IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.09.2021

PRONOUNCED ON : 28.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

C.R.P. (PD) No.324 of 2019

K.Gopalan (died)

1.G.Jayalakshmi
2.S.Devi Sri
3.K.G.Ramaprasad
4.K.G.Murali Krishna
5.K.G.Lakshmi Narayana
6.K.G.Venkata Prasad
7.M.Sasikala
8.K.G.Srividhya Devi ... Petitioners / Complainants

versus

M/s.Ramaniyam Real Estates (P) Ltd.,
Rep. by its Managing Director,
V.Jaganathari
New No:21, Old No:11
(presently No:17/35),
2nd Main Road, Gandhi Nagar,
Adayar, Chennai - 600 020. ... Respondent / Opposite party

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PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India, to set aside the order dated 10.10.2018 made in C.C.No.41 of 2008 on the file of the Tamil Nadu State Consumer Disputes Redressal Commission, Chennai and thereby direct the Tamil Nadu State Consumer Disputes Redressal Commission, Chennai to adjudicate the above mentioned complaint on merits.

For Petitioners : Mr.P.V.Sanjeev

For Respondent : M/s.P.Vasantha Kumar
Visweswaran

ORDER

This Civil Revision Petition is filed against the order dated 10.10.2018 passed by the Tamil Nadu State Consumer Disputes Redressal Commission, Chennai in C.C.No.41 of 2008.

2. The learned counsel for the petitioners submitted that, the petitioners filed C.C.No.41 of 2008 before the Tamil Nadu State Consumer Disputes Redressal Commission, Chennai, against the respondent. The allegation against the respondent is that, the respondent is M/s.Ramaniyam Real Estates (P) Limited, is engaged in real estate. The petitioners are the absolute owners of the property situated at Plot No.3273,

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T.S.No.107, Block No.1C of Naduvankkarai Village, Arignar Anna Nagar, measuring one ground and 1125 sq.ft. This property is situated in the residential locality and its value is more than Rs.2.5 crores per ground. The petitioners wanted to develop this property into a residential complex.

3. The respondent approached the petitioners in September 2004 and persuaded the petitioners to enter into a Joint Development Agreement. Accordingly, Joint Development Agreement was entered into between both the parties on 08.09.2004. As per this Agreement, the respondent agreed to construct the residential building on the above said property and agreed to allot 2600 sq.ft. of built up area by way of two flats one in ground floor and another in second floor with two covered car parks [which amounts to 50% of the development buildings].

4. The respondent promised to construct the building within 9 months. The respondent also agreed to construct the building in accordance with the specification detailed in Schedule - 'D" of the said Joint Development Agreement. The petitioners executed the Power of Attorney in

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favour of the respondent's nominee C.P.Kuppusamy. As per Clause 19 of the Agreement, the respondent is warranted to ensure good construction and the respondent will be responsible in remedying any / all defects at their cost in civil construction for a period of 12 months and electrical, sewerage, plumbing connections / painting etc. relating to the construction for a period of 12 months from the date of completion and handing over the possession.

5. The petitioners came to know that the respondent illegally and fraudulently handed over the construction to a builder, namely, "Red Rose". The Red Rose builders had not constructed the complex as per the specification in the Joint Development Agreement. The respondent had sold more than their proportionate area to third parties in the first floor. Red Rose builders was not qualified or had experience and had reputation in the field of construction and the construction was also not in accordance with the specification of the Joint Development Agreement. Therefore, this complaint is filed for (a) directing the respondent to pay a sum of Rs.1,00,00,000/- as compensation towards the damages for the negligent act committed by the respondent; (b) directing the respondent to rectify all the

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deficient work and damages done by them on the petitioners property as reported in the Engineer's Report dated 02.05.2007 and install their name on the building constructed as per the Joint Development Agreement dated 08.09.2004.

6. It is further submitted by the learned counsel for the petitioners that, this complaint was filed in July 2007. After 11 years, an order was passed on 10.10.2018 by the Tamil Nadu State Consumer Disputes Redressal Commission, Chennai, stating that the complainants claim exceed the pecuniary jurisdiction of the Commission and therefore, the complaint was returned with a direction to the petitioners to present before the National Consumer Disputes Redressal Commission. Against the said order, this Civil Revision Petition is preferred.

