

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

Civil Appeal No. 9290 Of 2014
(@ S. L. P. (C) NO. 14172/2013)

APPELLANT

SANJAY KUMAR JOSHI

.....A

VERSUS

RESPONDENTS

MUNICIPAL BOARD, LAXMANGARH & ANR....

RESPONDENTS

O R D E R

Leave granted.

2. This appeal is filed by the appellant against the impugned order dated 22.01.2013 passed by the National Consumer Dispute Redressal Commission ('NCDRC' for short

questioning the correctness of the same urging certain facts and framing of substantial question of law that arise in this appeal and grounds in support of the same.

3. Indisputably, plot no. 7 was put for open auction on 22.01.2010. In the said public

auction, the appellant was the highest bidder

and in terms of the public auction, he was

Signature Not Verified

Digitally signed by
Sushil Kumar Rakheja

Date: 2014.10.11
13:44:58 IST
Reason:

required to deposit 25% of the sale consideration amount, which he deposited on 22.01.2010. For the remaining amount, the

respondents herein called upon the appellant on 19.03.2010 to deposit the remaining 75% of the amount with lease money to which the appellant herein responded to the said letter on 22.03.2010 requesting the respondents herein that the amount paid by him may be refunded as he had come to know that a civil suit concerning Plot No. 7 was pending before the Civil Court.

4. The 25% amount and the security deposit amount was not refunded, therefore, the appellant filed complaint No. 176/2011 under Section 12 of the Consumer Protection Act, 1986 ('the Act' for short) before the District Consumer Protection Forum, Sikar. After affording the opportunity to the respondents and after adverting to the rival factual and legal contentions, the District Forum has accepted the claim made by the appellant herein and rejected the plea taken by the respondents

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that the complaint is not maintainable in law as the plot in question was sold in public auction for commercial purpose, therefore, the appellant was not a consumer as defined under Section 2(i)(d) of the Act vide order dated 15.06.2011. The District Forum directed the respondents to pay Rs.25,000/- the security amount to the complainant and 25% of the amount of sale consideration amounting to Rs.3,69,500/-, in total Rs.3,94,500/- with interest @ 9% p.a. from 22.1.2010 within two months.

5. Against the order of the District Forum, the respondents filed First Appeal No. 1360/2011 before the State Commission, Jaipur. The

State Commission, after hearing the parties, confirmed the order of the District Forum vide Order dated 08.08.2011 holding that it did not find any error or illegality in the direction issued by the District Forum.

6. The correctness of the order of the State Commission was questioned by the respondents
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herein before the National Commission in Revision Petition No. 2855/2011. The correctness of the findings and reasons recorded by the District Forum, in its judgment were questioned including the maintainability of the complaint filed by the appellant herein by placing strong reliance upon the definition of Consumer as defined under Section 2(i)(d) of the Act and decision of this Court in U.T. Chandigarh Administration & Anr. vs. Amarjeet Singh & Ors. (2009) 4 SCC 660 contending that this Court has held that a person who had purchased the plot in public auction would not fall within the definition of 'Consumer' as defined in Section 2(i)(d) of the Act.

7. The National Commission after issuance of the notice to the appellant, placed him ex parte since the appellant did not turn up before the National Commission and heard the respondents herein and after extracting Paragraphs 20 and 21 from the decision of the U.T.Chandigarh Administration (supra) held that
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the appellant herein had purchased the commercial plot for a commercial purpose and the complaint filed by him would not be sustainable for the person who buys any goods or avails of any service for a commercial purpose is excluded

from the definition of the 'Consumer' as defined in Section 2(i)(d) of the Act and allowed the revision petition by setting aside the orders of State Commission and District Forum holding that the complaint filed by the appellant herein is not maintainable. However, the liberty was reserved to the appellant to seek redressal of his grievance from any other appropriate forum along with an application under Section 14 read with Section 5 of the Indian Limitation Act, 1963 to exclude the time spent in the Consumer Forum, while calculating the limitation in the light of the observations of the Supreme Court in Laxmi Engineering Works vs. PSG Industrial Institute reported in (1995) 3 SCC 583.

8. Learned counsel appearing on behalf of the

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appellant herein contended that the National Commission erred in holding that the transaction between the appellant and the respondents does not come under the purview of the Act as it is a commercial transaction and, therefore, the appellant is not a consumer as defined under Section 2(i)(d) of the Act. Further, it is urged that the commercial transaction done for earning livelihood does not exclude in the definition of a consumer as held by this Court in the case of Madan Kumar Singh vs. District Magistrate & Ors. reported in (2009) 9 SCC 179 and further it is contended that the National Commission committed an error in law holding that non-declaration of pending legal proceeding in relation to the plot in question does not amount to deficiency in service under the Act,

therefore, the findings and reasons recorded by the District Forum in its judgment is affirmed by the State Commission was perfectly legal and valid and the same did not warrant interference by the National Commission in exercise of its revisional jurisdiction.

Further, learned Counsel for the appellant placed reliance upon another decision of this Court in the case of National Seeds Corporation Ltd. vs. M. Madhusudan Reddy reported in (2012) 2 SCC 506, wherein this Court has held that if any person who is earning his livelihood by self-employment and has entered into commercial transaction, is a consumer within the definition of the Act.

