

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

THE HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

W.P.No.23218 of 2017

Date: 21.06.2018

Between:

M.Narayanamma, W/o.M.Appala Naidu,
Aged about 47 years, Occ: Housewife,
R/o.BC Colony, Jogirajupeta,
Alugolu, Vizianagaram,
Vizianagaram district.

... Petitioner

And

District Consumer Disputes Redressal Forum,
rep. by its Presiding Officer,
Vizianagaram, Vizianagaram district
and five others

... Respondents



Counsel for the Petitioner :

Mr.G.Sai Narayana Rao
for Vindhya, G.P.

Counsel for the Respondents: G.P. for Civil Supplies for R1,R3 to R6
Ms.G.Shanti for Smt.M.Bhaskara
Lakshmi, Senior Counsel for R2.

The Court made the following:

Order: (Per the Hon'ble Sri Justice C.V.Nagarjuna Reddy)

This writ petition is filed for issue of certiorari to set aside order dated 01.10.2016 in C.C.No.15 of 2016 on the file of the District Consumer Disputes Redressal Forum, Vizianagaram (for short 'the Forum').

2. By the impugned order, the Forum has not only directed respondents No.3 to 6 i.e. the revenue functionaries of Vizianagaram district, to cause survey of land in Survey Nos.18/16, 18/18, 2/01, 40/13 and to fix the boundaries, but also further directed the said respondents not to effect change in the revenue records contrary to the contents of Ex.A1 - pattadar passbook and Ex.A.2 – title deed, till the dispute in between the complainant and the petitioner is finally adjudicated by a competent civil court.

3. At the hearing, the learned counsel for the petitioner submitted that the impugned order suffers from several illegalities, such as (1) entertaining of the consumer dispute against government agencies in the absence of consumer-service provider relationship (2) interference in a case where second appeal is pending between the petitioner and respondent No.2-complainant and (3) adjudicating the consumer dispute behind the back of the petitioner, though the Forum had the knowledge of the pendency of the litigation between

the parties as evident from its referring the petitioner's name in the concluding part of the impugned order.

4. The learned counsel representing respondent No.2, sought to support the impugned order.

5. As regards the first submission of the learned counsel for the petitioner as to whether by receiving a specific sum as survey fees, respondents No.3 to 6 fall within the definition of 'service' and thereby making the dispute fall within the definition of 'consumer dispute' under Section 2 (1) (e) of the Consumer Protection Act, 1986 (for short 'the Act'), is a debatable issue, which in our opinion need not be adjudicated in the present case, as the writ petition could be disposed of on another aspect. We therefore, leave this issue for adjudication in an appropriate case.

6. Admittedly, the suit filed by respondent No.2 for declaration of title and permanent injunction, was decreed in his favour and the 1st appellate authority has set aside the said decree in the appeal filed by the petitioner. It is also not in dispute that the second appeal filed by respondent No.2 is pending before this court. When a civil dispute before the competent forum is pending between the parties, it is not permissible for respondent No.2 to avail a parallel remedy by approaching the Forum, on the purported ground of deficiency of service in respect of an aspect i.e. survey of the land, which forms integral part of the pending civil litigation. By getting the survey

conducted and boundaries fixed behind the back of the petitioner, respondent No.2 evidently seeks to collect evidence for being used in the pending second appeal. When respondent No.2 has disclosed the fact of pendency of civil litigation between him and the petitioner, respondent No.1 ought to have stayed its hands off, relegating respondent No.2 to this court in which his second appeal is pending, for seeking the reliefs as claimed before it. Even if for any reason, respondent No.1 felt that respondent No.2 is entitled to the relief, it ought not to have adjudicated the dispute on merits, without ensuring that the petitioner is impleaded as a party. Further more, the impugned order to the extent it pertains to a direction to the official respondents not to effect change in the revenue records contrary to the contents of Ex.A1 and A2, till the dispute between the petitioner and respondent No.2 is finally adjudicated in a competent civil court, is far too in excess of its jurisdiction as, being a creature of the Act, it cannot exercise jurisdiction which is otherwise not vested in it by the Act. No provision of the Act is brought to our notice by the learned counsel for respondent No.2, whereby respondent No.1 is vested with the jurisdiction to issue the aforementioned directions.

7. In the light of the above discussion, we are of the opinion that the order of the Forum is not sustainable and the same is accordingly quashed. The writ petition is allowed. This order however, would not

preclude respondent No.2 from seeking appropriate relief in the pending second appeal between him and the petitioner.

8. As a sequel, I.A.No.1 of 2017 (W.P.M.P.No.28627 of 2017) stands disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad,J)

Date: 21st June, 2018

msb



