

RAJASTHAN HOUSING BOARD v. BINDARAM

RAJASTHAN HOUSING BOARD v. BINDARAM

RAJASTHAN HOUSING BOARD

...Appellant

BINDARAM

...Respondent

Case No: REVISION PETITION NO. 3985 OF 2017

Date of Judgement: 06 December 2023

Judges:

DR. INDER JIT SINGH

PRESIDING MEMBER

For Appellant: MR. N K CHAUHAN, ADVOCATE

For Respondent: MS. REKHA PANWAR, MR. PRATEEK KUMAR JHA, ADVOCATES

Facts:

Complainant was allotted a house (no. 7-H-1) by Rajasthan Housing Board (OP) with area of 76.50 sqm against payment made. When seeking registration of house, OP objected stating complainant has encroached on 7.875 sqm, making it ineligible for registration. OP argued all houses in scheme measured 60.75 sqm, and extra Rs 2678 was charged for additional 7.85 sqm as per allotment letter. As per OP, total area in possession of complainant including additional land was 68.625 sqm but complainant has occupied 76.5 sqm, which includes road area. OP approached municipality regarding encroachment but complaint filed case in District Forum against OP's objections.

Court's Opinions:

Extracts from District Forum (22.11.2013) and State Commission (22.09.2017) orders show they analyzed allotment letter, extra land details, and costs charged. They rejected OP's contention that extra 7.875 sqm is included in original 68.625 sqm and houses have standard 60.75 sqm plots. Evidence showed other houses had plots larger than 60.75 sqm. No dues certificate also mentioned complainant's plot as 76.50 sqm. Hence they concluded complainant entitled to 76.595 sqm as per allotment letter which clearly states 6.10×11.25m standard plot plus extra 0.75×11.25m.

OP's Arguments:

Typographical error caused confusion about actual plot size but they received correct amount as per pricing principles. Complainant encroached on public road contradicting scheme provisions and site plans. Execution of sale deed for this is impermissible. Cited case law that encroachment on public roads is not permissible under any circumstance. Complainant disqualified as a consumer under Consumer Protection Act due to encroachment on public road.

Complainant's Arguments:

Revision petition is time-barred, lacks merit and filed to harass complainant. Judgments of District Forum and State Commission were based on careful examination of evidence. Highlighted inconsistencies in OP's claims regarding plot sizes and evidence refuting same. Emphasized No Dues certificate itself mentioned area allotted to complainant as 76.50 sqm. OP failed to prove case on merits and filed frivolous litigation.

Sections & Laws:

Filed under Section 21(b) of Consumer Protection Act, 1986. Referenced Section 2(d) defining 'consumer' under the Act. Cited case laws – Rubi Chandra Dutta v. United India Insurance (2011), Sunil Kumar Maity v. SBI (2022), Rajiv Shukla v. Gold Rush Sales And Services (2022).

Case Laws Referred:

No case laws were referred in the order.

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Court

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Full Text of Judgment:

1. The present Revision Petition (RP) has been filed by the Petitioner against Respondent as detailed above, under section 21(b) of Consumer Protection Act 1986, against the order dated 22.09.2017 of the State Consumer Disputes Redressal Commission, Rajasthan, Jaipur(hereinafter referred to as the 'State Commission'), in First Appeal (FA) No.127/2014 in which order of District Consumer Disputes Redressal Forum, Bhilwara (here in after referred to as District Forum) in Consumer Complaint (CC) no. 56/2013 was challenged, inter alia praying to allow the revision Petition and set aside the order passed by State Commission.

2. While the Revision Petitioner (here in after also referred to as OP) was Appellant and the Respondent (here in after also referred to as Complainant) was Respondent in the said FA/127/2014 before the State Commission, the Revision Petitioner was OP and Respondent was complainant before the District Forum in the CC/56/2013.

3. Notice was issued to the Respondent. Parties filed Written Arguments/Synopsis on 06.11.2020 (Respondent/complainant) and 27.10.2022 (Petitioner/OP) respectively.