In view of the aforesaid decision, the ratio laid down in the case of U.T. Chandigarh Administration (supra) upon which much reliance is placed by the National Commission to set aside the orders of the District Forum and also the State Commission, thereby the impugned order is vitiated in law as the purchase of plot by the appellant in public auction is for the purpose of earning the livelihood by self-employment by the appellant herein. Therefore, the impugned order passed by the National Commission is unsustainable in law.

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9. Learned counsel appearing for the respondents made submission that no litigation is pending in regard to the plot of land which was auctioned in public auction in which the appellant was the highest bidder and the same

was accepted by the respondent, which contentions of him has been refuted by the learned counsel for the appellant herein, therefore, this Court vide order dated 14.03.2014 directed the appellant to ascertain the correctness of the same by giving a direction as under:-

'The counsel for the petitioner is directed to first of all give the details of the litigations which are pending in regard to the plot which has been allotted to the petitioner by 28th March, 2014. Thereafter, the counsel for the respondents shall explain as to why the statement has been made before the Court that the plot in question is free from litigation.'

10. This Court heard the learned counsel for the respondents on 4.4.2014 and he submitted that the plot in question is in dispute in the civil suit

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in view of the submission made by the learned counsel on the litigation in relation to plot no.

7 which was auctioned on 22.01.2010. With reference to the aforesaid submission made by him, we have carefully examined the correctness of the findings and reasons recorded by the National Commission in the impugned order in setting aside the orders of the District Forum and State Commission placing reliance upon Section 2(i)(d) of the Act and the decision of U.T. Chandigarh Administration (supra). It is an undisputed fact that the appellant was the successful bidder in the public auction held on 22.01.2010. As per the terms and conditions of the public auction notice, the appellant deposited 25% of the bid amount which constitute a sum of Rs.3,69,500/- and also deposited a security amount of Rs.25,000/-. In view of the

undisputed fact, the subject matter of the plot in question is under litigation, the respondents could not have concluded the contract and confirmed the sale and executed the sale deed in 10

favour of the appellant herein. The contract is not concluded between the parties.

11. In that view of the matter, the forfeiture of the security deposit amount and 25% deposit towards the sale consideration of the plot in question is unsustainable in law. Therefore, the

impugned order passed by the National Commission is not maintainable in law as reasons and findings recorded by the District Forum, which is concurred by the State Commission holding that there is no error in law in passing the order

passed by the District Forum. Therefore, the impugned order setting aside the orders of

District Forum and State Commission by placing reliance upon the definition of a Consumer under Section 2(i)(d) of the Act and also placing reliance upon the decision of this Court in U.T.

Chandigarh Administration (supra) is wholly inapplicable to the fact situation in view of the plea taken by the appellant that he had purchased the plot in question for earning his livelihood. Therefore, the exclusion of the 11

sale of the plot for commercial purposes is not attracted to the present situation and,

therefore, the learned counsel for the appellant rightly placed reliance upon Madan Kumar Singh (supra) and National Seeds Corporation, Ltd. (supra).

12. In view of the aforesaid decisions of this Court, the interpretation made by the National Commission with regard to the definition of 'Consumer' that who purchased the plot in public auction is for commercial purpose, without there being any material in this regard and accepting the plea of the appellant herein that he had purchased the plot for the purpose of earning his livelihood as he is an unemployed person. This very important aspect of the matter to exclude him from the definition of the 'Consumer' is not considered by the NCDRC. The reliance placed upon two decisions of this Court, namely, Madan Kumar Singh (supra) and National Seeds Corporation, Ltd. (supra) are

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applicable to the present situation and further having regard to the undisputed fact brought to our notice by the learned counsel for the respondents that the subject matter of the plot in question is under litigation, therefore, after the public auction of the property, there is litigation pending, the respondents could not have concluded the contract by confirming the sale and forfeiture of the 25% of the sale consideration amount and Rs. 25,000/- towards security deposit is wholly unjust and amounts to unlawful enrichment in favour of the respondents.

13. For the reasons stated, the impugned order of the National Commission cannot be allowed to sustain. Accordingly, we allow this appeal, set aside the order dated 22.01.2013 passed in Revision Petition No. 2855 of 2011 and restore the order passed by the District Forum and

further direct the respondents to refund the amount as per the directions contained in operative portion of the order of the District
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Forum within six weeks from the date of receipt of a copy of this order.

.....J.

[V. GOPALA GOWDA]

.....J.

[ADARSH KUMAR GOEL]

New Delhi,
September 26, 2014

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ITEM NO.31

COURT NO.13

SECTION XVII

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 14172/2013

(Arising out of impugned final judgment and order dated 22/01/2013 in RP No. 2855/2011 passed by the National Consumer Disputes Redressal Commission, New Delhi)

SANJAY KUMAR JOSHI

Petitioner(s)

VERSUS

MUNICIPAL BOARD, LAXMANGARH & ANR.

Respondent(s)

(With office report)

Date : 26/09/2014 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE V. GOPALA GOWDA
HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

For Petitioner(s)

Mr. Rishi Matoliya, Adv.
Mr. H.D. Thanvi, Adv.
For Mr. Sarad Kumar Singhania, Adv.

For Respondent(s)

Mr. Pranab Kumar Mullick, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed order.

(S. K. RAKHEJA)
COURT MASTER

(MALA KUMARI SHARMA)
COURT MASTER

(Signed order is placed on the file)