Haryana State Agriculatural ... vs Bishamber Dayal Goyal & Ors on 26 March, 2014

Equivalent citations: (2014) 2 CURCC 3, AIR 2014 SUPREME COURT 1766, 2014 (16) SCC 24, 2014 AIR SCW 2047, 2014 (2) AIR KANT HCR 508, (2014) 1 NIJ 601, (2014) 1 LANDLR 550, (2014) 4 KCCR 385, (2014) 3 SIM LC 1479, (2015) 3 CAL HN 231, (2014) 2 CIVILCOURTC 772, 2014 (4) SCALE 134, (2014) 1 CLR 1007 (SC), (2014) 104 ALL LR 518, (2014) 2 CPJ 11, (2014) 2 CPR 176, (2014) 137 ALLINDCAS 64 (SC), AIR 2014 SC (CIVIL) 1224, (2014) 4 CAL HN 66, (2014) 2 RECCIVR 586, (2014) 4 SCALE 134, (2014) 1 WLC(SC)CVL 685, (2014) 2 ALL RENTCAS 5

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Bench: Gyan Sudha Misra, Pinaki Chandra Ghose

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3122 OF 2006

Haryana State Agricultural Marketing Board … Appellant

vs.

Bishamber Dayal Goyal and Ors. … Respondents

J U D G M E N T

Pinaki Chandra Ghose, J.

1. The present appeal has been filed assailing the order dated April 13, 2005 passed by the National Consumer Disputes Redressal Commission (hereinafter referred to as “the National Commission”) in Revision Petition Nos. 534-537 of 2005, affirming the order dated November 10, 2004 passed by the State Consumer Disputes Redressal Commission, Chandigarh (hereinafter referred to as “the

State Commission"), which further confirmed the order dated September 20, 2001 passed by the District Forum.

2. The facts of the case briefly are as follows :

a) By a notification dated November 16, 1971, the Haryana State Government under Section 7 of the Punjab Agricultural Produce Markets Act, 1961 (hereinafter referred to as 'the said Act'), notified the area of New Grain Mandi, Adampur as Market Area. Subsequently, in the year 1974, the areas/limits were further extended by five kilometers. In 1980, the State Government notified a sub-market yard of New Grain Mandi, Adampur. The Colonization Department of the State by a letter dated January 24, 1986, transferred the said area to the Haryana State Agricultural Marketing Board, the appellant herein.

b) The respondents herein were allotted plots by the appellant, being plot Nos. 17, 7, 16 and 14 upon depositing the 25% of the price of the said plots. The method of payment and the consequences for non-payment of any instalment would appear from the allotment letter dated July 25, 1991.

Admittedly, the respondents did not pay the instalments in terms of the allotment letters. The grounds mentioned by the respondents for non- payment of such instalments were the failure on the part of the appellant to provide basic amenities such as sewerage, electricity, roads etc. at the said Adampur Mandi Area.

c) On non-payment of the instalments, the appellant called upon the respondents to make the balance payments, being 75% of the cost with interest and penalty charges as prescribed in the said allotment letter. The respondents did not pay the same and filed a complaint before the District Forum alleging deficiency of services, failure to notify the Adampur Mandi as Market Area and failure to develop and provide basic amenities in the said locality. The appellant opposed the complaint on the ground that the respondents failed to make the payments of the instalments and further that one of the complainants was not dealing with the sale and purchase of agricultural produce by himself and instead had sublet the shop to someone else.

d) The District Forum appointed a Senior Member of the Forum as the Local Commissioner to inspect the said area and to file a report. The Local Commissioner filed a report stating that the area was developed with civic amenities and platforms were constructed in front of the shops. However, it is admitted that the complainant is not in a position to run the business in the market area as the same has not been notified by a notification and/or order declaring it as a sub-yard for the purpose of running the business. The District Forum held by order dated March 4, 1998 that the notification dated October 31, 1980 is not applicable since the land was auctioned in 1991 and further, the same was not in the ownership of the appellant and no business was transacted by the complainant at the Adampur Mandi. The District Forum held that since no notification was issued declaring the said area as sub-yard, it amounts to deficiency of service and the appellant was directed to withdraw the demand notice and further directed not to charge any interest on the instalments. The appellant

filed first appeal before the State Commission, being First Appeal No.362 of 1998. The State Commissioner by order dated March 3, 1998 remanded the matter to the District Forum holding that the appointment of Local Commissioner, Shri Arya, being a member of the District Forum vitiated the proceedings.

