

SUPREME COURT OF INDIA

Maharashtra State Cooperative Bank Ltd.

Vs.

Farmer Bank Employees Cooperative Housing Society Ltd.

C.A.No.8606 of 2019

(Uday U.Lalit and Indira Banerjee,JJ.,)

14.11.2019

JUDGMENT

1. Leave granted.

2. These Appeals arise out of (i) the judgment and order dated 08.02.2018 passed in First Appeal No. 255 of 2016 and (ii) order dated 24.09.2018 passed in Review Application No. 333 of 2018 in said First Appeal by the National Consumer Disputes Redressal Commission, New Delhi ('the National Commission', for short).

3. The Appellant-Bank is the apex bank of all District Central Cooperative Banks in State of Maharashtra and is also a scheduled bank in terms of the Banking Regulation Act, 1949. In response to an advertisement published by the Respondent No.2 (Nagpur Improvement Trust) offering an extent of land admeasuring 2709.701 square metres consisting of 14 plots, the Appellant made an application and was allotted said land on 02.11.1973 against the premium of Rs.90,300/-. One of the conditions for allotment was that the plot shall be used for residential purposes. The possession of the plot was immediately handed over. Soon thereafter, the Appellant applied for variation in sub-division and requested that the entire land be divided into 16 plots instead of 14 plots as was initially contemplated. The request was allowed and the land was sub-divided into 16 plots.

4. The Appellant, thereafter, constructed 28 tenements on 14 plots out of 16 plots while the other two plots were kept vacant. With the idea of making tenements available to the persons working with the Appellant in the category of peons, applications were invited from interested persons. It appears that only 19 persons satisfied the requirements and therefore 9 persons belonging to the category of clerks were also accommodated. All the 28 tenements were thus allotted to 28 employees of the Appellant sometime in March 1976. Upto the stage of allotment not a single paisa was paid by any of the employees. These employees were given the facility of financial support by the Appellant where interest was charged at concessional rate and home loans were made available to them.

5. Though the allotment of said 28 tenements was done in March 1976 itself and

possession was given, the Society of the employees did not get any lease executed as there were existing loans which were yet to be cleared by each of the employees. The lease in respect of the entire extent of land was therefore got executed in the name of the Appellant by Respondent No.2, the period of lease being 03.11.1973 to 31.03.2004. After the loans were repaid, the Executive Committee of the Appellant passed Resolution No.3 on 21.1.2004 resolving that since the loans were repaid, the tenements and the concerned plots be transferred in the names of those employees or their legal heirs by completing all legal formalities. Though, the Resolution was passed on 21.01.2004, the formalities could not be completed and as the period of lease had come to an end, the lease was got renewed from Respondent No.2 in favour of the Appellant on 15.02.2011 for further period of 30 years from 01.4.2004 to 31.03.2034.

6. On 16.04.2012 the Society of the employees i.e. the Respondent No.1 herein filed Complaint No.10 of 2012 before the State Consumer Disputes Redressal Commission, Nagpur ('the State Commission', for short) under Section 12 of the Consumer Protection Act, 1986 (hereinafter referred to as 'the Act') submitting inter alia that:-

“5. The management of Non-applicant No.2 bank decided to undertake housing scheme for the employees working as peons with Non-applicant No.2. And, therefore, in response to an advertisement in local newspaper in the year 1973 published by the Non-applicant No.1 offering residential plots to the general public in the old Subhedar Layout locality under Khasara No.58 & 59, known as Sakkardara Street expansion scheme, the Non-applicant No.2 contracted the Non-applicant No.1 to purchase 14 plots for its employees in peon category. The proposal of Non-applicant No.2 was accepted by Non-applicant No.1 and 14 plots bearing Nos.83 to 96 were allotted to Non-applicant No.2 Bank for a total consideration of Rs.90,300/- (Rupees Ninety thousand Three Hundred Only) admeasuring 2709.701 sq. Mtr i.e. 29,167 sq. Ft. of area. Initially it was proposed by the Board of Directors of the Non-applicant No.2 to construct 2 tenements on each plot totalling 28 tenements. However, the then Local manager at the Regional Office, Nagpur of Non-applicant No.2 got the 14 plots divided into 16 plots with the approval of Non-applicant No.1. The plots were renumbered as 83-96 + 89A and 90A.

