

Lucina Land Development Ltd vs Union Of India & Ors on 6 February, 2019

Author: Anu Malhotra

Bench: Anu Malhotra

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CM(M) 664/2018

LUCINA LAND DEVELOPMENT LTD

..... Petitioner

Through: Ms. Kanika Agnihotri & Mr. Preet
Singh Oberoi, Advocates.

versus

UNION OF INDIA & ORS

..... Respondents

Through: Mr. Vikram Jetly, CGSC for R-1.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER

% 06.02.2019 CM APPL. 5843/2019 In CM(M)-664/2018 The matter is fixed for 18.02.2019 and is taken up on CM.APPL. No.5843/2019 an application filed on behalf of the petitioner.

As observed vide order dated 05.02.2019, so far no notice of the petition has been ordered. The respondent no.1 is present on advance notice. It is at this stage, submitted on behalf of the petitioner that the petitioner seeks the deletion of prayer clause (b) made through the petition, which reads to the effect:-

"b. Issue direction to the respondent no.1 to in consultation with the Ld Commissions formulate proper regulations in the matters of section 12(1)(c) of the Act;"

In view of the said submission made, prayer vide clause (b) made in the petition is dismissed as withdrawn. It is also submitted on behalf of the petitioner that the respondent no.1 was arrayed only in view of this prayer clause (b) and thus, it is sought that the respondent no.1 be also deleted from the array of parties. In view of the submission made, the respondent no.1 is also deleted from the array of parties.

The amended memo of parties be placed on the record by the petitioner during the course of the day.

The matter is fixed for the date 18.02.2019 when as observed vide order dated 05.02.2019, the aspect of maintainability of several petitions on the similar issue as had been sought to be contended on behalf of the respondent no.1 then arrayed that the present petition is not maintainable, are fixed as already observed hereinabove. However, now the respondent no.1 has been deleted from the array of parties.

At the outset, the Court has pointed out to the learned counsel for the petitioner the observations of the Hon'ble Supreme Court in "Cicily Kallarackal Vs. Vehicle Factory" S.L.P.(C) Nos.24228- 24229 of 2012 (CC Nos.12891-12892 of 2012) a verdict dated 06.08.2012 with observations therein to the effect:-

"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 27 A (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 of the Commission."

and also observations in Para 1 thereof. Learned counsel for the petitioner has submitted that the said proceedings as indicated vide Para 7 of the said verdict in "Cicily Kallarackal Vs. Vehicle Factory"

(supra), relate to proceedings under Article 226 of the Constitution of India and not under Article 227 under which the present petition has been filed.

It has also been submitted on behalf of the petitioner that against the impugned order dated 16.05.2018 in Consumer Case No.1204/17, in relation to which the petitioner had sought a review thereof in terms of proceedings dated 29.05.2018 of this Court, of which the review has been declined vide order dated 24.01.2019 in Review Application No.160 of 2018 the statutory appeal in terms of Section 23 of the Consumer Protection Act, 1986, which provides as follows:-

"23. Appeal.--Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 21, may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order:

Provided that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period:

1[Provided further that no appeal by a person who is required to pay any amount in terms of an order of the National Commission shall be entertained by the Supreme Court unless that person has deposited in the prescribed manner fifty per cent. of

that amount or rupees fifty thousand, whichever is less.]", is not available in as much as the impugned order does not relate to any proceedings falling within the ambit of Section 21(a)(i) nor under Section 21(a)(ii) of the said enactment. Inter alia it has been submitted on behalf of the petitioner that the impugned order is on the basis of facts which had not been correctly put forth before the learned Commission and that there was no commonality of causes of action in the complaint since 13 out of 52 complainants had already taken possession and that the date of delivery of possession would be 60 months plus 9 months and that the said date had not arrived so far and that some of the complainants did not even have the cause of action.

It is essential to observe that the said aspect has been considered by the Hon'ble High Court of Calcutta in the case "Samir Dutta Vs. Mamata Das and Ors." in C.O. No.2602 of 2017, which was a petition under Article 227 of the Constitution of India with observations in Para 26 & 27 thereof to the effect:-

26. It is settled law that availability of alternative remedy is not an absolute bar, nor does it take away the jurisdiction of judicial review under Articles 226 and 227 of the Constitution of India; however, High Courts generally exercise self-imposed restriction in exercising, such power when an equally efficacious alternative remedy is available. It has been held conclusively in the landmark judgment of Whirlpool (supra) that the alternative remedy has been consistently held by the Supreme Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. Again, in Auro Developers (supra), this Court has held that inter alia when an order has been passed by an authority without jurisdiction, the power of judicial review under Article 227 of the Constitution can be exercised to correct such wrong.

27. In Cicily Kallarackal v. Vehicle Factory (supra), the High Court had usurped a remedy available to the Supreme Court, which was deprecated, which does not have relevance in the present context. Phalguni Das had not laid down any ratio as such on the said proposition.

Both Om Prakash Saini (supra) and Nivedita Sharma (supra) laid down non-interference by the High Courts as a general rule, but recognised that there may be exceptions and departures to the said rule. As such, the exceptions to the said non-interference rule, as laid down in Whirlpool (supra) and followed in the detailed judgment of this Court in Auro Developers (supra), stands unshaken till date."

It is also essential to observe that vide judgment dated 13.11.2018 in W.P. (C) 1746/18 in "K.A. Nagamani Vs. National Consumer Disputes Redressal Commission & Anr." of the Co-ordinate Bench of this Court, an order dated 02.02.2018 of the learned NCDRC was set aside.

Without adverting to the merits or demerits of the factual aspect put forth on behalf of the petitioner, and also without any observation on the aspect of maintainability of the petition, in view of the factum that several petitions are listed for hearing for the date 18.02.2019 before this Court on the said aspect, it is considered appropriate to issue notice of the petition and of the accompanying application to the respondents, as per the amended memo of parties after deletion of Respondent No.1, the Union of India, on taking of steps by the petitioner, process returnable for 18.02.2019, till which date the operation of the impugned orders dated 16.05.2018 and 24.01.2019 in Consumer Case no. 1204/17 are stayed.

Copy of this order be given dasti under the signatures of the Court Master, as prayed.

ANU MALHOTRA, J FEBRUARY 06, 2019/NC