

**NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION
NEW DELHI**

REVISION PETITION NO. 2548 OF 2013

(Against the Order dated 26/03/2013 in Appeal No. 328/2011 of the State Commission Punjab)

1. KABIR COOPERATIVE HOUSE BUILDING
SOCIETY LTD. & ANR.

.....Petitioner(s)

Versus

1. SUDESH KAUSHAL & 7 ORS.
2. LUDHIANA IMPROVEMENT TRUST
THROUGH ITS CHAIRMAN,
LUDHIANA
PUNJAB
3. USHA KIRAN
.
4. ASHA KIRAN
.
5. ARCHANA KAUSHAL
.
6. POONAM KAUSHAL
.
7. ANIL KAUSHAL
S/O. SH. HARI NIWAS KAUSHAL 526/14, OSWAL
STREET NO.1, MILLER GANJ
LUDHIANA
PUNJAB

.....Respondent(s)

REVISION PETITION NO. 2549 OF 2013

(Against the Order dated 26/03/2013 in Appeal No. 345/2011 of the State Commission Punjab)

1. KABIR COOPERATIVE HOUSE BUILDING
SOCIETY LTD. & ANR.
THROUGH ITS SECRETARY, PAKHOWAL ROAD,
PUNJAB
2. PRESIDENT, KABIR COOPERATIVE HOUSING
BUILDING SOCIETY LTD.,
THROUGH ITS SECRETARY, PAKHOWAL ROAD
LUDHIANA
PUNJAB

.....Petitioner(s)

Versus

1. SUDESH KAUSHAL & 7 ORS.

S/O LATE SH, HAR NIWAS KAUSHAL, R/O
HOSUING BOARD COLONY, BHAI RANDHIR
SINGH NAGAR,
LUDHIANA
PUNJAB

2. ARCHAN KAUSHAL, W/O LATE SH. VIPAN
KAUSHAL, S/O LATE SH. HARI NIWAS KAUSHAL.
1608,SECTOR-44-B
CHANDIGARH

3. USHA KIRAN PRABHAKAR, D/O SH. HARI
NIWAS KAUSHAL, W/O SH.NARESH PRABHAKAR,
1695,SECTOR-11-B
CHANDIGARH

4. -

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5. ASHA KIRAN SHARMA, D/O LATE SH. NIWAS
KAUSHAL, W/O SH.MOTI RAM SHARMA,
526,SECTOR-10
CHANDIGARH

6. POONAM KAUSHAL, WD/O SH.ASHWINI
KAUSHAL ,
526/14 OLD OSWAL STREET NO-1, MILLER GANJ,
LUDHIANA
PUNJAB

7. ANIL KAUSHAL, S/O LATE SH. HARI NIWAS
KAUSHAL,
526/14 OSWAL STREET NO-1, MILLER GANJ,
LUDHIANA
PUNJAB

8. GAURAV KAUSHAL, S/O LATE VIPAN
KAUSHAL,
1608,SECTOR-44-B
CHANDIGARH

9. LUDHIANA IMPROVEMENT TRUST,
THROUGH ITS CHAIRMAN,
LUDHIANA
PUNJAB

.....Respondent(s)

BEFORE:

HON'BLE MRS. JUSTICE DEEPA SHARMA,PRESIDING MEMBER

For the Petitioner : Mr. Gagan Gupta, Advocate
For the Respondent : Mr. Manveer Singh, Advocate

Dated : 29 Aug 2019

ORDER

(ORAL)

1. This order shall dispose of both the above-noted revision petitions arising out of the common order dated 26.3.2013 in two appeals, appeal No.328/2011 filed by the respondents and appeal No.345/2011 filed by the petitioners. These two appeals were filed by the parties against the order of the District Forum dated 18.1.2011 in CC/405/2010 filed by legal heirs (LRs) of Sri Hari Niwas Kaushal.

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2. The brief admitted facts are that the petitioners formulated a society for acquiring a land for allotment to its members in the year 1972. Sri Hari Niwas Kaushal was also member of the said society since its inception having membership No.56. He had also deposited Rs.1000/- as share money and Rs.50/- as share capital and made his wife Smt. Vidya Wati Kaushal as his nominee who died in his life time. Unfortunately, Sri Hari Niwas Kaushal also expired on 5.2.2006 and till that time no letter of allotment of the plot had been issued in his name by the society. The society had also shown him as the member in the list maintained by it till the period 31st March, 2008. Society had also written a letter dated 3.6.2006 and sent it wherein the outstanding amount of Rs.4200/- was demanded as due upto 31st March, 2007. While the petitioner submits that this letter was a general letter issued to all the members, however, since the letter contains a specific amount of Rs.4200/- which according to the petitioner, was due towards Sri Hari Niwas Kaushal it cannot be said that this was a general letter issued to all the members of the society. Society wrote a letter dated 16.4.2008 demanding Rs.5400/- from Sri Hari Niwas Kaushal whose membership number was 56 towards maintenance upto 31st March, 2008.

