redressal Commission, New Delhi, hereinafter referred to as "the Commission" whereby the Revision Petition No. 705 of 1999 filed by the appellants against the decision of the State Consumer Disputes Redressal Commission, Punjab (for short "the State Commission") directing delivery of possession of a plot of land to the respondent has been dismissed.

2. Material facts, giving rise to the appeal are as under:

3. In the year 1970, the appellant--Ludhiana Improvement Trust, Ludhiana, hereinafter referred to as "the Trust", formulated a scheme, styled as Model Town Extension Scheme Part II. For the said purpose, proceedings for acquisition of land in certain villages were initiated. Lands owned by several co-operative housing societies were also notified as part of the land proposed to be acquired. However, before the announcement of awards in respect of the lands to be acquired, representations were made by several societies to the Trust as also to the Government seeking exemption of their land from acquisition. The Trust acceded to the request by some of the societies and recommended to the Government that the land of these societies be exempted from acquisition, which was accepted by the Government. The respondent Society was also amongst those societies who were granted exemption. Notwithstanding making of the awards, the Trust neither took possession of the land belonging to the respondent nor paid any compensation. Subsequently in the year 1981-82, the Government also issued a notification under Section 56 of the Punjab Town Improvement Act, 1922 for abandonment of proposal for acquisition of lands belonging to these societies, the respondent Society being one of them.

The exemption was on certain terms and conditions with which we are not directly concerned in this appeal.

4. It appears that after the issue of the said exemption notification, the respondent Society requested the Trust to allot plots to their members as large portions of their land were under encroachment. Apparently, the request of the Society was not legally correct inasmuch as due to the exemption, the Society remained owner of their land and the Trust was neither competent nor under any obligation to allot plots to them. Thus, the Trust did not accept the request of the Society for allotment of plots and till the year 1990 nothing tangible seems to have happened. However, when one B.D. Aggarwal took over as Chairman of the Improvement Trust, the process for allotting plots to certain societies suddenly gained momentum. So much so, the land of one Society was exchanged with the land of another Society and plots were allotted even on the land belonging to the Trust. In the case of the respondent Society, as per condition of exemption, the Society could carve out plots in area admeasuring upto 23,000 sq. yds. but the Trust carved out 154 plots in 23,800 sq. yds. Out of these, 123 plots were given to the Society including 25 plots in the land belonging to other societies and 3 plots on Trust's land. It seems that the Society was not satisfied with the said allotment, inasmuch as its stand was that the Trust, through its Chairman had taken over the land of the Society by acquisition and had promised to allot about 151 plots. Out of 151 plots the possession of one plot bearing No.32, measuring 150 sq. yds situated in Model Town Extension Part II Block C, Dugri Road, Ludhiana, was not given by the Trust to the Society on the ground that a suit in respect of the private land, which was subject matter of Plot No. 32 had been filed. The said civil suit was decreed and land on which Plot No. 32 had been carved out was held to be belonging to one Gurcharan Singh. After the decree, the Society requested the appellant to allot alternative plot to them in lieu of Plot No.32.

5. Having failed to get any response from the appellant, on 1st March, 1996, the Society, through its secretary filed a complaint before the District Consumer Disputes Redressal Forum ("District Forum" for short) under the *Consumer Protection Act, 1986* (for short "the Act") for issuing a direction to the appellant to allot an alternative plot in lieu of Plot No.32.

6. At this juncture, it is pertinent to note that when the irregularities committed by the former Chairman and Executive Officer of the Trust came to the notice of the Government, vide his order dated 19th December, 1996, the Principal Secretary, Local Government directed the Director, Local Government to conduct an inquiry into the affairs of the Trust.

“The enquiry officer found grave irregularities in allotment of plots by the said two office bearers of the appellant in connivance with the management of the societies. Some of the irregularities listed by the enquiry officer, and which have significant bearing on the present appeal are extracted below.

