

Tdi Infrastructure Ltd vs Uoi And Anr on 16 March, 2022

Author: C.Hari Shankar

Bench: C. Hari Shankar

\$~15, 16, 17, 18 and 19 (Appellate Side)
* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CM(M) 1393/2017 and CM APPL. 44730/2017 (Stay)
TDI INFRASTRUCTURE LTD Petitioner
Through Ms. Kanika Agnihotri and Ms.
Yashodhara Gupta, Advs.

versus

UOI AND ANR Respondent
Through Mr. Sushil Kumar Pandey,
Senior Panel Counsel with Mr. Kuldeep
Singh, Advs. for Respondent 1

+ CM(M) 100/2018, CM APPL. 2825/2018 and CM APPL.
20127/2018

DLF HOMES RAJAPURA PVT LTD Petitioner
Through Mr. Rajiv Nayar, Sr. Advocate
with Mr. Kartik Nayar, Ms. Sonia Dhamija,
Ms. Seema Sundd, Mr. Saurabh Seth, Mr.
Prabhat Ranjan, Mr. Dhounh Garg and Mr.
Aditya P.N. Singh, Advs.

versus

UNION OF INDIA & ANR Respondents
Through Mr. Sushil Kumar Pandey,
Senior Panel Counsel with Mr. Kuldeep
Singh, Advs. for Respondent 1

+ CM(M) 664/2018 CM APPL. 23358/2018 and CM APPL.
5843/2019

LUCINA LAND DEVELOPMENT LTD Petitioner
Through Ms. Kanika Agnihotri and Ms.
Yashodhara Gupta, Advs.

versus

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By:SUNIL SINGH NEGI

CM(M) 1393/2017 & contd matters

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UNION OF INDIA & ORS Respondents
Through Mr. Sushil Kumar Pandey,
Senior Panel Counsel with Mr. Kuldeep
Singh, Advs. for Respondent 1

+ CM (M) 1333/2019, CM APPL. 40236/2019, CM APPL.
11933/2021 and CM APPL. 11934/2021

DLF HOMES RAJAPURA PVT LTD Petitioner
Through Mr. Rajiv Nayar, Sr. Advocate
with Mr. Kartik Nayar, Ms. Sonia Dhamija,
Ms. Seema Sundd, Mr. Saurabh Seth, Mr.
Prabhat Ranjan, Mr. Dhounh Garg and Mr.
Aditya P.N. Singh, Advs.

versus

UNION OF INDIA & ORS Respondents
Through Mr. Sushil Kumar Pandey,
Senior Panel Counsel with Mr. Kuldeep
Singh, Advs. for Respondent 1
Mr. Shankar Divate, Adv. for Respondents 2
to 8

+ CM(M) 520/2020 and CM APPL. 26760/2020
PURI CONSTRUCTION PVT. LTD. Petitioner
Through Mr. Saurabh Kumar, Adv.

versus

SHAILESH GUPTA & ORS. Respondents
Through Mr. Rekha Aggarwal and Mr.
Bimal Kapur, Advs.
Mr. Shankar Divate, Mr. Gaurav Gupta and
Mr. Sharan Mehta, Advs. for Respondent 6

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR
ORDER

% 16.03.2022 CM(M) 664/2018 CM APPL. 23358/2018 and CM APPL.

1. As has been noted by earlier orders passed in these cases, principally the order dated 6th February, 2019 in CM(M) 664/2018, a preliminary issue of maintainability of the present petition under Article 227 of the Constitution of India arises for consideration.

2. The orders of the learned National Consumer Disputes Redressal Commission (NCDRC), impugned in these petitions are more or less identical, and deal with the authority of the learned NCDRC to exercise jurisdiction in these matters.