3. Thereafter, another letter dated 2.4.2009 was addressed to Hari Niwas Kaushal informing him that the membership fee had been fixed at Rs.500/- by

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the Punjab Government and demanding him to pay the balance membership fee and he was asked to contact the office.

4. The complainants contention was that they had deposited Rs.450/- vide demand draft dated 24.4.2009. The dispute, however, arose when vide letter dated 30.4.2009 the society cancelled the membership of Sri Hari Niwas Kaushal on account of non-payment of Rs.450/- well in time.

5. A complaint was filed by the LR's of the deceased Hari Niwas Kaushal raising several disputes. The prayer made in the complaint was that the plot of 500 sq. yard to which the deceased Hari Niwas Kaushal was entitled to, should be allotted and the compensation was also sought. The

prayer was also made that in case in the said colony the plot was not available, the plot be allotted in another similar equally developed locality. The complaint was contested on several counts. Plea taken was that the complaint was barred by limitation and that the complainants were not consumers and the complaint was not maintainable. It was also contended that the complaint was liable to be dismissed and the opposite parties are not obliged to issue any plot because Sri Hari Niwas Kaushal had never deposited any plot money and without deposit of such plot money the member was not entitled to any plot.

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6. Parties led their evidences before the District Forum. After hearing the arguments of the parties and perusing the record, the District Forum issued following directions: -

“16. Sequel to the discussions, the complaint is partly allowed and as a result, we quash cancellation of Membership of Sh. Hari Niwas Kaushal, under letter Ex-C7 dated 30.4.2009 of the OPs 1 & 2 and order them to restore such membership on receiving Rs.450/- from them. Consequently, OPs directed to pay compensation and litigation cost compositely assessed Rs.3000/- (Three thousand only) to the complainants. The complainants if so deem fit may seek their remedy for allotment of the plot by approaching any competent court of jurisdiction. Compliance of the order be made within 45 days of receipt of copy of the order, which be made available free of cost to the parties. File be completed and consigned to record.”

7. This order of the District Forum was impugned, as mentioned above, by both the parties by two independent appeals. Both the appeals were disposed of by the State Commission vide the impugned order. The State Commission has observed as under: -

“19. The stand of respondent no1 & 2 in the written version as well as in the pleadings is that late Sh. Hari Niwas Kaushal was only a member of the Society and he never deposited any plot money for allotment of the plot. The respondents have not placed on record any document vide which the members were asked to deposit the plot money, including Sh. Hari Niwas Kaushal, since deceased. The respondents no. 1 & 2 have not placed on record any copy of the notice served upon late Sh. Hari Niwas Kaushal asking him to deposit the plot money within a specified period. Respondents no.1 & 2 have also placed on record document

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Ex. R-12 which proves that at serial No.56, name of Sh. Hari Niwas Kaushal along with his address is mentioned and Ex.R-2 is the copy of the ledger vide which the amount of Rs.1000/- was deposited by Sh. Hari Niwas Kaushal. The letter dated 30.4.2009 Ex. R-3 was addressed to appellant Anil Kaushal and the postal receipt is Ex.R-4, mentioning that the membership has been cancelled on the ground that he failed to deposit the enhanced amount of Rs.450/- well in time, whereas the cheque dated 24.4.2009 of Rs.450/- was given to the respondent Society and on 30.4.2009, the membership was cancelled. It appears that the respondents no.1 & 2 as per their own whims and wishes, have allotted the plot to their favourites and ignored the founder member for allotting the plot. As discussed above, no such document has been placed on record by respondents no.1 & 2 that deceased Sh. Hari Niwas Kaushal was asked to deposit the plot money or to deposit any other amount, for allotment of the plot. The hanky panky done by the officials of respondents no.1 & 2 is apparent and write-large and the deceased was whimsically not allotted the plot. Other argument was raised that vide publication Ex. R-6 to accommodate the left out cases, the society planned to provide about 100 sq. yds. developed plots and they were to apply within 30 days from the publication, is not at all tenable because respondents no.1 & 2 never informed the deceased Sh. Hari Niwas Kaushal that he was not allotted any plot, nor gave any reasons. There was no question of applying for 100 sq. yds as the deceased Sh. Hari Niwas Kaushal had already applied for 500 sq. yds. plot way back in the year 1972. The act of the officials of respondents no.1 & 2 including the president speak volumes and the District Forum has not taken notice of all these facts and partly allowed the compliant and cancellation of membership of Sh. Hari Niwas Kaushal deceased vide letter Ex.C7 dated 30.4.2007 by respondents no. 1 & 2 was quashed and the membership was ordered to be restored on receiving Rs.450/- from them. Rs.3000/- were awarded as compensation and litigation expenses, but for the remedy of the allotment of the plot, the appellants were directed to approach any competent court of jurisdiction. This part of