4. Brief facts of the case, as emerged from the RP, Order of the State Commission, Order of the District Commission and other case records are that:-

The complainant received allocation for house number 7-H-1 from the OP, with an area spanning 76.50 square meters, against the payment made accordingly. When seeking registration for the house, objections were raised by the OP, asserting that the complainant had encroached upon 7.875 square meters, making it ineligible for registration. This

dispute was escalated to the District Forum. The OP's argument stated that all houses within the scheme were measured at 60.75 square meters, and an additional amount of Rs. 2678/- was received for the extra land area of 7.85 square meters outlined in the allotment letter. According to the OP, the total area in possession of the complainant, inclusive of the additional land, amounted to 68.625 square meters. However, the complainant presently occupies 76.5 square meters, which includes the road area. The OP took steps by contacting the municipality to address this perceived encroachment. Despite the objections raised by the OP, the District Forum, considering the allotment letter issued to the complainant, dismissed the objection and directed the entire land to be transferred through a registry.

5. Vide Order dated 22.11.2013, in the CC no. 56/2013 the District Forum has allowed the complaint and directed OP to execute registry of the house of complainant measuring 76.50 sq.mt. in the name of complainant; directed OP to pay compensation of Rs. 10,000/- to the complainant and to pay Rs. 3,000/- towards litigation expenses.

6. Aggrieved by the said Order dated 22.11.2013 of District Forum, Petitioner appealed in State Commission and the State Commission vide order dated 22.09.2017 in FA No.127/2014 has dismissed the appeal and allowed the complaint.

7. Petitioner has challenged the said Order dated 22.09.2017 of the State Commission mainly on following grounds:

i. That both the District Forum and State Commission erred by overlooking the legal limitation that Consumer Fora lacks jurisdiction to mandate the execution of property transfer or sale deeds. This authority exclusively resides with Civil Courts. Consequently, the orders issued by both the fora are legally flawed and warrant reversal. It is submitted that both fora failed to acknowledge that the OP board did not charge any additional amount for the land beyond the actual area.

Consequently, no sale deed for encroached land on public roads could be executed by the OP. Therefore, there exists no deficiency in service or unfair trade practice on the OP's part. The orders issued by both fora are without jurisdiction.

ii. The direction from the District Forum to execute a sale deed for encroached land in favor of the complainant, upheld by the State Commission, promotes encroachment on public roads without authority. This action is deemed illegal and contrary to the law and facts of the case. Both fora failed to comprehend the open counter sale scheme for the allotment of LIG houses at Chandra Shekhar Azad Nagar, Bhilwara. The cost of land was fixed based on specific principles, and the impugned orders, relying on false and baseless claims without reliable evidence are not legally sustainable. Both fora committed a serious error by not appreciating that the complainant purchased a LIG house under the scheme, and any discrepancies in the documentation were due to typographical human error. The OP board received the correct amount for the actual area, as per the established principles of costing under the scheme. Therefore, the impugned orders, contradicting the proven facts and evidence, should be set aside.

iii. The District Forum and the State Commission have erred by relying solely on the complainant's claims without supporting evidence and disregarding the documentary evidence presented by the OP board. Hence, the impugned orders run contrary to facts, evidence, equity, and natural justice, warranting reversal. The State Commission made an error in directing the execution of a sale deed for public road land, under the pretext of extra land, without receiving any amount from the complainant. This decision was based on a typographical error without considering that the amount calculated adhered to the rates stipulated for the scheme. Therefore, the findings on this aspect should be annulled, as evidenced by letters dated 20.11.1993 and 26.12.2013. Both fora failed to consider the

letter dated 20.11.1993 that determined land costs based on standard and extra land areas. The complainant encroached on public road land by extending the boundary, resulting in an unauthorized area beyond the allotted space. The OP board clarified this through a letter dated 13.06.2011, indicating illegal encroachment. The fora overlooked the illegality of the complainant extending construction and boundaries beyond the permissible limits of the scheme, violating the site plan and allotment. This contravenes the evidence presented and the rates of land specified in allotment letters, rendering the impugned orders illegal and contrary to the provided evidence.

iv. Both fora failed to acknowledge houses constructed in the same area following final cost calculations for standard and extra land, established by the board. The rates applicable during allotment were evident from other allotment letters on record. The impugned orders, based on presumptions and assumptions contrary to evidence, set awrong precedent and invite widespread litigation, causing irreparable loss to the OP and future aspirants. The State Commission erred by not recognizing the OP's status as a non-profit entity working for the public welfare. The complainant's actions, encroaching on public land and filing a false complaint, do not make them a consumer under Section 2(d) of the Consumer Protection Act. Therefore, the complainant is not entitled to any relief as claimed in their baseless complaint.