"Firstly, the Trust was under no obligation to allot plots to the societies whose land has been exempted because after the abandonment of acquisition u/s 56 (1), the societies continued to be the owners of their land. The notification of exemption nowhere states that the Trust will allot plots to the societies whose land has been exempted. The only obligation placed on the Trust is to ensure that the colony of the Society comes up in consonance with the over-all lay out plan of the scheme. This colony is to come up in Society's own land. Therefore, there was no need for the Trust

to allot plots to the societies. The fact that the Trust has deliberately taken upon itself the burden of allotting plots to the various societies when it had no obligation to do so clearly shows that all this had been done with an ulterior motive.

Secondly, the Trust had no legal competence to exchange the land of one Society with the land of another because due to the exemption it was not the owner of this land. However, by allotting one Society exempted land to other societies, the Trust officials have made illegal allotments. This situation would have not arisen, if all the plots of the Society had been carved out in its own land and given to the Society. In that case, the Court would not have even entertained the claim of the Society that the Trust should give alternative plots. Now the trust will have to fight tough legal battles to counter the illegal acts of the Trust officials.

Thirdly, there was no logical reason for allotting plots to any Society in the Trust land. Instead of getting the lay out plan revised Shri B.D. Aggarwal and Shri K.R. Garg, E.O. allotted 54 plots measuring 8000 sq. yds. falling in Trust land to some of the Co-op. Societies without taking any sale money. This gifting away of valuable Trust land has caused heavy financial loss to the Trust.

Fourthly, the Trust officials did not bother to recover full development charges from some of the societies as per letter of allotment. Nor did they bother to execute any agreement for fulfillment of condition laid down for exemption and for vesting of the open land of the Society in the trust as per letter of allotment. In the absence of this agreement some of the societies are exploiting the situation and in some cases have even sold off land which was meant to be kept vacant for parks etc.

Fifthly, from the perusal of the affidavit filed by the members of the societies it appears that many of the members of the societies are bogus and further enquiry in to this aspect will also reveal grave irregularities."

7. It seems that thereafter criminal cases were registered against the said B.D. Aggarwal, K.R. Garg on the basis of the said report. The District Forum, vide order dated 30th July, 1997, allowed the complaint and directed the appellant to allot an alternative plot in an equally developed scheme within three months and pay cost of Rs. 2000.

8. Aggrieved by the said order, the appellant went in appeal to the State Commission. The State Commission vide order dated 30th July, 1997 held that though the Society was given the exemption, the area was developed by the Trust and it was then offered to the Society in the form of possession of 151 residential plots of 150 sq. yds. each, and therefore, not handing over a plot in lieu of Plot No.32 amounted to "unfair trade practice" on the part of the appellant Trust. Thus, the decision of the District Forum was affirmed. As noted earlier, the National Commission has dismissed appellant's petition on the ground that since both the fora below have given their verdict in favour of the respondent there was no ground for interference. Being aggrieved, the appellant-Trust and its Chairman are before us in this appeal.

9. Mr. Pradeep Gupta, learned counsel appearing for the appellants strenuously urged that the National Commission, as also the State and District Forums erred in relying on appellant's letter dated 23rd October, 1990, whereunder 151 plots were purportedly offered to the respondent for further allotment to its bona fide members. The said offer was pursuant to and in furtherance of the Government Notification No. 747, dated 7th October, 1982 which was adopted by the Trust vide Resolution No. 594, dated 29th August, 1990 without appreciating that the said resolution had been specifically rescinded by the State Government vide Memo dated 29th May, 1997. It was submitted that even if it was assumed that the appellant had devised a plan to develop the land belonging to the societies, yet it could not be said that there was any "unfair trade practice" by the Trust because, admittedly, the Society had itself failed to comply with the terms and conditions stipulated in appellant's letter dated 23rd October, 1990. It was pleaded that neither full development charges were paid nor the requisite documents were executed by the Society or its members. It was also contended that since a complicated question of fact was involved, this could be adjudicated only in a Civil Suit and not in summary proceedings before the three Consumer fora.

