

**In the High Court at Calcutta
Civil Revisional Jurisdiction
Appellate Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

**CO No. 1186 of 2020
IA No: CAN 1 of 2020
(Old No: CAN 5949 of 2020)**

**Smt. Chandrani Sarkar
Vs.
Sudipa Chowdhury and others**

For the petitioner : Mr. Partha Pratim Roy,
Mr. Dyutiman Banerjee

For the
opposite party No.1 : Mr. Arijit Chakrabarti,
Mr. S.S. Dhar,
Mr. Nilotpall Chowdhury

Hearing concluded on : 25.06.2021

Judgment on : 02.07.2021

Sabyasachi Bhattacharyya, J:-

1. The present application under Article 227 of the Constitution of India arises against an order dated June 30, 2020 passed by the State Consumer Disputes Redressal Commission on contest, whereby both the orders impugned therein were set aside. Two separate appeals had been preferred before the Commission. First Appeal No. A/885/2019 was filed against an award passed by the District Forum on February 28, 2014, whereby the opposite party no.1 obtained an award against the opposite party no.2 for possession, in the alternative refund of the consideration

money allegedly paid by the opposite party no.1 to the opposite party no.2 in respect of the disputed property. The other appeal bearing no.A/3/2020 was preferred against an order bearing Order No.50 dated September 26, 2019, whereby police assistance was directed for the opposite party no.1 to get possession of the property-in-dispute.

- 2.** The short background of the case is as follows:
- 3.** The opposite party no.1 filed a complaint before the consumer forum, giving rise to CC No.10 of 2014, alleging that, despite having entered into an agreement for sale of the disputed property in favour of the opposite party no.1, the opposite party no.2 had refused to honour the same.
- 4.** Ultimately, the opposite party no.2 did not contest the proceeding and on February 28, 2014 an award was passed directing delivery of possession in favour of the opposite party no.1, in the alternative for refund of the consideration money.
- 5.** On June 16, 2016, the present petitioner purchased the disputed property from the original owner and an alleged constituted attorney of the owner by a registered deed.
- 6.** In the meantime, EA 251 of 2014 was initiated by opposite party no.1 against the opposite party no.2 for execution of the award dated February 28, 2014. On December 19, 2016, the executing forum directed an Advocate Commissioner to execute a registered deed of conveyance in favour of the opposite party no.1 on behalf of the opposite party no.2.

Further, the police was directed to hand over possession of the disputed flat to opposite party no.1

7. Pursuant to the aforesaid direction of the executing forum, an Advocate Commissioner executed and registered a sale deed in favour of the opposite party no.1 on July 4, 2017, that is, subsequent to the purchase deed of the present petitioner.
8. The matter dragged on, since the present petitioner was in possession of the flat and such possession could not be handed over to the opposite party no.1. A police report filed in the execution proceeding was considered vide order no. 33 dated May 31, 2018 by the executing forum, which reflected that the husband of the present petitioner, namely, Dipankar Sarkar, was residing in the said flat. The opposite party no.3 had handed over possession to the petitioner's husband by a registered deed, which was also recorded in the order dated May 31, 2018. By the said order, the opposite party no.2 was directed to refund the consideration money taken from the opposite party no.1 and a warrant of arrest was issued against the opposite party no.2 to implement execution.
9. On August 30, 2019, opposite party no.1 made an application in EA 251 of 2014 to recover possession from the petitioner's husband in respect of the suit flat, where the petitioner also resides.
10. Vide Order No.50 dated September 26, 2019, on the ground that the warrant of arrest against the opposite party no.2 could not be executed,

the executing forum directed the police to assist the opposite party no.1 in getting possession of the disputed flat.

- 11.** Pursuant thereto, on October 18, 2019, the opposite party no.1 put her own padlock over the petitioner's padlock on the entrance of the flat with police help.
- 12.** It is contended by the petitioner that the executing forum acted beyond jurisdiction in directing delivery of possession in favour of the opposite party no.1, since its charter was limited to executing the award dated February 28, 2014 which specifically stipulated that in the alternative of possession being handed over to opposite party no.1, the said opposite party would be entitled to refund of money from opposite party no.2. However, subsequently the opposite party no.1 sought possession of the flat as well. Even in the order dated May 31, 2018, the executing forum had directed the opposite party no.2 to refund money to the opposite party no.1 as well as issue a warrant of arrest against the opposite party no.2, on the specific finding that the petitioner's husband was residing in the flat.
- 13.** It is argued that subsequently the executing forum deviated from such position and directed delivery of possession with police help, despite being fully aware of the fact that the petitioner and her family was in possession of the said flat on the basis of a valid sale deed.
- 14.** It is further contended that since the Appellate Commission, vide order dated June 30, 2020, had set aside both the orders impugned therein in

