

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

Criminal Application [APL] No.154 of 2015

(Nagpur Improvement Trust, through Executive Officer, Nagpur and another
vs.

State of Maharashtra, through Registrar, District Disputes Redressal Forum, Nagpur and another)

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Office notes, Office Memoranda of
Coram, appearances, Court's orders
or directions and Registrar's orders.

Court's or Judge's Orders

CORAM : PRASANNA B. VARALE, J.

DATE : MARCH 27, 2015.

Heard Mr. S.K. Mishra, the learned Counsel for the applicants and Mr. Anoopsingh Parihar, the non-applicant no.2, who appears in person before this Court.

This Court by order dated 03/03/2015 issued notice and granted *ad interim* stay in terms of prayer clause (ii). On the backdrop of the submission that special leave petition was filed against the order of the District Consumer Disputes Redressal Forum, Nagpur and the same was dismissed and also on the backdrop of the submission that non-applicant no.2 issued notice to one Shri Harshawardhan Kambale, Chairman, Nagpur Improvement Trust, Nagpur. The non-applicant no.2 vehemently submitted that the interim order passed by this Court is causing serious prejudice to the rights of non-applicant no.2 and the application is nothing but giving a go bye to the observance of criminal proceedings. Before I refer to the other

submissions of the parties, certain facts are necessary to refer giving rise to the present application.

Non-applicant no.2 approached the District Consumer Disputes Redressal Forum, Nagpur (hereinafter referred to as 'the Forum' for the sake of brevity). The grievance of the non-applicant no.2 i.e. the applicant before the Forum under Section 12 of the Consumer Protection Act (hereinafter referred to as 'the Act' for the sake of brevity), was in response to an advertisement published by the non-applicant before the forum i.e. the Nagpur Improvement Trust (N.I.T.), he submitted an application for purchase of a flat under the Public Housing Scheme, Phase-2. The area of the flat booked by non-applicant no.2 was admeasuring 790 sq.ft. and the cost of the said flat was fixed at Rs.8,70,000/-. The N.I.T. offered the sale of flats on the principle "First Come First Served". Then there are the submissions and counter submissions before the Forum. Ultimately, the Forum vide its order dated 01/04/2008 allowed the complaint partly. The directions of the Forum were, the non-applicant (N.I.T.) should allot the complainant a flat admeasuring 790 sq.ft. as registered in the complex "Shop-cum-Residential Complex on Hill Road", or if the non-applicant is unable to allot the flat admeasuring 790 sq.ft. as mentioned above, then the non-applicant, in the alternative, should allot the complainant flat No.208, admeasuirng 719.93 sq.ft. and the

terrace admeasuring 541.40 sq.ft. in the same complex at the determined cost of Rs.9,54,343/-. The N.I.T. was further directed to pay Rs.10,000/- to the complainant towards THE physical and mental harassment as well as the economic loss caused to the complainant and further Rs.3,000/- towards cost of the complaint. The Forum then directed the N.I.T. to implement the orders within a stipulated period of 30 days from the date of receipt of the copy of order. As there was no compliances against the grievance of non-applicant no.2, an application under Section 27 of the Consumer Protection Act, 1986 was filed before the Forum. The President of the Forum on 23/01/2014 passed the order, which reads thus:

“Contents of complaint and verification prima-facie shows commission of offence punishable under section 27 of the Consumers Protection Act. Register the case and issue summons against accused.”

Being aggrieved by this order, a revision was filed by the Chairman of the N.I.T. The State Consumer Disputes Redressal Commission, Nagpur (hereinafter referred to as 'the Commission' for the sake of brevity) finding no fault with the order passed by the Forum dismissed the revision.