e) Thereafter, the District Forum took up the matter and appointed an Advocate - Mr. G.L. Balhara - as the Local Commissioner, to make an inspection and to file a report. The appellant herein on April 20, 2000, once again issued demand notices to the respondents demanding the payments. The main contention of the respondents being the complainants was that although the area was not notified by the appellant-Board as a market area, they were unable to conduct any grain business in the shops for which they had purchased the said plots; and further alleged that no basic amenities, i.e., sewerage, roads, parao, electricity etc. had been provided by the Board, and that there were no boundary walls and gates of the market area which were a necessity in such Mandi; furthermore, there were heaps of debris lying around the shops. In these circumstances, the plots allotted were redundant.

f) The appellants contended that the complainants are not consumers and there is no deficiency of service. The respondents failed to construct the booths in two years' time even after getting the licences. Furthermore, the respondents are not dealing with the agricultural produce instead they have sublet the plots in question to other persons. According to the appellants, the amenities of sewerage, water supply and electricity were provided and construction of a platform was also done by them. An Additional Mandi was established, according to the appellant, by the Colonization Department and subsequently transferred to them in 1986. The Colonization Department, in 1980, duly notified the same. The District Forum after perusing the report dated April 25, 2000 filed by the Local Commissioner – Mr. Balhara, Advocate -- held that it is admitted by both the parties that the Additional Mandi has no boundary walls and gates and that there has been no notification by the appellant- Board, further no auction has been made by the respondents and the debris are lying around the shops. In these circumstances, the District Forum by order dated September 20, 2001 held that it is admitted that due to the omission of the appellant, no business could be done in the Mandi and the boundary walls which are essential for the business, were not provided. It is further held that the notification dated October 31, 1980 has no manner of application since the land was transferred to the appellant in 1986 and the shops were auctioned in 1981. The District Forum further held that due to the omission of the appellant, the complainants/respondents herein were deprived of doing the grain business for which the plots were purchased and in the absence of the notification of the area as a sub-yard, the District Forum held that there was a grave deficiency of service. The Forum awarded the respondents interest at 12% per annum on the entire deposited amount after two years from the date of issuance of allotment letters to the respondents till the development and notification of the area in question is not done. The respondents were directed to deposit the remaining balance amount and the appellant-Board was directed not to levy any charge, penalty or interest on the same. However, the Forum refused to allow the compensation as prayed by the respondents and directed the appellants to develop the area within a month.

g) Being aggrieved, the appellant went in appeal before the State Commission. Cross-appeals were also filed by the respondents before the State Commission, seeking enhancement of the rate of

interest from 12% to 18% per annum and further sought compensation. On November 10, 2004, both the appeals were dismissed. The State Commission upheld the order of the District Forum holding that the report of the Local Commissioner did not raise any objection with regard thereto nor placed any notification before the District Forum. In these circumstances, the appellant herein filed a revision petition before the National Commission resulting in dismissal, hence, the matter has come up in appeal before us.

3. It is the case of the appellant that all the three fora below have erred in fact and in law by omitting to take into consideration the fact that the payment of instalments towards the cost by the respondents was unconditional. It was further contended that it was not subject to fulfilment of any condition on the part of the appellant as a pre- requisite. Moreover, all the three fora lost sight of the fact that under Section 8 of the Act, after creation of a sub-market yard by notification under Section 7(2) of the said Act, no person could be allowed to trade in agricultural produce without licence and they had to apply for the same under Section 9 of the said Act, and further to obtain a licence under Section 10 of the said Act.

4. It is not in dispute that the respondents duly applied for licence under Section 9 and which was granted under Section 10 permitting them to trade in agricultural produce in the sub-market yard from their allotted shops under Section 8, which was possible only when there was a notification under Section 7(2) to invoke notifying the sub-market yard, according to the appellant, the same was notified by a Notification dated October 31, 1980 passed by the predecessor-in-interest of the appellant and the same is still subsisting and remained in force after the transfer of the area to the appellant in 1986. Therefore, according to the learned counsel appearing in support of this appeal, all the fora failed to take any note thereof. It was further pointed out that there was no question of any deficiency in service. According to the learned counsel, the area of Adampur Mandi was developed in the year 1992 by the Haryana Public Health Department by providing all basic amenities like sewerage, drainage, electricity, roads etc. in the said area. It was further pointed out that the report of the Local Commissioner would show that all the developmental works except construction of the boundary walls have been carried out by the appellant-Board. It was further submitted that the sanctioning of the business licence under Section 10 of the said Act pre- supposes that the State Government notified the said area as a market area. It is further contended that the respondents are using the plots allotted to them without paying the instalments as ought to have been done by them.