the two appeals, bearing Nos. A/885/ 2019 and A/3/2020 respectively, the award itself, passed on February 28, 2014, as well as the police help order passed on September 26, 2019 for taking possession from the petitioner's husband were nullified. However, the State Commission stopped one step short of granting complete relief to the petitioner by not granting restoration of possession to the petitioner/petitioner's husband, despite such possession having been obtained solely on the basis of the award and the police help order impugned in the appeals, both of which were set aside.

- 15.** Learned counsel for the petitioner further argues that the direction to execute and register a deed of conveyance in favour of the opposite party no.1 was not only beyond the authority of the executing forum, since the original award did not contain any such provision, such deed was registered on July 4, 2017, that is, subsequent to the petitioner's purchase deed dated June 16, 2016. Hence, in any event, the petitioner's prior title in the property by virtue of the previous registered sale deed prevails over the subsequent sale deed in favour of the opposite party no.1.
- 16.** Learned counsel appearing for the opposite party no.1 contends that the opposite party no.1 is not to blame for the plight of the petitioner. It is contended that a valid order was passed by the executing forum granting police help for taking possession on December 19, 2016 itself.

- 17.** That apart, when the possession was delivered in favour of the opposite party no.1 pursuant to the order of the executing forum, the appeal before the State Commission against the said order had not seen the light of day and, hence, the order was still in force. Thus, the possession granted in favour of the opposite party no.1 was legal and valid.
- 18.** It is further contended that in the year 2020, a title suit bearing Title Suit No.346 of 2020 has been preferred by opposite party no. 1 in respect of the suit flat before a civil court. In the said suit, an order of injunction was passed at the instance of the present opposite party no.1, restraining the petitioner from disturbing the peaceful possession of opposite party no.1. Hence, in view of the injunction order as well as since the matter is sub judice before a competent civil court having jurisdiction to decide title, no order of restoration of possession could have been granted by the State Commission. The authority of the State Commission cannot override the decision of the civil court, where the question of title is still sub judice.
- 19.** It appears from the contentions of the parties as well as the materials on record that, by the order impugned in the present application under Article 227 of the Constitution, both the order dated September 26, 2019, inter alia directing police assistance for the opposite party no.1 to take possession of the disputed flat, as well as the parent award passed by the District Forum on February 28, 2014, which was the very basis of the execution case itself, had been set aside.

- 20.** In such view of the matter, as on the date of passing of the order impugned herein, the award, which was the basis of the execution application, as well as the specific direction of police help for the opposite party no.1 to take possession from the petitioner, were non-existent. In such circumstances, the State Commission failed to exercise jurisdiction vested in it by law in refusing to direct restoration of possession to the present petitioner, since such a direction was a necessary corollary of the order setting aside the award and the police help order.
- 21.** That apart, it is well-settled that all courts and tribunals are competent enough to remedy any wrong committed by themselves. In such scenario, there was no bar or legal impediment for the State Commission to direct restoration of possession to the petitioner to undo the wrong committed against the petitioner by virtue of the District Forum orders impugned before the State Commission.
- 22.** The second aspect of the matter which catches the eye is that, even giving a go-bye to all other grounds, the sale deed executed in favour of the opposite party no.1 was subsequent to that executed and registered in favour of the petitioner. Hence, the petitioner's title *ex facie* prevails over the alleged title of the opposite party no.1, by virtue of prior transfer.
- 23.** Thirdly, the direction of the executing forum to execute a registered deed of conveyance in favour of the opposite party no.1 was patently *de hors* its jurisdiction, being beyond the scope of the parent award dated February 28, 2014, which merely directed possession, in the alternative

refund of money. Since possession could not be delivered physically as well as in view of the prior title acquired by the petitioner, the remedy of refund was, in any event, available to the opposite party no.1 against the opposite party no.2. Such questions, in fact, became academic when the State Commission, by the impugned order, set aside both the award and the subsequent police help order, which negated the award as well as the police help direction, which were the very bases of the possession of opposite party no.1.