10. Per contra, Mr. Jagjit Singh Chhabra, learned counsel appearing for the respondent supported the decision by the District Forum, as affirmed by the State and National Commissions. It was contended that having offered plots vide letter dated 23rd October, 1990, the appellant could not resile from its obligation under the said communication and having allotted Plot No. 32, it was bound to deliver its possession or of some other plot in lieu thereof, notwithstanding annulment of Resolution No. 594, dated 29th August, 1990 by virtue of letter dated 29th May, 1997. Lastly, it was argued that all the three fora having recorded concurrent findings in favour of the respondent, this Court should be loath to interfere therewith.

11. Thus, the short question to be examined is whether non- delivery of a plot in lieu of Plot No. 32 by the appellant to the respondent amounts to "unfair trade practice" within the meaning of Section 2(r) of the Act?

12. Prior to the substitution of Clause (r) in sub-Section (1) of Section 2 of the Act with retrospective effect from 18th June, 1993, there was no separate definition of the term "unfair trade practice" and the said term was given the same meaning as in Section 36A of the *Monopolies and Restrictive Trade Practices Act, 1969* (for short "the MRTP Act"). But now after the said amendment, the definition of the term has been specifically provided in Section 2(r), although the definition is practically verbatim reproduction of the definition in Section 36A of the MRTP Act. The basic ingredients of "unfair trade practice" are: (i) it must be a trade practice; (ii) the trade practice must be employed for the purpose of promoting the sale, use or supply of any goods or for the provision of any service; and (iii) the trade practice adopts any unfair method or unfair or deceptive practice including any of the practices enumerated in clauses (1) to (6) of Section 2(r) of the Act.

“Therefore, any trade practice which is adopted for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, by adopting any unfair method or unfair or deceptive practice has to be treated as "unfair trade practice" for

which an action under the provisions of the Act would lie, provided, the complainant is able to establish that he is a consumer within the meaning of Section 2(1)(d) of the Act.”

13. The scope of the term "unfair trade practice" as used in Section 36A of the MRTP Act was considered by this Court in *Anr.*¹ and it was observed thus:

"When a problem arises as to whether a particular act can be condemned as an unfair trade practice or not, the key to the solution would be to examine whether it contains a false statement and is misleading and further what is the effect of such a representation made by the manufacturer on the common man? Does it lead a reasonable person in the position of a buyer to a wrong conclusion? The issue can not be resolved by merely examining whether the representation is correct or incorrect in the literal sense. A representation containing a statement apparently correct in the technical sense may have the effect of misleading the buyer by using tricky language. Similarly a statement, which may be inaccurate in the technical literal sense can, convey the truth and sometimes more effectively than a literally correct statement. It is, therefore, necessary to examine whether the representation, complained of, contains the element of misleading the buyer. Does a reasonable man on reading the advertisement form a belief different from what the truth is? The position will have to be viewed with objectivity, in an impersonal manner".

14. At this juncture, we may also note that though a mild attempt was made by the learned counsel for the appellant to argue that the respondent Society could not be treated as a "consumer" within the meaning of Section 2(1)(d) but when his attention was invited to the exhaustive definition of the word 'consumer' in the said Section, particularly, in clause (ii) thereof, learned counsel did not press the point. Moreover, this issue having not been raised before any of the fora, having regard to the facts of the present case, we do not propose to deal with the question.

15. Having examined the matter in the light of the factual scenario, noted above, we are of the opinion that answer to the question formulated above has to be in the negative.