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*the order of the District Forum, directing the appellants to approach the competent court is not in accordance with the law laid down by Hon'ble Supreme Court. The Hon'ble Supreme Court in case “ CC . **Chambers Co-op Hsg. Society Ltd. vs. D.C. Bank Ltd.**” 2004 AIR (SC) 184 observed in para-7 (relevant portion) as follows: -*

The fora made available under the Act are in addition to, and not in derogation of the provisions of any other law for the time being in force and the jurisdiction of the conventional courts over such matters as are now cognizable under the Act has not been taken away.

...

This Court noticed that the fora under the Act are specifically empowered to follow such procedure which may not require more time or delay the proceedings. A forum under the Act is entitled, and would be justified, in evolving a procedure of its own and also by effectively controlling the proceedings so as to do away with the need of a detailed and complicated trial and arrive at a just decision of the case by resorting to the principles of natural justice and following the procedure consistent with the principles thereof, also making use of such of the powers of Civil Courts as are conferred on it. The decisive test is not the complicated nature of the questions of fact and law arising for decision. The anvil on which entertainability of a complaint by a forum under the Act is to be determined is whether the questions, though complicated they may be, are capable being determined by summary enquiry i.e. by doing away with the need of a detailed and complicated method of recording evidence. It has to be remembered that the fora under the Act at every level are headed by experienced persons. The National Commission is headed by a person who is or has been a Judge of the Supreme Court. The State Commission is headed by a person who is or has been a Judge of the High Court. Each District Forum is headed by person who is, or has been, or is qualified to be a District Judge.”

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8. This order is impugned before me by the petitioners, who were the opposite parties in the complaint, alleging that the impugned order needs to be set aside since the State Commission as well as the District Fora had no jurisdiction to grant the relief. It is submitted that since alternative remedy is available under the Registrar of Societies Act, therefore the complaint was not maintainable. This contention had been duly dealt with by the State Commission in its order as is apparent from the above reproduction of the impugned order. Learned counsel for the complainants has also produced before me a latest judgment of this Commission in the case of **Raj Kumar Goyal vs. Malwinder Singh Battu 2017 (1) Law Herald (SC) 177 (NCDRC)** . In this case the National Commission has also dealt with the similar issue and thereafter has held as under: -

“21. In so far as the jurisdiction of consumer fora to handle the matter is concerned, Section 3 of the Consumer Protection Act, 1986 is an additional remedy available to the complainants as it states that:-

3. Act not in derogation of any other law. —*The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.*

22. Even if the issue is to be handled by the officers of the Cooperative Department under the cooperative law, the jurisdiction of the consumer fora to deal with these matters, is not barred and is independent of the action contemplated by such officers.

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23. *In a number of landmark judgments given by the Hon'ble Supreme Court, e.g. in Fair Air Engineers Pvt. Ltd. vs. N. K. Modi, III (1996) CPJ 1 (SC), Secretary Thirumurugan Cooperative Agricultural Credit Society vs. M. Lalitha (dead) through LRs., I (2004) CLT 20 (SC), Trans Mediterranean Airways vs. Universal Export, IV (2011) CPJ 13 (SC) and State of Karnataka vs. Vishwabarathi House Building Cooperative Society, I (2003) CPJ 1 (SC) , it has been laid down that the provisions of the Act are to be interpreted broadly, positively and purposefully to give meaning to additional/extended jurisdiction. It is clear, therefore, that the consumer fora below have rightly exercised their jurisdiction to deal with the matters in hand under the Consumer Protection Act, 1986."*

9. Learned counsel for the petitioners has also relied on the judgments of Hon'ble Supreme Court in the case of **General Manager, Telecom vs. M. Krishnan 2009 (8) SCC 481 and Chairman, Thiruvalluvar Transport Corporation vs. Consumer Protection Council 1995 (2) SCC 479** . The judgments relied upon by counsel for the petitioners are not relevant for the purpose of these revision petitions and are irrelevant for the issues.