5. Per contra, it is submitted by Mr. N.S. Dalal, learned counsel for the respondents, that no developed infrastructure has been provided by the appellant and the first two courts below have come to the conclusion on the basis of the facts placed before them. Since there is a concurrent finding on such facts, it is submitted that this appeal should be dismissed. Learned counsel further submitted that the Local Commissioner – Mr. Balhara – in the presence of both the parties carried out the local inspection and the report of the said Commissioner would show that the facts mentioned therein have been approved by both the parties. It was pointed out that the Local Commissioner had mentioned that no infrastructure has been provided, there is no platform, no boundary walls and heaps of debris are lying there, meaning thereby the purpose for which the Mandi was created could not be carried out or used or even started or accomplished. In the absence

of basic infrastructure and amenities to run a grain market the purpose for which the shops were allotted, is totally frustrated. The report of the Local Commissioner was not challenged by the appellant at any point of time. It was further pointed out that the appellant never relied on the said notification before the District Forum or before the State Commission nor even before the National Commission. Therefore, the grounds tried to be raised by the learned counsel for the appellant cannot have any bearing on the matter. It is further contended that the District Forum as well as the State Commission have recorded how there could have been notification by the appellant when the land itself came to the appellant in the year 1986. Therefore, there cannot be any reason to believe that the notification was issued earlier under the ownership of the appellant. It is further stated that no explanation has been given by the appellant about the conduct of non-developing the area in question by them. On the contrary, the respondents relied on the doctrine of legitimate expectations to have a proper area to continue with their business.

6. The appellant-Board has contended before us that the respondents are not consumers but we must keep it on record that the Board never challenged the jurisdiction of the consumer forum. We would reiterate that the statutory Boards and Development Authorities which are allotting sites with the promise of development, are amenable to the jurisdiction of consumer forum in case of deficiency of services as has already been decided in U.T. Chandigarh Administration & Anr. v. Amarjeet Singh & Ors.[1]; Karnataka Industrial Areas and Development Board v. Nandi Cold Storage Pvt. Ltd.[2]. This Court in Narne Construction (P) Ltd. v. Union of India [3] referred to its earlier decision in Lucknow Development Authority v. M.K. Gupta [4] and duly discussed the wide connotation of the terms “consumer” and “service” under the consumer protection laws and reiterated the observation of this Court in Lucknow Development Authority v. M.K. Gupta (supra) which is provided hereunder :

> “5. In the context of the housing construction and building activities carried on by a private or statutory body and whether such activity tantamounts to service within the meaning of clause (o) of Section 2(1) of the Act, the Court observed: (LDA case, SCC pp. 256- 57, para 6):
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> “...when a statutory authority develops land or allots a site or constructs a house for the benefit of common man it is as much service as by a builder or contractor. The one is contractual service and the other statutory service. If the service is defective or it is not what was represented then it would be unfair trade practice as defined in the Act....”

7. Though in the present case providing of amenities is not a condition precedent as per the terms of the allotment letters. However, the allotments were made when the plots were in the development stage on the condition that they be used only for auction and trading of grains, therefore, the present auction is different from a free public auction or an auction on “as is where is basis”. In such a scenario the appellant board as service provider is obligated to facilitate the utilization and enjoyment of the plots as intended by the allottees and set out in the allotment letter. In Municipal Corporation, Chandigarh & Ors. v. Shantikunj Investment (P) Ltd.& Ors.[5], wherein the allottees refused to pay instalments towards the cost of the allotted plots, this Court while deciding the same

held (at para 38) as under:

> "We make it clear that though it was not a condition precedent but there is a obligation on the part of the Administration to provide necessary facilities for full enjoyment of the same by allottees" In the aforementioned case, the Court remitted many of the cases back to the High Court for limited adjudication of facts to determine where the basic facilities have not been provided and held that though the allottees were incorrect unilateral action of not paying the instalments yet penal interest and penalty will be levied as per the facts of each case. Thus, the allottees were entitled to proportionate relief. In Haryana State Agricultural Marketing Board v. Raj Pal [6], wherein the appellant was involved and the certain allottees refused to pay instalments towards the allotted plots in the new grain market at Karnal-Pehowa Road at Nighdu in the Karnal District, citing lack of amenities provided by the Board, the Court while dismissing the case of the Board referred to the following decisions in Municipal Corporation, Chandigarh & Ors. v. Shantikunj Investment (P) Ltd. and Ors. (supra) and UT Chandigarh Administration & Anr. v. Amarjeet Singh & Ors. (supra) as under :
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> "13. In Municipal Corpn., Chandigarh v. Shantikunj Investment (P) Ltd., this Court held: (SCC p. 128, para 38) "38. ... We make it clear that though it was not a condition precedent but there is obligation on the part of the Administration to provide necessary facilities for full enjoyment of the same by the allottees. We therefore, remit the matter to the High Court for a very limited purpose to see that in cases where facilities like kutcha road, drainage, drinking water, sewerage, street lighting have not been provided, then in that case, the High Court may grant the allottees some proportionate relief. Therefore, we direct that all these cases be remitted to the High Court and the High Court may consider that in case where kutcha road, drainage, sewerage, drinking water facilities have been provided, no relief shall be granted but in case any of the facilities had not been provided, then the High Court may examine the same and consider grant of proportionate relief in the matter of payment of penalty under Rule 12(3) and interest for delay in payment of equated installment or ground rent or part thereof under Rule 12(3-A) only. We repeat again that in case the above facilities had not been granted then in that case consider grant of proportionate relief and if the facilities have been provided then it will not be open on the part of the allottees to deny payment of interest and penalty. So far as payment of installment is concerned, this is a part of the contract and therefore, the allottees are under obligation to pay the same. However, so far as the question of payment of penalty and penal interest in concerned, that shall depend on the facts of each case to be examined by the High Court. The High Court shall examine each individual case and consider grant of proportionate relief."
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> 14. Referring to the said decision, this Court in UT Chandigarh Admn.

v. Amarjeet Singh observed as follows: (SCC pp. 682-83, para 46) "46. As noticed above, in Shantikunj, the auction was of the year 1989. The lessee had approached the High Court in its writ jurisdiction in the year 1999 seeking amenities. Even in 2006 when this Court heard the matter, it was alleged that the amenities had not been provided. It is in those peculiar facts that this Court obviously thought it fit to give some reliefs with reference to penal interest wherever amenities had not been provided at all even after 17 years. In fact, this Court made it clear while remanding to the High Court that wherever facilities/amenities had been provided before the date of the judgment (28-2-2006), the lessees will not be entitled to any reliefs and where the facilities/amenities had not been granted even in 2006, the High Court may consider giving some relief by proportionate reduction in [the] penal interest. This direction was apparently on the assumption that in case of penalty, the court can grant relief in writ jurisdictions." In Haryana State Agricultural Marketing Board v. Raj Pal (supra), the Court upheld the principles as laid down in Shantikunj Case (supra) and Amarjeet Singh Case (supra) and held that allottees cannot postpone the payment of instalments on the grounds that some of the amenities were not provided and the Court setting aside the penal and compound interest levied by the Board and in consonance with the Allotment Rules of 1997, levied only simple interest.

8. In the present case, the inaction on the part of the appellant in providing the requisite facilities for more than a decade clearly establishes deficiency of services as the respondents were prevented from carrying out the grain business. However, the respondents were also incorrect in refusing to pay the instalments and violating the terms of the instalment letter. Thus, considering the surrounding circumstances wherein the appellant has been unable to develop the area for more than two decades and the resultant loss suffered by the respondents, we are of the opinion that in the present situation, there is a need for proportionate relief as the levy of penal interest and other charges on the respondents will be grossly unfair.

9. In these circumstances, we do not find that any grounds have been made out by the appellant to interfere with the order passed by the National Commission. We have minutely examined the order passed by the District Forum as well as the State Commission, and we have noticed that adequate relief has been granted even to the respondents/complainants by awarding interest @ 12 per cent per annum on the entire deposited amounts. Hence, we do not find any merit in the appeal and the same is accordingly dismissed. There shall, however, be no order as to costs.

.....J. (Gyan Sudha Misra) New Delhi;

.....J. March 26, 2014. (Pinaki Chandra Ghose)

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[1] (2009) 4 SCC 460
[2] (2007) 10 SCC 481
[3] (2012) 5 SCC 359
[4] (1994) 1 SCC 243
[5] (2006) 4 SCC 109
[6] (2011) 13 SCC 504

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