16. It is true that the Consumer Protection Act being a benevolent piece of legislation intended to protect the consumers from exploitation, the provisions thereof should receive a liberal construction; technicalities should be eschewed and grievances of the consumers deserve to be redressed expeditiously. Yet, the power exercised by the three consumer fora for redressal of consumer complaints being quasi-judicial in nature, they are required to take into consideration all the relevant factors and the material brought on record by both the parties. The averments in the complaint by the consumer cannot be taken as a Gospel truth. To support a finding of "unfair trade practice", there has to be some cogent material before the Commission and any inferential finding is not sufficient to attract Section 2(r) of the Act. Of course, the burden of proof, the nature of proof and adequacy thereof depends upon the facts and circumstances of each case.

17. In the present case, in its brief order, the National Commission has held that since both the fora have upheld the contention of the respondent Society to the effect that it is entitled to allotment of alternative plot in lieu of Plot No. 32 in the same scheme, there is no ground to interfere in exercise of its jurisdiction under Section 21(b) of the Act. Unfortunately, we have not been able to decipher from the order of the Commission and for that matter even from the orders of the District Forum and State Commission, any reason in support of the conclusion that the appellant was obliged to deliver to the respondent possession of Plot No. 32 or an alternative plot in lieu thereof. It is manifest from the orders of the State and District Forum that both the fora have proceeded on the assumption that there was an obligation on the part of the appellant to develop and deliver possession of 151 plots, including Plot No. 32, to the respondent. Their presumption was based on letter dated 23rd October, 1990 from appellant to the respondent, communicating delivery of possession of 151 plots which included Plot No. 32 also. They failed to appreciate that on passing of order by the State Government under Section 56 of the *Punjab Town Improvement Act, 1922*, the acquisition proceedings in respect of respondent's land stood abandoned and it reverted back to the respondent on fulfilment of certain conditions, enumerated in appellant's letter dated 23rd October, 1990. It is amply clear that the exemption notification did not contemplate that the appellant trust was to allot plots to the members of the respondent Society, whose land had been exempted from acquisition under the said notification. The only obligation on the appellant was to ensure that the colony of the respondent comes up in consonance with the overall layout plan of the scheme. In furtherance of that object, it seems that the appellant formulated the scheme for development of the land; perhaps developed it and vide letter dated 23rd October, 1990, delivered the plots to the respondent on fulfilling certain conditions including payment of development charges. Apart from the fact that Resolution No. 594, dated 29th August, 1990 stood annulled vide order dated 29th May, 1997 passed by the Department of Local Government, Government of Punjab, the scheme for development was scrapped, no evidence was led by the respondent to show that all the conditions stipulated in letter dated 23rd October, 1990 had been complied with. As a matter of fact, it had been highlighted in the report submitted by the enquiry officer that the appellant was under no obligation to allot plots to the societies whose land had been exempted because after the abandonment of acquisition in terms of Section 56(1) of the *Punjab Town Improvement Act, 1922* they had failed to recover full development charges from some of the societies and even the members of the societies also appeared to be bogus. Furthermore, in view of the Civil Suit in respect of the land out of which Plot No. 32 had been carved out having been decreed in favour of the landowner, it was clear that the said piece of land did not belong to the Society, which could be placed at the disposal of the appellant for development and yet, it seems that in connivance with the officials of the appellant, they succeeded in getting it included in their list of allotted plots with an ulterior motive to get a plot in lieu thereof. We are convinced that all these were relevant factors which have been ignored by all the three fora and, therefore, their finding that the non-delivery of Plot No. 32 or an alternative plot in lieu thereof amounted to "unfair trade practice" on the part of the appellant Trust, cannot be sustained. It is evident that even the implication of abandonment of acquisition under Section 56 and the annulment of Resolution No. 594, dated 29th August, 1990 by the State Government have not been taken into consideration by any of the three

fora. In our judgment, there is no material on record to return a finding that the appellant had indulged in "unfair trade practice".

18. For the foregoing reasons, the appeal is allowed and the impugned order passed by the Commission , affirming the finding of the State Commission and the District Forum that the appellant had indulged in "unfair trade practice", attracting 1 Section 2(r) of the Act, is set aside with costs, quantified at Rs.20,000/-.

¹(1989) 3 SCC 251