

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

AND

**THE HON'BLE SRI JUSTICE GUDISEVA SHYAM
PRASAD**

W.P.No.31427 of 2014

Date: 14.06.2018

Between:

SPVL Constructions Private Limited
a Company incorporated under Companies Act, 1956
having its registered office at 1-1-336/39,
Sri Sai Kartikeya Apartments, 4th floor,
Viveknagar, Chikkadpally, Hyderabad
rep. by its Managing Director
Sri Sivarama Prasad ... Petitioner

And

The District Consumer Disputes
Redressal Forum-II,
rep. by its Presiding Officer,
Chandra Vihar Complex,
MJ Road, Hyderabad
and two others. ... Respondents

Counsel for the Petitioner : Mr.Srikanth Hari Haran

Counsel for the Respondents: G.P. for Civil Supplies (TS) for R1
None appeared for R2 and R3.

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 for quashing order dated 22.08.2014 in C.C.No.760 of 2013 on the file of respondent No.1 – Forum. In spite of service of notice on respondent No.2, who is the contesting respondent, he has not entered appearance. On 08.06.2018, when the case was listed, the case has been adjourned to today, as there was no representation for the respondents. Even today, no one represented the respondents, including respondent No.2, who was the complainant before the respondent No.1, in whose favour the impugned order has been passed.

2. We have heard the learned counsel for the petitioner and perused the record.

3. A transaction of sale and purchase of a plot between the petitioner and respondent No.2 has taken place, in pursuance of which, a sum of Rs.3 lakhs was stated to have been paid by respondent No.2 to the petitioner towards the value of the plot. Respondent No.2 has approached the Forum by filing Consumer Case No.760 of 2013 for the following reliefs:

1. To provide remedies for all the inconvenience caused to the complainant.
2. To cancel the booking and refund the amount of Rs.3 lakhs with interest.
3. To pay a sum of Rs.1000/- towards cost of the petition.

4. It is the pleaded case of the petitioner that notices were not served on him and, therefore, he could not participate in the proceedings before respondent No.1. Upon considering the case of respondent No.2, respondent No.1 has disposed of the case by granting the following reliefs:

1. To refund a sum of Rs.3 lakhs to respondent No.2 along with interest @ 9% p.a. from the date of payment i.e. 25.07.2013 till the date of realization.
2. To pay a sum of Rs.2000/- towards costs.

Feeling aggrieved by this order, the present writ petition is filed.

5. Ordinarily, this court seldom entertains the writ petition filed, bye-passing alternative remedy of appeal, which in fact, is available to the petitioner. However, the petitioner has raised the issue of lack of jurisdiction of respondent No.1 to entertain the complaint and grant the relief as it did. In support of this plea, the petitioner has relied upon the judgment in GANESHLAL VS. SHYAM (Civil Appeal No.331 of 2007 dated 26.09.2013) of the Apex Court, wherein an identical issue fell for consideration of the Supreme Court. Upon considering the definition of 'complaint' under Section 2 (1) (c) of the Consumer Protection Act, 1986 (for short 'the Act') and Sections 2 (1) (g) and 11 of the Act, the Supreme Court has held as under:

“It is submitted that failure to hand over possession of the plot of land simpliciter cannot come within the jurisdiction of the District Consumer Forum, State Commission or National Commission. We quite see merit in this submission of Mr.Lambat, particularly having seen the definition of 'deficiency' as quoted above. We may, however, note that when it comes to 'housing

construction', the same has been specifically covered under the definition of 'service' by an amendment inserted by Act 50 of 1993 with effect from 18th June, 1993. That being the position, as far as the housing construction by sale of flats by builders or societies is concerned, that would be on a different footing. On the other hand, where a sale of plot of land simpliciter is concerned, and if there is any complaint, the same would not be covered under the said Act".

6. In the light of the legal position as reflected from the above referred judgment of the Supreme Court which remained uncontraverted, we are of the opinion that respondent No.1 has no jurisdiction to entertain the complaint filed by respondent No.2 and grant the impugned relief. Accordingly, the impugned order is quashed.

7. The writ petition is, accordingly allowed, however, with liberty to respondent No.2 to avail appropriate remedies available to him under law.

8. As a sequel to dismissal of the writ petition I.A.No.1 of 2014 (W.P.M.P.No.39289 of 2014) stands disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

(Gudiseva Shyam Prasad, J)

Date: 14th June, 2018

msb