6. The Non-applicant No.2 started collecting monthly subscription from those employees who registered their names to participate in the scheme, with a view to create their 10% contributory fund to avail 90% of loan facility as against the cost of their respective tenements.

7. Thereafter, Non-applicant No.2 engaged M/s Planarch an Architectural firm and got the tenement plans sanctioned from Non-applicant No.1. The Non-applicant No.2 then engaged Shri N.T. Vyas, a building contractor, to construct 28 tenements with its own funds. However, the Non-applicant No.2 restricted the construction of tenements to 28 only instead of 32 and 14 plots and 2 plots remained vacant as because the Board of Director of Non-applicant No.2 Bank at Head Office at Mumbai did not approve the subdivision of plots from 14 to 16.

8. At the time of completion of construction of 28 tenements, only 19 peons confirmed their participation and, therefore, 9 employees from clerical cadre were accommodated in the scheme and allotment of tenements was done in March 1976. In fact, if the Non-applicant No.2 would have constructed 4 more tenements, the same could have been allotted to those desirous employees in future. However, for the reason best known, the Non-applicant No.2 kept 2 plots vacant, for the past 38 years.

9. The Non-applicant No.2 initially incurred all expenses relating to completion of the project as mentioned below:-

Sr.No.	Particular	Amount (Rs.)	Security Deposit	Total (Rs.)
1.	Cost of Land	90,300.00	--	90,300.00
2	Ground Rent (1974-75)	1,806.00	--	1,806.00
3	Security Deposit (NIT)	--	800.00	800.00
4.	Steel	47,845.48	--	47,845.48
5	Cement	87,634.40	--	87,634.40
6	Contractor's Bill	3,69,855.19	--	3,69,855.19
7	Architect Feed	19,364.80	--	19,364.80
8	Supervisor's charges	3,600	---	3,600

The total cost of the project including cost of land was worked out at Rs.6,34,457.87 and by dividing this amount by 28 the cost of each tenement was worked out at Rs.22,659.20 which obviously includes the proportionate cost of 2 vacant plots admeasuring 3600 sq.ft. of area. The Board of Directors of the Non-applicant No.2 Bank in its meeting held on 12.01.1977 approved the cost of project and cost of each tenement and also approved housing loan to each employee as per their eligibility. It was also resolved by the Board of Directors to transfer the entire property in the name of society along with loan amount sanctioned to 28 members and started effecting recovery of loan through society via their monthly salaries. However, due to sub-division of 14 plots into 16 plots and constructing only 28 tenements, every member had to sacrifice the benefit of 12 sq.ft. of permissible construction are even after paying the cost and suffered a permanent irreparable loss.

11. As stated earlier, the Non-appliant No.2 paid the price of 16 plots. The expenditure

incurred on construction and for other purposes was initially borne by Non-applicant No.2. However, both the Non-applicant No.1 and Non-applicant No.2 cheated the Complainant and its members by executing the lease deed of 16 plots for a period of 30 years commencing from 03.11.1973 to 31.03.2004 in favour of Non-applicant No.2. This document of lease was executed on 26.04.1979 i.e. 3 years after handing over the possession of tenements in March 1976 and further after its own decision of 12.01.1977 taken by the Board of Directors of Non-applicant No.2 Bank to transfer the property in favour of Complainant Society. However, the annual lease rent is being paid by the Complainant society since beginning and up till now over Rs.70,000/- are paid towards rent without any title to the land. Now, therefore, the Complainant or its members do not possess any title to the property they are occupying even though they have discharged their loan liability way back on their respective superannuation or on the expiry of term of repayment of loan. Out of 28 allottees, 20 members have died and the question of succession to the property has arisen before the Complainant Society. However, the Complainant Society is totally helpless to resolve the issue as the title of the said 16 plots of land is with the Non-applicant No.2.”