8. Heard counsels of both sides. Contentions/pleas of the parties, on various issues raised in the RP, Written Arguments, and Oral Arguments advanced during the hearing, are summed up below.

i. The counsel for petitioner/OP argued that the OP board introduced an open counter sales scheme for allotting LIG houses at Chandra Shekhar Azad Nagar in Bhilwara. Houses were constructed on standard-sized plots at specified rates. Any plot larger than the standard area incurred an additional charge, as per the principles laid out in the scheme. The

complainant acquired a house under this scheme, but due to a typographical error in the allotment letter, there was confusion regarding the actual plot size. Upon the complainant's application for house registration, it was discovered that an encroachment had occurred onto the public road. The OP board issued a clarification about the actual allotted plot size and unauthorized encroachment in a subsequent letter. In response, the complainant lodged a consumer complaint challenging the plot area, alleging a deficiency in service and unfair trade practice. The OP board, through a written statement, denied the allegations, citing the encroachment on the public road by the complainant. Both parties presented evidence through affidavits before the District Forum. The forum, in its judgment dated 22.11.2013, directed the OP board to execute a sale deed for 76.50 Sq. Mtr., including the encroached land, and awarded compensation and litigation costs. The board issued a revised allotment letter rectifying the typographical error, clarifying the actual area allotted and the corresponding costs. The OP board appealed this decision before the State Commission. However, the Commission upheld the District Forum's decision, leading to the current revision petition. The Judgment and order passed by the State Commission are biased and against the principles of natural justice.

ii. The counsel further asserts that Both the forums erred by overlooking the law, asserting that Consumer Fora lack jurisdiction to direct the execution of transfer/sale deeds, which falls under the jurisdiction of Civil Courts. The OP board did not charge extra for the land beyond the actual area, negating any execution of a sale deed for the encroached land on the public road. Therefore, there's no deficiency in service or unfair trade practice. The direction by the District Forum and State Commission for executing the sale deed for encroached land promotes illegal encroachment on public roads and exceeds the jurisdiction vested in Consumer Fora. The scheme for LIG houses specified costs for standard-sized plots

and additional charges for larger plots, as outlined in the principles of costing in the board's letter No. 468 dated 20.11.1993. The Typographical errors in the allotment letter led to confusion about the actual plot size, but the board received the correct amount for the actual area, as per the scheme's principles.

iii. The counsel asserts that there was an encroachment on the public road, leading to clarification by the board through letters and revised allotment letters. The encroachment onto the public road contradicted the scheme's provisions and site plans, making the execution of a sale deed contrary to the site plan impermissible. Hundreds of houses were constructed in the same locality based on the final costs for standard plots and extra land, supporting the OP's stance. The Counsel referring to a Supreme Court case, *Municipal Corporation of Jaipur & Anr. Vs. Lekhraj Soni & Anr.* SLP No. 16668/2008 argued that encroachment on public roads is impermissible under any circumstance, emphasizing that orders by both forums go against established legal positions. The complainant's encroachment on the public road disqualifies them as a consumer under Section 2(d) of the Consumer Protection Act, as it doesn't align with the Act's definition of a consumer.

iv. The counsel for complainant/respondent contends that the revision petition is not maintainable and is time-barred. Moreover, it lacks merit and has been filed to harass and mentally torture the complainant. The counsel asserts that the judgments passed by both the District Forum and the State Commission were just and based on careful examination of evidence. The OP's stance is self-contradictory, suggesting falsehoods in their statements throughout the case. The counsel highlights inconsistencies in the OP's assertions regarding the size of allocated plots or houses and presents evidence from allotment letters to refute the OP's claims. Both lower forums rejected the OP's argument that extra land was encroached upon by the complainant, as the evidence and

documents provided by the OP contradicted their claims. The counsel emphasizes that a No Dues Certificate issued by the OP itself mentioned the land area allotted to the complainant as 76.50 sq. mtr., including the original plot and the additional land. The counsel for complainant concludes that the evidence and documents provided by the OP show that their case lacks merit. They allege that the OP filed a frivolous case, wasting the Commission's time and causing unnecessary harassment to the complainant.