The learned Counsel for the applicants submits that the order passed by the Forum was a two fold order. The directions to the N.I.T. were, either allotment of the flat admeasuring 790 sq.ft. in the complex “Shop-cum- Residential

Complex on Hill Road” or in the alternative, if the N.I.T. is unable to allot the flat admeasuring 790 sq.ft., then allotment of the flat No.208 admeasuring 719.93 sq.ft. and the terrace admeasuring 541.40 sq.ft. in the same complex at the determined cost of Rs.9,54,343/-. The learned Counsel further submits that the N.I.T. has complied the order passed by the Forum. A communication was also forwarded to non-applicant no.2 dated 27/11/2014. It was the submission of the learned Counsel for the applicants that though the Forum itself permitted the N.I.T. to accept the determined costs of Rs.9,54,343/- against the flat admeasuring 790 sq.ft., non-applicant no.2 failed to deposit the amount as directed by the Forum and deposited only Rs.8,91,923/-. He then submits that non-applicant no.2 himself was aware that at the relevant time, Shri Pravin Darade, the applicant no.2, was occupying the position of Chairman of the N.I.T. for the period from 02/06/2011 to 04/09/2014 and thereafter he was transferred to Mumbai. Since 04/09/2014, Shri Pravin Darade is discharging his responsibility as Secretary to the Hon'ble Chief Minister. He further submits that as non-applicant no.2 was well aware about these facts, he submitted a representation raising his grievance to Shri Harshwardhan Kamble, who was occupying the position of Chairman of the N.I.T. by an application dated 19/12/2014. The learned Counsel then submits that the N.I.T. has complied

the order passed by the Forum and as such there was no question of initiating the proceedings attracting the provisions under Section 27 of the Act at the instance of non-applicant no.2. He also submits that a Pursis to that effect is also presented before the Forum on 09/01/2015. The Forum by its order dated 09/01/2015 observed the fact that the applicant in Execution Application No.EA/14/16 is present and the Counsel representing the non-applicant is present before the Forum. The order passed by the Forum though was challenged in the revision before the Commission, the Commission by dismissing the revision application held the order of the Forum just and proper, and as such questioned the N.I.T. for taking the steps of presence of the applicant no.2 before the Forum on the next date and posted the matter on 05/03/2015. The learned Counsel further submits that as the compliance of the order of the Forum is already done by applicant no.1 i.e. N.I.T., there was no requirement of insisting of presence of the applicant no.2 before the Forum.

Mr. Parihar, non-applicant no.2 vehemently submits in countering the submission of the applicants that the order passed by the Forum though was giving an option to the N.I.T., the non-applicant no.2 was never intimated about the above exercise by the N.I.T. The submission of Mr. Parihar is, in spite of the order passed by the Forum on 01/04/2008, no steps were

taken for compliance of the order either by the N.I.T. or the then Chairman Mr. Darade till 2014 and in an unilateral act of the N.I.T., the N.I.T. informed non-applicant no.2 that the N.I.T. is exercising its option by allotment of the flat admeasuring 719.93 sq.ft. With terrace area of 541.40 sq.ft. The submission of Mr. Parihar was, as an amount of Rs.8,60,000/- i.e. the cost of flat booked in response to the advertisement admeasuring area 790 sq.ft., was already deposited by non-applicant no.2, he ought not to have asked by the N.I.T. to deposit additional amount towards the option exercised by it unilaterally. Mr. Parihar then submits that as applicant no.2-Mr. Darade was a party before the Forum and was aware of the order passed by the Forum dated 01/04/2008 and as there was no compliance of the order till 2014, he was prompted to file an application under Section 27 of the Act. Mr. Parihar then submits that Section 27 deals with the penalties and the provisions then refers the action in the nature of imprisonment for a term not less than one month, but which may extend to three years, for failure to comply the order passed by the District Forum, the State Commission or the National Commission, as the case may be. Mr. Parihar submits that as the applicant no.1-N.I.T. as well as the applicant no.2-the then Chairman failed to comply the order passed by the Forum, the applicant no.2 cannot raise a specious plea that subsequently he handed over the charge to the other incumbent

and avoiding the presence before the Forum under the proceedings initiated under Section 27 of the Act. Mr. Parihar placed reliance on the judgment of the Apex Court reported in 2015(2) SCALE 410 in the matter of Kamlesh Aggarwal vs. Narain Singh Dabbas and another.

Mr. Mishra, the learned Counsel for the applicants submits that immediately after the order passed by this Court dated 03/03/2015, an application was moved seeking dismissal of the proceedings submitting that the order of the Forum is complied with by the N.I.T.