- 24.** That apart, it is the petitioner who was residing with her family in the flat pursuant to a valid deed of purchase, which was registered on June 16, 2016. Such possession could not be snatched away at the drop of a hat and justified on the strength the now-non-existent award of the District Forum and/or an order of the executing forum, the execution application itself having become infructuous.
- 25.** Thus, the very basis of the possession of the opposite party no.1 was rendered invalid and illegal by the order dated June 30, 2020 passed by the State Commission.
- 26.** Hence, it does not lie in the mouth of the opposite party no.1 that a dispute, raised by the opposite party no.1 herself before a civil court, would *ipso facto* be an impediment to delivery of possession back to the petitioner by the consumer forum itself.
- 27.** As far as the injunction order passed by the civil court is concerned, it is an admitted position that the same restrained the petitioner from

disturbing the “peaceful possession” of the opposite party no.1. Such order, in any event, pre-supposes the valid and legal possession of the opposite party no.1. In the present case, the possession remained with the petitioner, since the petitioner’s padlock was never removed from the disputed flat entrance, but, in addition, a padlock of the opposite party no.1 was affixed thereon with the help of police. Therefore, the opposite party no.1 has never taken actual physical possession of the said flat.

- 28.** Moreover, the injunction order was obtained by practising fraud upon the civil court and vitiated due to suppression of material facts, since the possession of the opposite party no.1 after June 30, 2020 could not be said to be legal, more so in the face of the prior title deed of the petitioner.
- 29.** As far as the cited judgments are concerned, *South Eastern Coalfields Ltd. vs. State of M.P. and others*, reported at AIR 2003 SC 4482, leaves the discretionary powers under Section 144 of the Code of Civil Procedure in the hands of the court to undo the wrong, if any, committed due to the order which has been set aside. Although specific conferment of such power is not specifically vested in the State Commission, such power is implicit in any judicial/quasi-judicial tribunal and/or court of law.
- 30.** *Binayak Swain vs. Ramesh Chandra Panigrahi and others*, reported at AIR 1966 SC 948, also endorses the view that such obligation arises automatically on the reversal or modification of a decree and necessarily

carries with it the right to restitution of all that has been done under the erroneous decree.

31. In *Karnataka Housing Board vs. K.A. Nagamani*, reported at AIR 2019 SC 2290, it was held that the National Commission had no jurisdiction to entertain a revisional application against an order passed in execution proceedings by the State Commission.
32. *Malay Kumar Ganguly vs. Sukumar Mukherjee and others*, reported at AIR 2010 SC 1162, specifically observed that the Commission is to comply with the principles of natural justice, save and except the ones laid down under sub-section (4) of Section 13 of the 1986 Act.
33. Apart from the aforesaid decisions, it has been repeatedly held by the Supreme Court as well as this court that although, under normal circumstances, the High Court does not interfere in judicial review under Articles 226 and 227 of the Constitution of India where an equally efficacious alternative remedy is available to the aggrieved party, such interference is justified in cases like the one at hand, which is a burning example of gross miscarriage of justice and abuse of the process of court. This court cannot shut its eyes to a patent illegality in refusing restoration of possession to the petitioner, in view of the manner in which the petitioner was ousted from the disputed flat, of which the petitioner has been a lawful owner at all relevant times. Mere availability of an alternative remedy is not an absolute bar, as also held by the Supreme Court time and again. The present case is a perfect instance

where the superintending jurisdiction under Article 227 of the Constitution of India ought to be exercised to rectify the wrong committed by the State Commission in refusing restoration of possession to the petitioner, which ought to have automatically followed the reversal of the parent award and subsequent police help order.

34. Accordingly, CO No.1186 of 2020 is allowed, thereby modifying the impugned order dated June 30, 2020 passed by the State Consumer Disputes Redressal Commission, West Bengal in A/3/2020 along with A/885 of 2019 to the extent that the opposite party no.1 is directed to restore possession to the petitioner in respect of the flat-in-dispute at the earliest, positively within thirty days from the date of this order. In default of compliance of such direction, the petitioner shall be at liberty to approach the local police station for assistance in breaking open the padlock of the opposite party no.1 and in restoring back possession to the petitioner in respect of the said flat. If such an approach is made, the local police will render all possible assistance to the petitioner in that regard.

35. IA No: CAN 1 of 2020 (Old No: CAN 5949 of 2020) is disposed of accordingly.

36. There will be no order as to costs.

- 37.** Urgent certified copies of this order shall be supplied to the parties applying for the same, upon due compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)