9. In this case, there are concurrent findings of both the fora below against the petitioner/complainant here in. Extract of relevant para of District Forum order is reproduced below:-

"The original allotment letter was reviewed on this. From which it is clear that the complainant was allotted 6.10 by 11.25 square meters of land, which when calculated is 68.625 square meters. According to the allotment letter, 7.875 square meter corner land was given to the complainant, according to which Rs. 2678/- was recovered from the complainant. Thus, the area allotted to the complainant is 76.50 square meters. According to the OP, the construction is on 76.50 square meters only, but the OP says that the size of the plot in the said plan is 5.40 meters by 11.25 meters. The complainant was allotted 60.750 square meters of original land and 0.70 meters by 11.25 meters additional land i.e. 7.875 square meters of land, thus the total land allotted to the complainant was 68.625 square meters. For which the OP has also presented a layout plan. As far as the layout plan is concerned, in the allotment letter issued for the complainant's plot, 6.10 meter by 11.25 meter land was allotted to him, for which Rs. 16,403/- were recovered from the complainant 20 years ago, and the additional money of Rs. 2678/- for land of 7.875/- per square meter was recovered. For which allotment letter dated 29.01.1994 was issued, which is an original documentary evidence. Thus, a dues certificate was issued by the OP on 04.03.2011 in which also a plot of land of total area of 76.50 square meters of the complainant's plot has been allotted. In

which the original plot of 6.10 meters by 11.25 meters i.e.68.625 square meters and additional land of 7,875 meters, a total of 76.50 squaremeters of land has been allotted to the complainant. For which the OP can never say after 20 years that a plot of 5.40 meters by 11.25 meters has been allotted to the complainant. Original allotment letter was issued on 29.01.1994, and dues certificate dated issued on 04.03.2011. In which the size of the plot is mentioned as 76.50 squaremeters. The price of which the OP had received from the complainant 20 years ago.The OP has recovered the full amount of the said house from the complainant. Both allotment letter and dues certificate were issued by the OP housing board, from their writing the OP board is bound to not take different stand as per the principle of estoppel.”

10. Extract of relevant para of State Commission is also reproduced below:-

“It has been argued on behalf of the appellant that a plot of 6.10X11.25 squaremeters was allotted to the complainant. The cost of this was 7.875 square meters.Therefore it is shown separately in the allotment letter. Therefore, this land is currently included in the original area of 68.626 square meters only. He also argues that under the same housing scheme, he has presented two allotment letters of Shri Rajkumar Aggarwal and Shri Chhai Lal Sharma, whereas the learned advocate for the respondent has supported the conclusion reached by the learned District Forum.

I have considered the arguments from both sides. If the argument of the Housing Board is to be accepted that all the houses in that scheme are of 60.75 square meters area, then this argument cannot be accepted because according to the allotment letter of Chhai Lal, the area of 7-H-2 is stated to be 60.75 square meters but according tothe allotment letter of Rajkumar Aggarwal ,the area of 7-H-42 is said to be 68.62square meters. Thus, the argument that all houses should be of 60.75 square meters cannot be accepted. It has not been disputed that the plot 7-H-1 is a corner plot andhas two areas

mentioned in its allotment letter. The cost of land of 6.10X11.25 squaremeters has been marked as Rs 16,403/-. Below this, the cost of additional land has been mentioned as Rs 2678/- for 7.875 square meters. The argument of the learned counsel for the Appellant cannot be accepted that the land allotted to the Appellant is included in the original area but because the cost of this additional land is different, it has been shown as separate. If such was the situation then it should have been shown as additional cost instead of additional land. Similarly, a dues certificate from the Housing Board itself is available in which the residential engineer has mentioned that the total amount is 76.5 square meters and the lease amount has been received on this. Therefore, there is no need to interfere in the decision of the learned District Forum, the appeal deserves to be dismissed and is dismissed."