7. The learned counsel for the petitioners submitted that, the petitioners claimed the compensation of only Rs.1,00,00,000/-, which is well within the pecuniary jurisdiction of the Tamil Nadu State Consumer Disputes Redressal Commission, Chennai. However, the State Commission,

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observed that, the value of the claim for availing the service of the builder comes to Rs.1,83,50,000/-. Adding the compensation of Rs.1 crore claim, the value of the complaint for the purpose of determining pecuniary jurisdiction comes to Rs.2,83,50,000/-. On this reasoning, it was held that, the State Commission, has no pecuniary jurisdiction to entertain the complaint and directed the petitioners to present the complaint before the National Consumer Disputes Redressal Commission. This order according to the petitioners, is against law. The State Commission, is refusing to exercise the jurisdiction vested in it. The observation that the value of the services and compensation have to be considered for fixing the pecuniary jurisdiction, is not correct. When the Courts, subordinate Court or Tribunal, refuse to exercise jurisdiction, this Court in its power under Article 227 of the Constitution of India can interfere and pass appropriate orders. In this regard, the learned counsel for the petitioners relied on the following judgments;

(a) THE MANAGING DIRECTOR NADIPPISAI PULAVAR K.R.RAMASWAMY SUGAR MILLS vs. FAREED BAWA reported in 1997 (1) CTC 186

(b) AVINASH KANKANI vs. NEW KENILWORTH HOTEL PVT. LTD. reported in 2017 (3) ICC 618

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(c) STATE OF GUJARAT vs. VAKHATSINGHJI VAJESINGHJI VAGHELA reported in 1968 AIR (SC) 1481

(d) ACHUTANANDA BAIDYA vs. PRAFULLYA KUMAR GAYEN reported in 1997 AIR (SC) 2077

(e) SURYA DEV RAI vs. RAM CHANDER RAI reported in (2003) 6 SCC 675

(f) AJAY SINGH vs. STATE OF CHATTISGARH reported in (2017) 3 SCC 330

(g) FAQIR CHAND GULATI vs. UPPAL AGENCIES PRIVATE LIMITED reported in (2008) 10 SCC 345

(h) BUNGA DANIEL BABU vs. SRI VASUDEVA CONSTRUCTIONS reported in (2016) 8 SCC 429 "

8. In response, the learned counsel for the respondent submitted that, while considering the pecuniary jurisdiction of the Tamil Nadu State Consumer Disputes Redressal Commission, the value of the goods or services and compensation, if any claimed, should be considered. When value of the goods or services and compensation are considered and if the value put together exceeds 20 lakhs, but does not exceed Rs.1 crore, then only a complaint can be maintained before the Tamil Nadu State Consumer Disputes Redressal Commission.

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9. In the case on hand, the petitioners had claimed Rs.1 crore as compensation, they failed to value the services of the builder. Tamil Nadu State Consumer Disputes Redressal Commission, found as per the averments made in the complaint that the value of the house site is Rs.2.5 crores per ground. If this value is adopted for 3525 sq.ft., the value of the site comes to Rs.3.67 crores. 50% of this amount comes to Rs.1,83,50,000/-. This amount is the consideration paid by the complainants to the respondent for availing the services, namely, developing the house site into a residential complex and allotting the super built up area of 2600 sq.ft. along with two covered car parks (50% of the developed building). Admittedly, the petitioners had not valued of the services availed by the builder. If the value of the services is added with the compensation claimed (Rs.1,83,50,000/- + Rs.1,00,00,000/-), the claim exceeds Rs.1,00,00,000/- and thus, exceeds the pecuniary jurisdiction of the State Commission. Therefore, he prayed for confirming the order of State Consumer Disputes Redressal Commission and dismissal of this petition.

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10. With regard to the powers of the High Court under Article 227 of the Constitution of India, to exercise the superintendence over the subordinate courts and Tribunal, the learned counsel for the petitioners relied on the judgment of the Hon'ble Supreme Court in ***ACHUTANANDA BAIDYA vs. PRAFULLYA KUMAR GAYEN*** reported in ***1997 AIR (SC) 2077***, wherein it was held thus;

> *"10. The power of superintendence of the High Court under Article 227 of the Constitution is not confined to administrative superintendence only but such power includes within its sweep the power of judicial review. The power and duty of the High Court under Article 227 is essentially to ensure that the Courts and Tribunals, inferior to High Court, have done what they were required to do. Law is well settled by various decisions of this Court that the High Court can interfere under Article 227 of the Constitution in cases of erroneous assumption or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving a finding which is perverse or based on no material, or resulting in manifest injustice. As regards finding of fact of the inferior Court, the High Court should not quash the judgment of the subordinate Court merely on the ground that its finding of fact was erroneous but it will be open to the High Court in exercise of the powers under Article 227 to interfere with the finding of fact if the subordinate Court came to the conclusion without any evidence or upon manifest misreading of the*

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evidence thereby indulging in improper exercise of jurisdiction or if its conclusions are perverse."