In para 13 of the complaint, various options were suggested by Respondent No.1, one of the suggested options namely option 'e' being:- “The Non-applicant No.2 could have constructed 4 more tenements on remaining two vacant plots out of 16 plots and could have allotted them to the interested employees easily as because a large number of employees of Non-applicant No.2 have sought housing loan benefit from Non-applicant No.2 thereafter for their housing needs. The Non-applicant No.2 could have also refunded the cost of two vacant plots originally shared by 28 employees or adjusted to their loan accounts.”

The prayers made in the Complaint were as under:-

- i. Direct the Non-applicant No.1 to renew the lease of 16 Plots No. 83 to 96 and 89A and 90A in favour of the Complainant-Society within two months from the date of order.
- ii. Direct the Non-applicant No. 2 to pay the cost for renewal of lease of 16 plots to the Complainant-Society immediately as and when demanded by the Complainant Society.
- iii. Direct the Non-applicant No. 2 to pay the price of two vacant plots, if it desires to retain for construction, as per prevailing market price which amounts to Rs.98,00,000/- (Rupees Ninety Eight Lakhs Only).
- iv. Direct the Non-applicant No. 3 to accept and register the document of Sale Deed that would be executed by Complainant Society in favour of each member or legal heirs of the deceased members free of stamp duty and registration charges as per Government notification dated 14.03.1980.

v. Direct the Non-applicant No.1 and 2 to pay Rs.1,00,000/- each to Complainant Society for harassment and mental agony caused to members over the years.

vi. Saddle the cost of Rs.20,000/- on Non-applicant No.2 bank for filing the complaint.”

7. In its written statement the Appellant denied the claim made by the Respondent No.1 and submitted that the dispute raised by the Respondent No.1 could not be a consumer dispute within the meaning of the Act and, in any case, the complaint was barred by time as per Section 24A of the Act.

8. It was observed by the State Commission that the entire cost of construction of tenements and other charges were paid by the concerned employees and as such nothing was due from those employees; that the Appellant was a service provider in terms of the Act and the complaint was maintainable. Finding the Appellant to be deficient in rendering of service in that it had not got the lease deed of the plots executed in favour of the Respondent No.1 well-in-time and had thereby caused loss to the Respondent No.1, the complaint was allowed with following directions:- “ii. It is directed that OP No.2 shall take suitable steps to get renewed & registered the lease deed of plot Nos. 83 to 96, 89A & 90A described in the complaint through the OP No.1 NIT, in favour of the complainant society within two months from receipt of copy of this order.

iii. The complainant shall bear expenses of renewal and registration of that lease deed as per the rates applicable as on 26.04.1979 and the OP No.2 Bank shall bear the additional expenses for the same as required on the date of the renewal and registration of that lease deed.

iv. The OP No.2 bank shall also pay compensation of Rs.10,000/- to the complainant towards physical and mental harassment caused to its members and shall also pay cost of this complaint amounting to Rs.5,000/- to the complainant.”

9. The Appellant, being aggrieved, filed First Appeal No. 255 of 2016 before the National Commission. Submissions raised by the Appellant were noted as under:-

“5. Heard the learned counsel for the parties and perused the record. Learned counsel for the appellant stated that the State Commission has given total financial responsibility for getting the lease deed executed in favour of the Respondent No.1. It was also stated as the matter was under litigation, the bank has already got the lease extended for another 30 years from the Respondent No.2 in favour of the original allottee i.e. bank. Now, the only question remains that the lessee is to be transferred to the Respondent No.1 Society. It was also contended by the learned counsel that out of the 16 plots only 14 plots have been utilized and the two plots are still vacant and have not been allotted to any employee. Thus, these two plots remain the property of the bank and that cannot be leased to the Respondent No.1 Society.