3. These orders were passed in original complaints filed before the NCDRC. The complaints were filed by select members of a class of consumers, who claimed to be affected by the acts of the

respondents and, according to Mr. Divate, were filed in a representative capacity, as is permissible under Section 12(1)(c) read with Section 22 of the erstwhile Consumer Protection Act, 1986 ("the Act"). For ready reference Section 12(1)(c) and Section 22 of the Act are reproduced as under:

"12. Manner in which complaint shall be made--

(1) A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided may be filed with a District Forum by -

(c) one or more consumers, where there

numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or"

22. Power and procedure applicable to the National Commission--

(1) The provisions of sections 12, 13 and 14 and the rules made thereunder for the disposal of complaints by the District Forum shall, with such modifications as may be considered necessary by the Commission, be applicable to the disposal of disputes by the National Commission.

(2) Without prejudice to the provisions contained in sub-section (1), the National Commission shall have the power to review any order made by it, when there is an error apparent on the face of record."

4. The respondents before the learned NCDRC have chosen to challenge these orders by filing writ petitions under Article 227 of the Constitution of India. As is manifest from the order dated 6th February, 2019 passed in CM(M) 664/2018, the respondents, relying on the following observations contained in order dated 6th August, 2012, passed by the Supreme Court in *Cicily Kallarackal v. Vehicle Factory*¹, sought to dispute the maintainability of these petitions under Article 227 of the Constitution of India:

"7. While declining to interfere in the present Special Leave Petition preferred against the order passed by the High Court in exercise of its extraordinary jurisdiction Under Article 226 of the Constitution of India, we hereby make it clear that the order of the Commission are incapable of being questioned under the writ jurisdiction of the High Court, as a statutory appeal in terms of Section 27A (1)(c) lies to this Court. Therefore, we have no hesitation in issuing a direction of caution that it will not be proper exercise of jurisdiction by the High Courts to entertain writ petitions against such orders (2012) 8 SCC 524 of the Commission."

5. Ms. Agnihotri, learned counsel for the petitioners, in these petitions, submits that the aforesaid order would not apply in the present case, as it dealt with the maintainability of writ petitions under Article 226 of the Constitution of India, whereas these petitions have been filed under Article 227 of the Constitution of India. She has drawn my attention to paras 50 to 53 of the judgment of a three Judge Bench of the Supreme Court in *State of Karnataka v. Vishwabharathi House Building Coop. Society*², which read thus:

"50. We, therefore, are clearly of the opinion that the said Act cannot be said to be unconstitutional.

51. It may be true that there does not exist any provision for transfer of case from one forum to the other or there does not exist any provision to grant injunction. Absence of such provisions in our opinion would not render the statute ultra vires the Constitution or unworkable.

52. The very fact that in a given case a party under the said Act may approach upto this Court and/or may otherwise take recourse to the remedy of judicial review, the interests of the parties must be held to have been sufficiently safeguarded.

53. The provisions relating to power to approach appellate court by a party aggrieved by a decision of the forums/State Commissions as also the power of High Court and this Court under Article 226/227 of the Constitution of India and Article 32 of this Court apart from Section 23 of the Act provide for adequate safeguards. Furthermore, primarily the jurisdiction of the forum/ commissions is to grant damages. In the event, a complainant feels that he will have a better and effective remedy in a civil court as he may have to seek for an order of injunction, he indisputably may file a suit in an appropriate civil court or may take recourse to some other remedies as (2003) 2 SCC 412 provided for in other statutes."

6. Ms. Agnihotri also sought to contend that Section 23 of the Act may not apply in the present case as the impugned order is passed under Section 12 rather than Section 21(a)(1). Tentatively, the Court has expressed its doubts about this contention as the order appears to have been passed under Section 21(a)(1), Section 12 being merely a provision under which complaints can be filed before the Commission.

7. Ms. Agnihotri further submits that, even if, arguendo, the order is to be treated as having been passed under Section 21, nonetheless, the remedy of the petitioners under Article 227 cannot be foreclosed, irrespective of the merits of the matters.

8. As arguments went on in these matters for almost an hour, list these matters on 28th March, 2022 as part heard.

9. Both sides are at liberty to file compilations of any judicial authorities on which they may seek to place reliance, additionally, by way of email to the Court Master. The judgments should not be

marked or highlighted, however, reference to relevant paragraph numbers may be mentioned in the index accompanying the compilations.

C.HARI SHANKAR, J MARCH 16, 2022/r.bararia