On the backdrop of this rival contention raised by the parties, what emerges is the core issue revolves around the submission of non-applicant no.2 that there was no compliance of the order passed by the Forum, dated 01/04/2008. On the other hand, the applicant no.1-N.I.T. comes with the submission that the order is already complied with by exercising the option, which was granted by the Forum itself, and the non-applicant no.2 himself is in default of payment of some amount, which was directed by the Forum. The N.I.T. also submitted that as the order is complied with by it, and in the administrative convenience of the State, the then Chairman i.e. applicant no.2 is now transferred and occupying the position as Secretary to the Chief Minister, fastening of criminal law against applicant no.2 and insisting his presence would be inconsequential. It is not in

dispute that the application filed by non-applicant no.2 under Section 27 of the Act is before the Forum for its consideration. It is also not in dispute that though the order passed by the President of the Forum dated 23/01/2014, which was challenged in revision by the N.I.T. and the revision was dismissed, the N.I.T. filed a Pursis before the Forum submitting that the N.I.T. has complied with the order. The N.I.T. after passing interim orders of this Court filed an application before the Forum seeking dismissal of the proceedings raising certain grounds in the application. Though Mr. Parihar-non-applicant no.2 vehemently submits that the application filed by the N.I.T. is untenable and the grounds raised by the N.I.T., on the face of it, are contrary to the facts of the record, in my opinion, the party can raise the ground of compliance and it is for that Forum to consider those grounds and arrive at a conclusion by giving an equal opportunity of hearing to the parties of the proceedings. Thus, by giving equal opportunity of hearing to the parties, includes the other party to raise grounds in opposition to the application including the ground of tenability of the application or efficacy of the grounds in the application.

The Forum is a competent Forum under the provisions of the Act having sufficient powers to deal with the application and pass appropriate orders. As the Forum before whom the application under Section 27 is pending for its

consideration and decision, in my opinion, it will be in the interest of justice and in the fitments of the things to allow the Forum to exercise its powers and arrive at a conclusion giving an equal opportunity of hearing to both the parties. By such an exercise, in my opinion, no prejudice is going to be caused to any of the parties. Non-applicant no.2 can raise his objections raising all the grounds to the application filed by the applicant-N.I.T. including a ground, on which Mr. Parihar was insisting upon that non-applicant no.2 cannot be permitted to avoid the proceedings, being the proceedings are under Section 27 of the Act. All these grounds can certainly go into by the Forum and the Forum can pass appropriate orders.

Mr. Parihar submits that if the application is allowed by the Forum, it will lead to a situation that the applicant no.2, who is facing the proceedings in a nature of criminal proceedings and is duty bound person before the Forum, is successful in avoiding the proceedings before the forum. This submission of Mr. Parihar, in my opinion, is presuming as if the Forum without considering the submissions of the parties is going to allow the application filed by the N.I.T., and as if this Court is expecting that the Forum is determined to allow the application filed by the N.I.T. Such a presumption cannot be accepted. The Forum will have to give an opportunity to apply its mind to the merits of application and to the counter pleas

raised by the parties and on giving an equal opportunity of hearing to the parties arrive at a conclusion. Needless to state that even if any order is passed by the Forum, the Act provides the other remedy for the aggrieved party. Thus, in my opinion, this application can conveniently be disposed of at the stage of admission by directing the Forum, before whom the application is filed by non-applicant no.2 under Section 27 of the Act and a counter application for seeking dismissal is presented by the applicant-N.I.T., to decide the same by giving equal opportunity to the parties with a time bound schedule of this Court, so that the apprehension of non-applicant no.2 that much time has been lapsed and he is waiting for a long period for compliance of the order of the Forum, can be taken care of.

Though Mr. Parihar has placed reliance on the judgment of the Apex Court reported in 2015(2) SCALE 410 in the matter of Kamlesh Aggarwal vs. Narain Singh Dabbas and another, he then fairly submitted that the issue in the said matter was considered by the Apex Court on the backdrop of exercising its power under Article 142 of the Constitution of India and as such the judgment may not be of much help to non-applicant no.2.

Thus, in that view of the matter, the Forum is directed to decide the application filed by applicant no.1 - N.I.T.

on 05/03/2015 within a period of two weeks by giving equal opportunity of hearing to the parties

With these directions, the present application is disposed of

JUDGE

**sdw*