11. In the case of ***SURYA DEV RAI vs. RAM CHANDER RAI*** reported in ***(2003) 6 SCC 675***, the Hon'ble Supreme Court held thus;

"(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate courts within the bounds of their jurisdiction. When a subordinate court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise it supervisory jurisdiction."

12. He further relied on the judgment of the Hon'ble Supreme Court in ***AJAY SINGH vs. STATE OF CHATTISGARH*** reported in ***(2017) 3 SCC 330*** wherein it has observed thus;

"24. In Achutananda Baidya V. Prafullya Kumar Gayen ***(1997) 5 SCC 76*** *a two Judge Bench while dealing with the power of superintendence of the High Court under Article 227 has opined that the power of superintendence of the High Court under Article 227 of the Constitution is not confined to administrative superintendence only but such power includes within its sweep the power of judicial review. The*

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power and duty of the High Court under Article 227 is essentially to ensure that the courts and tribunals, inferior to the High Court, have done what they were required to do. Law is well settled by various decisions of this Court that the High Court can interfere under Article 227 of the Constitution in cases of erroneous assumption or acting beyond its jurisdiction, refusal to exercise jurisdiction, error of law apparent on record as distinguished from a mere mistake of law, arbitrary or capricious exercise of authority or discretion, a patent error in procedure, arriving at a finding which is perverse or based on no material, or resulting in manifest injustice."

13. He also relied on the judgment of the Hon'ble Supreme Court in ***FAQIR CHAND GULATI vs. UPPAL AGENCIES PRIVATE LIMITED*** reported in ***(2008) 10 SCC 345*** and ***BUNGA DANIEL BABU V. SRI VASUDEVA CONSTRUCTIONS*** reported in ***(2016) 8 SCC 429*** for the proposition that the dispute between the owner of the land and developer can be raised under the Consumer Protection Act. It is observed in ***(2016) 8 SCC 429*** that;

"20. There is no dispute or doubt that a complaint under the Act will be maintainable in the following circumstances:

(a) Where the owner\holder of a land who has entrusted the construction of a house to a contractor, has a complaint of deficiency of service with reference to the constitution.

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(b) Where the purchaser or intending purchaser of an apartment/flat/house has a complaint against the builder/developer with reference to construction or delivery or amenities."

14. With regard to the maintainability of the Revision Petition under Article 227 of the Constitution of India, against the order of State Commission under Section 17(a)(ii), the learned counsel for the petitioners relied on the judgment of this Court in ***THE MANAGING DIRECTOR NADIPPISAI PULAVAR K.R.RAMASWAMY SUGAR MILLS vs. FAREED BAWA*** reported in ***1997 (1) CTC 186***, wherein it is observed thus;

"State Consumers' Disputes Redressal Commission directing to pay general damages after recording finding that complainant has not produced acceptable evidence with regard to loss suffered - No appeal is provided to National Commission against order of State Commission passed under Section 17(a)(ii). 2. Therefore, Revision petition under Article 227 is maintainable against order of State Consumers' Disputes Redressal Commission made under Section 17(a)(ii)."

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15. The aforesaid judgments discussed the jurisdiction of consumer forum to entertain the dispute between a land owner and the developer as a consumer dispute and the powers of High Court to exercise

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its jurisdiction under Article 227 of the Constitution of India. There is no dispute with regard to the proposition laid down in these judgments. We are concerned about the factors to be considered for fixing the pecuniary jurisdiction.

16. Learned counsel for the petitioners relied on the judgment of the Calcutta High Court in ***AVINASH KANKANI vs. NEW KENILWORTH HOTEL PVT. LTD.*** reported in ***2017 (3) ICC 618***, as a precedent for fixing the value of pecuniary jurisdiction. It is observed in this judgment that, the value of the goods or services and the compensation claimed should be considered for the purpose of pecuniary jurisdiction. Relevant portion is extracted hereunder;

> *"18. For the purpose of entertaining a complaint either under Section 11 or 17, or 21 of the Act it depends on the amount of claim by the complaint(s) where, of course, all opportunities would remain open to counter and controvert such claim by the O.P in the complaint case, subject to adjudication, depending upon "the value of the goods or services and the compensation claimed therein. So the words "and the compensation" are conjunctive to the word "goods" or "services". By no stretch of imagination compensation would be determined "in view of the value of hiring services as wrongly observed by the State Commission captioning the claim of amount of compensation as inflated without*

