

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

IA 2-3/2012 in Petition(s) for Special Leave to Appeal (Civil) No(s).18225-18226/2011

(From the judgement and order dated 01/10/2010 in RP No.1972/2010 dated 23/02/2011 in RA No.26/2011 in RP No.1972/2010 of The NATIONAL CONSUMERS DISPUTES REDRESSAL COMMISSION, NEW DELHI)

FAQIR CHAND GULATI

Petitioner(s)

VERSUS

M/S UPPAL AGENCIES P.LTD.& ANR

Respondent(s)

(for impleadment and for recall of order dated 4.4.2012 office report)

Date: 25/07/2012 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA

For Petitioner(s) Shri S.K. Mehra, Adv.  
Ms. Mamta Mehra, Adv.  
Ms. Mukta Kapur, Adv.

For Respondent(s) Mr.Mukul Rohatgi, Sr. Adv.  
(applicant) Mr. Jay Kishor Singh, Adv.  
  
Mr. Ranjit Kumar, Sr. Adv.  
Mr. Subramonium Prasad, Adv.

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

I.A. No. of 2012 in S.L.P.(C) Nos.18225-18226 of 2011

The application filed by the petitioner for taking on record documents marked Annexures 1 to 8 is allowed in terms of the prayer made.

I.A. Nos. 2 and 3 in S.L.P.(C) Nos.18225-18226 of 2011

Learned counsel for the petitioner says that he does not have any objection to the acceptance of the prayer for impleadment as parties made by S/Shri R.M. Raheja and S. Chatterjee.

Accordingly, these applications are allowed and the applicants are impleaded as respondent nos. 2 and 3 in the special leave petitions.

(Parveen Kr. Chawla)  
Court Master

(Sharda Kapoor)  
Court Master

S.L.P.(C) Nos.18225-18226 of 2011

In these petitions, the petitioner has questioned the correctness of order dated 1.10.2010 passed by the National Consumer Disputes Redressal Commission (for short 'National Commission') in Revision Petition No. 1972 of 2010 and order dated 23.2.2011 passed in Review Application No. 26 of 2011.

The complaint filed by the petitioner in the matter of alleged illegal construction raised by respondent no.1 was initially dismissed by the District Forum on the ground that he can not be treated as a 'consumer' within the ambit of Section 2(1)(d)(ii) of the Consumer Protection Act, 1986. The order of the District Forum was upheld by the State Commission and the National Commission, but this Court allowed the appeal filed by the petitioner and remitted the case to the District Forum with a direction to decide the complaint on merits.

After remand, the District Forum allowed the complaint and directed respondent no.1 to remove at its own costs the non compoundable additions made in the building contrary to the sanctioned plan; supply 'C' and 'D' forms to the petitioner and to pay Rs.11,750/- along with compensation of rupees seven lakhs fifty thousand including litigation expenses.

The appeal preferred by respondent no.1 was dismissed by the State Commission and a direction was issued to the Engineers of Municipal Corporation, Delhi to inspect the existing construction to find out if there are non compoundable deviations. The State Commission also observed that if there are non compoundable deviations then the same shall be removed and the building be brought in conformity with the building bye-laws at the cost and responsibility of respondent no.1. Paragraphs 26 to 28 of the order passed by the State Commission read as under:

"26. There can be no denying the fact that the Appellant cannot escape their liability to bring the construction in conformity with the building bye-laws applicable at a given time. If the deviations in the building are not in consonance with the bye-laws as are applicable at present the Appellants are duty bound to carry out rectification, so that building bye-laws are complied with. There is also no denying the fact that building bye-laws have undergone a sea-change during these days and what those bye-laws are prevailing at present can best be in the knowledge of the Municipal authorities, that is why, the Hon'ble High Court in its order passed on 8.2.2006 (Annexure P-12, appended to the appeal) had observed that power to relax rules regarding minimum setbacks, is vested in the MCD and to do so in special circumstances; that MCD would decide whether no special circumstance is made out to relax the setbacks and additionally find that the layout of the colony prescribed minimum setbacks to be followed it would then be ensured by the MCD that a staircase is provided to the petitioner to access their first and second floor, if this would require a modification in the existing construction on the ground floor, MCD would direct necessary changes to be effected on the ground floor.

27. Further the direction given in the order are that ill MCD re-decides on the issues, no demolition would be effected on the first floor and second floor of property bearing no. L-3, Kailash Colony, New Delhi it is not known whether these directions are still in force. Nor it has been clarified by either of the parties, who went on harping on the applicability of one or the other decision of the Hon'ble High Court, while the Hon'ble Supreme Court, simply decided the issue that Consumer Fora have jurisdiction to entertain such complaints. If the directions given vide order dated 8.2.2006(Annexure P-12) are still in force, then impugned order directing to remove non-compoundable additions/deviations made in the building contrary to the sanctioned plan will be in contradiction of the order dated 8.2.2006(Annexure P-12) passed in the writ petition (Civil Appeal No. 1883 18-21/2004) by the Hon'ble High Court of Delhi.

28. It shall, therefore, be expedient that the impugned order is modified to the extent that the MCD Engineers shall inspect the existing construction in the building in dispute within 30 days of the receipt of copy of this order to find out, if there are non-compoundable deviations as per the prevailing building bye-laws, which cannot be regularized/compounded even by imposing penalty, they shall remove the same to bring the building in conformity with the building bye-laws at the cost and responsibility of the Appellant, provided there is no restraint order in force against such demolition by any court of law. Remaining order of the Ld. District Forum shall remain unaltered because we find no fault with any other directions given in the impugned order."