11. We have perused the allotment letter dated 29.01.1994, relevant extract of which is reproduced below:-

DETAILS OF COST OF HOUSE & OTHER EXPENSES

(A) COST OF HOUSE

1. Cost of land (std. area 6.10 x 11.25 Sq. mtr @ Rs. 16403.00
(Actual area.....sq. mtr.)
2. Cost of extra land @ 7.875 sqm. Rs. 2678.00
3. Cost of construction (including all overheads) Rs. 49697.00
4. Extra charges for DC/SDC house @ 2 % on (3) Rs. 994.00

This clearly shows that the complainant was allotted a plot of which the standard area was 6.10m x 11.25m i.e. 68.625 sq.mtr., for which he was charged Rs. 16,403/-. This being a corner plot, the extra land was 7.875 sq.mtr. (0.75m x 11.25m) for which an amount of Rs.2678/- has been charged. Thus the total area come to 76.595 sq.mtr.. However, the OP Board contends that extra area of 7.875 sq.mtr. i.e. the corner plot area is included in the 68.625sq.mtr. area and the standard area was 5.50m x 11.25m only and it was a typographical error in the allotment letter to mention it as 6.10m x 11.25m. OP Board also contends that all the houses in this area/colony have standard plot size of 5.50 x 11.25 only. Perusal of allotment

letter and other documents show that these contentions of OP Board are not correct, hence not acceptable. The allotment letter clearly states that area of plot is 6.10m x 11.25m and extra land of 7.875 sq.mtr. has been charged in addition. Further, there are few more houses in the same area where standard plot size is not 5.50m x 11.25m e.g. House No. 7 H42 is 6.10m x 11.25m i.e. 68.62 sq.mtr., 7H33 is 8.0m x 11.25m i.e. 90 sq.mtr., 7F33 is 7.70m x 11.25m i.e. 86.62 sq.mtr. and so on. Moreover, in the No Dues Certificate dated 04.03.2011 also, the area of 7H1 i.e. plot of complainant in this case is clearly mentioned as 76.50sq.mtr.

12. Hence, at this stage the contention of OP Board that complainant has encroached upon a public road extra area of 7.875 sq.mtr. is not acceptable. The complainant is entitled to total area of 76.595 sq.mtr. i.e. 68.625 sq.mtr. Standard area plus 7.875 sq.mtr. for extra area on account of this being a corner plot, for which he has been charged separately. Hence, he is entitled to get the conveyance deed registered in his favour for the total area of 76.595 sq.mtr.

13. As was held by Hon'ble Supreme Court in Rubi Chandra Dutta Vs. United India Insurance Co. Ltd. [(2011) 11 SCC 269], the scope in a Revision Petition is limited. Such powers can be exercised only if there is some prima facie jurisdictional error appearing in the impugned order. In Sunil Kumar Maity Vs. State Bank of India & Ors. [AIR (2022) SC577] held that "the revisional jurisdiction of the National Commission under Section 21(b) of the said Act is extremely limited. It should be exercised only in case as contemplated with in the parameters specified in the said provision, namely when it appears to the National Commission that the State Commission had exercised a jurisdiction not vested in it by law, or had failed to exercise jurisdiction so vested, or had acted in the exercise of its jurisdiction illegally or with material irregularity."

14. The Hon'ble Supreme Court in Rajiv Shukla vs Gold Rush

Sales And Services Ltd.

Civil Appeal No. 5928 of 2022, decided on 8 September, 2022, held that:-

“13. As per Section 21(b) the National Commission shall have jurisdiction to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity. Thus, the powers of the National Commission are very limited. Only in a case where it is found that the State Commission has exercised its jurisdiction not vested in it by law, or has failed to exercise the jurisdiction so vested illegally or with material irregularity, the National Commission would be justified in exercising the revisional jurisdiction. 14. In exercising of revisional jurisdiction the National Commission has no jurisdiction to interfere with the concurrent findings recorded by the District Forum and the State Commission which are on appreciation of evidence on record. Therefore, while passing the impugned judgment and order the National Commission has acted beyond the scope and ambit of the revisional jurisdiction conferred under Section 21(b) of the Consumer Protection Act.’

15. In view of foregoing, we find no illegality or material irregularity or jurisdictional error, in the order of the State Commission, hence the same is upheld. Accordingly, the RP is dismissed with additional litigation cost of Rs. 5,000/- , to be paid by the Petitioner herein to Respondent herein. Petitioner here in/OP board shall implement the order of the District Forum within 45 days from today.

16. The pending IAs in the case, if any, also stand disposed off.

—END—