6. Therefore, it is not possible to implement the order of the State Commission fully. It is further argued for the appellant that the State Commission has ordered all the expenses in registration of the lease deed to be borne by the appellant bank over and above the expenses of registration in 1979. It is a common known practice that the purchaser has to bear the burden of stamp duty and registration charges. Therefore, even if the lease deed is transferred in the name of Respondent Society, the expenses are to be borne by the society or the Society members and not the appellant bank. It was requested by the learned counsel that on both these counts, the order of the State Commission is not justified and needs to be set aside.”

The discussion was as under:-

“10. I have given a thoughtful consideration to the arguments advanced by the learned counsel for the parties and have examined the record. It is true that out of 14 plots, the bank has got 16 plots made, however on the same land 14 plots have been allotted and 2 plots have been left out. The State Commission has passed the order in respect of the plot Nos. 83 to 96, 89A to 90A. The question is now of transferring the lease deed of Respondent No.1 and its members. Lease deed has been renewed in the name of the Bank, there should be no difficulty in transferring the lease to Respondent No.1 Society or its members as the case may be according to the provisions of rules of NIT or any other relevant law.

11. So far as the question of expenditure for transferring of lease deed is concerned, in my view, as the registration will be done under the current law and the current law does not exempt Cooperative Society for any stamp duty, therefore, the stamp duty will have to be paid by the consumers as is the law of the land. However, as the Respondent No.1 has lost the opportunity of getting free registration done under the old law, due to deficiency and delay caused by the action or omission of the appellant bank, the appellant bank is ordered to share 50% of the total expenditure including registration charges and the stamp duty or any other charges/expenses in connection with the registration of lease deed in favour of the Respondent No.1 Society. Accordingly, the order dated 27.01.2016 of the State Commission be complied with by both the parties within a period of three months. The compensation and cost as awarded by the State Commission is upheld.”

10. In this Appeal, we heard Mr. M.Y. Deshmukh, learned Advocate for the Appellant, Mr. Kishor Ram Lambat, learned Advocate for the Respondent No.1 and Mr. Satyajit A Desai, learned Advocate for the Respondent No.2.

11. The facts on record clearly indicate that neither the Respondent No.1 nor any of its members were involved when the initial allotment was made by the Respondent No.2 in favour of the Appellant, when 16 plots were carved out from the allotted land and 28 tenements were constructed. The tenements were constructed by the Appellant to take care of the needs of its employees for housing. The facility of loans was also extended to each

of the allottees and the finance was made available at comfortable rate of interest. It is accepted that there was absolutely no profit motive behind the exercise and the Appellant did not even demand any interest in respect of funds employed by it and what was sought to be recovered was only the element of actual costs incurred by it.

12. It is also clear from the record that the Resolution to transfer the land in favour of the employees or the legal heirs was passed by the Appellant on 21.01.2004. There is nothing on record to indicate that any requisition or demands were made by the Society to have the land transferred and yet there was any delay on part of the Appellant in acting in terms of the Resolution. There was, thus, no deficiency on part of the Appellant or refusal on its part to act in terms of the aforesaid Resolution dated 12.01.1977. If, as a result of any delay in execution of the document in favour of the Society for which the Appellant was not responsible, the Society would now be required to pay stamp duty at an enhanced rate, that by itself does not give any entitlement to seek relief against the Appellant.