10. Thus as per the settled proposition of law, even if any alternative remedy is available, the jurisdiction under Consumer Protection Act can be invoked.

11. The other argument raised by the petitioners is that the complaint was barred by limitation and it ought to have been dismissed. It is argued that Sri Hari Niwas Kaushal had become the member in the year 1972 and he did not raise any objection till the filing of the complaint. Therefore, the complaint is

barred by limitation. It is argued on behalf of the complainants that there is no letter issued by the society informing the deceased that any land had been purchased/allotted to the society or demarcated or that the deceased was required to make any payment towards the allotment of the plot. It is further submitted that the cause of action arose when the membership was cancelled and the plot was not allotted to Sri Hari Niwas Kaushal which happened in the year 2009. It is submitted that therefore the present complaint was not barred by limitation.

12. I have gone through the record. Admittedly in the year 1972 the society was formulated. In the written statement the petitioners are silent as to on which date the land was allotted to it, when did they demarcated the land and when did they started the allotment of the plot to its members. They are also silent as to when they had written the letter to the deceased informing him of allotment of a plot and demanding the plot money. Their contention is that since deceased had not deposited plot money, the plot was not allotted to him. However, there is no evidence on record to show that the deceased was ever asked to deposit the plot money. Since it was not done, it cannot be said that the cause of action had arisen at any time earlier to the one noticed by the Fora below. This argument also has no merit and the same is dismissed.

13. The learned counsel appearing on behalf of the petitioners at the onset has submitted that he is not challenging the finding of the Fora below about the restoration of the membership of the deceased. The only contention is that deceased is not entitled to any alternative plot since he has not deposited the plot money. As discussed above, the petitioner has not either pleaded whether any plot money was demanded from the deceased nor has produced any evidence to this effect before the Fora below. Moreover, this Commission has limited jurisdiction under Section 21 (b) of the Consumer Protection Act, 1986. Hon'ble Supreme Court has clearly held that this Commission is not required to re-appreciate and reassess the evidence and reach to its own conclusion. Where there are concurrent findings of the fact, this Commission is not required to interfere on the finding of the fact. The only limited jurisdiction is to see whether there is any miscarriage of justice or the order is perverse.

14. Hon'ble Supreme Court in **Mrs. Rubi (Chandra) Dutta Vs. M/s United India Insurance Co. Ltd** . 2011 (3) Scale 654 has observed as under:

“Also, it is to be noted that the revisional powers of the National Commission are derived from Section 21 (b) of the Act, under which the said power can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order, and only then, may the same be set aside. In our considered opinion there was no jurisdictional error or miscarriage of justice, which could have warranted the National Commission to have taken a different view than what was taken by the two Forums. The decision of the National Commission rests not on the basis of some legal principle that was ignored by the Courts below, but on a different (and in our opinion, an erroneous) interpretation of the same set of facts. This is

not the manner in which revisional powers should be invoked. In this view of the matter, we are of the considered opinion that the jurisdiction conferred on the National Commission under Section 21 (b) of the Act has been transgressed. It was not a case where such a view could have been taken by setting aside the concurrent findings of two fora.”

15. Hon'ble Supreme Court has further held in the case of **Lourdes Society Snehanjali Girls Hostel and Ors. Vs. H & R Johnson (India) Ltd. and Ors.** (2016 8 SCC 286 as under:

“The National Commission has to exercise the jurisdiction vested in it only if the State Commission or the District Forum has failed to exercise their jurisdiction or exercised when the same was not vested in their or exceeded their jurisdiction by acting illegally or with material irregularity. In the instant case, the National Commission has certainly exceeded its jurisdiction by setting aside the concurrent finding of fact

recorded in the order passed by the State Commission which is based upon valid and cogent reasons.”

16. The learned counsel for the petitioners has failed to show that there is any perversity in the impugned order or that the order is illegal or that any miscarriage of justice is shown to have been done to the petitioners. The order is based on the evidences on record. I found no reason to interfere with the impugned order. The revision petitions have no merit. Both are dismissed with no order as to cost.

.....J
DEEPA SHARMA
PRESIDING MEMBER