The National Commission took cognizance of the fact that the petitioner is 93 years old and disposed of the revision petition by giving the following directions:

"Keeping this in mind we direct the MCD to depute the engineer to inspect the building within 30 days of the receipt/production of a certified copy of this order and that of the State Commission. MCD engineer is directed to give its report within 15 days of the inspection and the respondent is directed to remove the deviations, if any, found by the MCD engineers within two months thereof failing which the petitioner would be at liberty to execute the decree passed by the District Forum."

The review filed by the petitioner was allowed by the National Commission and small corrections were made in line 4 at page 4 of order dated 1.10.2010.

After issuing notice of the special leave petition, this Court passed order dated 4.4.2012 for demolition of the portion of the building constructed in violation of the sanctioned plan.

Respondent nos. 2 and 3 who have purchased a portion of the building in dispute and who have been impleaded as respondent nos. 2 and 3 by a separate order passed today, have filed I.A. No...../2012 for vacation of order dated 4.4.2012 by asserting that they are bona fide purchasers and order for demolition could not have been passed without hearing them.

Shri Mukul Rohatgi, learned senior counsel appearing for respondent nos. 2 and 3 referred to letter dated 18.1.2011 sent to the petitioner by Municipal Corporation, Delhi in response to RTI application dated 13.12.2010 and argued that the special leave petitions should be dismissed because the petitioner deliberately withheld that letter from the Court. Learned senior counsel referred to the contents of that letter to show that the Engineers of the Municipal Corporation of Delhi, who inspected the building did not find any non compoundable deviation and all the compoundable deviations were compounded by charging compounding fees and, thereafter, completion certificate was issued by the competent authority. Shri Rohatgi pointed out that even though letter dated 18.1.2011 was annexed with Review Petition No. 26 of 2011 filed on 17.2.2011, the petitioner deliberately omitted to make a mention of this fact in the special leave petitions and thereby succeeded in misleading the Court in believing that the direction given by the State Commission has not been complied with.

Shri S.K. Mehra, learned counsel for the petitioner controverted the submissions of Shri Rohatgi and argued that omission to make a mention of letter dated 18.1.2011 should not be made a ground for non-suiting the petitioner who has been forced to litigate for last more than 18 years on account of the illegal construction made by respondent no.1.

We have considered the arguments/submissions of the learned

counsel and perused the record.

In our view, letter dated 18.1.2011 is crucial for deciding the petitioner's plea that though respondent no.1 is guilty of constructing building in violation of the sanctioned plan and the bye-laws framed by the Municipal Corporation of Delhi, the concerned authorities have failed to take action in terms of the directions given by the State and the National Commissions. The relevant portions of that letter read as under:

"Subject noted RTI - application is filed under the provisions of RTI Act-2005, and applicant has sought information why MCD Chief Engineer, Central Zone has not inspected the building No.L-3, Kailash Colony, New Delhi as per orders National Consumer Disputes Redressal Commission dated 1.10.2010 & 19.11.2010 and what action has Chief Engineer, Central Zone, MCD taken on said orders.

In this regard, it is informed that P.No.L-3, Kailash Colony, New Delhi has been inspected on 13.10.2010 by the concerned Junior Engineer (Bldg.) after receipt of above mentioned orders of National Consumer Disputes Redressal Commission, and on 17.6.2010 also in the light of earlier orders of the National Consumer Disputes Redressal Commission to ascertain the existing construction in terms of the extent of compoundable and non-compoundable deviations. During the inspection on both the occasions, it was found that there are no non-compoundable deviations in the existing building, which existed was compoundable as per prevalent norms contained in the MPD-2021. Compounding fee for the compoundable deviations in P.No.L-3, Kailash Colony, New Delhi have been deposited with the MCD and completion certificate has also been issued for the building under reference."

At the time of filing the special leave petitions, the petitioner was very much aware of the fact that in compliance of the direction given by the State Commission, which was substantially approved by the National Commission, the concerned Engineers of the Municipal Corporation of Delhi had inspected the building and found that there are no non compoundable deviations which warranted demolition and that the competent authority had issued the completion certificate after charging fees for the compoundable deviations. This is evinced from the fact that in the review application filed before the National Commission the petitioner had not only made a mention of letter dated 18.1.2011 but also pleaded that this did not amount to compliance of the direction given by the State Commission. However, with the sole object of keeping this Court in dark about the action taken by the concerned authorities in compliance of the State Commission's order, the petitioner deliberately omitted to make a mention of letter dated 18.1.2011 in the special leave petitions and did not produce a copy thereof. We have no doubt that if the petitioner had placed on record a copy of letter dated 18.1.2011, the court may not have entertained his grievance that the authorities of the Municipal Corporation have failed to take action in terms of the direction given by the State Commission and the National Commission and, in any case, interim order dated 4.4.2002 would not have been passed for demolition of the alleged deviations in the building constructed by respondent No.1.

From what we have stated above, it is clear that the petitioner has not approached the Court with clean hands. Therefore, he is not entitled to be heard on the merits of his grievance. Reference in this connection can usefully be made to the judgment of this Court in Dalip Singh vs. State of U.P. (2010) 2 SCC 114, the first two paragraphs of which are extracted below:

"1. For many centuries Indian society cherished two basic values of life i.e. "satya" (truth) and "ahinsa" (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has overshadowed the old ethos and

the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final."

The special leave petitions are accordingly dismissed. Interim order dated 4.4.2012 stands automatically vacated.

| (Parveen Kr.Chawla)  
| Court Master  
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| | (Sharda Kapoor)  
| | Court Master  
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