13. It is true that the tabular chart extracted in para 9 of the complaint denotes that the cost of land as well as the actual expenditure incurred in erecting 28 tenements aggregated to Rs.6,34,457.87, which was divided by 28, being number of tenements, to arrive at what would be the actual cost relatable to each of those tenements. After receiving financial accommodation and other advantages, each one of the tenement holders had made good such amount. It was, therefore, contended that all the tenement holders together had some interest in said two vacant plots. However, the documents on record do not indicate any intention on part of the Appellant that any interest in respect of said two plots was intended to be created. The idea was to make available tenements to the concerned on no profit no loss basis and not to let them have those two plots and enable them to profiteer out of the transaction. That is precisely why one of the alternatives suggested by the Respondent No.1 to resolve the dispute was option 'e' in para 13 as extracted hereinabove. The relief in the complaint gives measure of the value of those plots which was stated to be in the region of Rs.98 lakhs in the year 2012. The nature of reliefs claimed by Respondent No.1 indicates that apart from 28 tenements and the land appurtenant thereto, the Respondent No.1 was also desirous of securing interest in respect of said two plots.

14. As stated above, it was never the intent of the Appellant and there is nothing on record to even suggest that the idea was to transfer interest in respect of those two plots in favour of the employees or the Society formed by the employees. This issue was squarely raised before the National Commission but the matter was not considered at all. Be that as it may, we have gone through the record and do not find any indication or even a whisper that any decision was taken to transfer interest in relation to those two plots as well.

15. The fact of the matter however remains that some contribution towards cost of land was made by all the tenement holders. If the amount representing cost of land was Rs.90,300/- and had there been 32 tenements, individual share of every tenement holder would have come to approximately Rs.2,822/-. However, dividing said amount by number 28, the contribution that each of the tenement holder actually paid was Rs.3,225/-; which would mean that roughly Rs.400/- extra were charged from each one of them. Accepting

the plea taken by the Respondent No.1 in option 'e' in para 13 as mentioned hereinabove, interest of justice, in our view, would be met if the appellant is directed to make over to every tenement holder a sum of Rs.10,000/- in compensation for having recovered Rs.400/- over and above what logically could have been recovered from each one of them. It is, of course, left to the appellant either pay to each tenement holder a sum of Rs.10,000/- or transfer the entire land to the Society.

16. It was seriously argued that the role played by the appellant was not that of a service provider and all that it had done was to extend a helping hand so that its employees could satisfy their housing needs. It was also submitted that there was absolutely no profit element and in fact the appellant had incurred considerable expenditure towards interest burden for having invested some money over a period of time which element was never sought to be recovered. It is, thus, seriously disputed and submitted that the instant matter could not have been gone into by fora under the provisions of the Act. However, at this length of time, we do not deem it appropriate to relegate the Respondent No.1 to any other remedy. Therefore, in peculiar circumstances of the case, we have proceeded on the footing that the matter was maintainable before the fora under the Act. But as stated earlier, there was absolutely no deficiency on part of the Appellant and no justification in imposing any costs and directing the Appellant to pay compensation to the Respondent No.1.

17. We, therefore, allow these Appeals and set aside the orders passed by the State Commission and the National Commission. In substitution of the directions issued, we direct:-

a) The appellant shall pay to each of the tenement holders (or to the heirs/successors, in case the original tenement holders are no more) a sum of Rs.10,000/- within three weeks from today;

OR

in the alternative the Appellant shall execute an appropriate deed conveying interest in favour of the Respondent No.1 in respect of 28 tenements and the entire land admeasuring 2709.701 square meters, as stated hereinabove, within six weeks.

b) If the Appellant pays to each of the tenement holders (or to the heirs/successors, in case the original tenement holders are no more) a sum of Rs.10,000/-, the Respondent No.1-Society shall be entitled to have an appropriate deed conveying interest in favour of the Respondent No.1 in respect of 28 tenements and the proportionate land appurtenant thereto within six weeks from today. In such eventuality, the Appellant shall continue to have right, title and interest in respect of portion of land representing those two plots over which no tenements have been constructed and it shall continue to have propriety interest and shall be entitled to deal with that portion.

c) In either case the stamp duty in respect of such documents shall be borne by the

Respondent No.1 and the concerned documents shall be executed by the Appellant and the Respondent No.2 in favour of the Respondent No.1.

18. The Appeals are allowed in aforesaid terms. No costs.