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adjudication. Therefore, disjuncting the words "the compensation" from two other components i.e. either due to deficiency in goods or deficiency in services as alleged in the complaint and only relying on the amount of hiring services (i.e. the bill amount of Rs.5565/-) the State Commission committed another perversity in not taking note of the claim of compensation, as set out in the complaint case allegedly on account of causing insult, mental agony and torture by the alleged wrongful acts, alleged to have been committed by the O.P. To accept or not, or, to accept as a whole, or, to accept in part all would be dependant subject to the result of adjudication. The State Commission wrongly made itself out of its jurisdiction assuming the favourable result not exceeding the amount of Rs.5,565/- only."

17. It was a case where the bill amount was Rs.5,565/- coupled with compensation amount, a sum of Rs.49,00,000/- was claimed. The State Commission held that the compensation claimed is inflated and the petition should have been filed before Dispute Forum. The order of the State Commission was set aside and it was directed to adjudicate the matter. We can understate from this judgment, the value of goods or services and the compensation put together should be taken into consideration for determining the pecuniary jurisdiction.

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18. The Tamil Nadu State Consumer Disputes Redressal Commission, referred the case law in ***AMBRISH KUMAR SHUKLA vs. FERROUS INFRASTRUTURE PVT. LTD.*** reported in ***2017 (1) CPJ (NC)*** for the proposition that, the value of the goods or services and compensation should be taken into consideration for fixing the pecuniary jurisdiction. The reading of this judgment shows that "*for the purpose of determining the pecuniary jurisdiction of a Consumer Forum, the consideration paid or agreed to be paid by the consumer at the time of purchasing the goods or hiring or availing of the services, as the case may be, along with the compensation, is to be considered*." Therefore, taking the value of the services into account along with the compensation amount claimed and then coming to the conclusion that the value of the complaint comes to Rs.2,83,50,000/- and therefore, the Tamil Nadu State Consumer Disputes Redressal Commission, cannot be faulted.

19. One more submission made by the learned counsel for the respondent is that, against the order of the Tamil Nadu State Consumer Disputes Redressal Commission, the petitioners have to file an appeal

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before the National Consumer Disputes Redressal Commission under Section 19 of the Consumer Protection Act, 1986, within a period of 30 days from the date of receipt of a copy of this order. When there is an alternative and effective remedy provided under Section 19 of the Consumer Protection Act, filing petition under Article 221 of the Constitution of India, is not correct. This Court finds that this submission of the learned counsel for the respondent, has force in it. If the petitioners are aggrieved by the order of the Tamil Nadu State Consumer Disputes Redressal Commission, they have to prefer an appeal under Section 19 of the Consumer Protection Act before the National Consumer Disputes Redressal Commission. Invoking Article 227 of the Constitution of India is like bypassing the default mechanism provided in the Consumer Protection Act and that cannot be entertained.

20. One of the main contentions of the learned counsel for the petitioners is that, though this petition was filed in 2007, only on 10.10.2018, nearly after 11 years, an order was passed returning the petition for presenting before the National Consumer Disputes Redressal

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Commission Commission. It is an abuse of process of law. Of course 11 year period taken for returning the complaint, cannot be appreciated. We do not know the reason for taking this long time for passing the order. Merely because there is a delay in disposal of the complaint, this Court cannot direct the Tamil Nadu State Consumer Disputes Redressal Commission State, to dispose the matter when it has no pecuniary jurisdiction.

21. In such view of the matter, this Court finds no reason to interfere with the order of the Tamil Nadu State Consumer Disputes Redressal Commission, Chennai, in C.C.No.41 of 2008 dated 10.10.2018 and the order is hereby confirmed.

22. The petitioner is directed to present the complaint before the National Consumer Disputes Redressal Commission, Chennai, as directed. The period taken for prosecuting this Civil Revision Petition, is condoned for presenting the complaint before the National Consumer Disputes Redressal Commission.

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23. Resultantly, this Civil Revision Petition is dismissed. However, there is no order as to costs.

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Speaking order / Non-speaking order
Index : Yes

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To

1.The Tamil Nadu State Consumer Disputes Redressal Commission,
Chennai.

2.The National Consumer Disputes Redressal Commission,
Chennai.

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G.CHANDRASEKHARAN, J.

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Pre-Delivery Order made in C.R.P. (PD) No.324 of 2019

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