2024:PHHC:095969

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH.

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CWP-16427-2024 (O&M).
Date of Decision: 18.07.2024.

HARYANA URBAN DEVELOPMENT AUTHORITY (NOW HARYANA SHEHRI VIKAS PRADHIKARAN) AND ANOTHER

... Petitioners

Versus

SAVITRI DEVI AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

PRESENT Mr. Priyavrat Parashar, Advocate,
for the petitioner.

VINOD S. BHARDWAJ, J. (ORAL)

Prayer in the present petition is for issuance of an appropriate writ for quashing of the impugned order dated 27.05.2024 (Annexure P-11) passed by the National Consumer Disputes Redressal Commission, New Delhi in Revision Petition No. 1439 of 2024, whereby the appeal against the order dated 10.11.2022 (Annexure P-9) in Appeal No. 483 of 2018 passed by the State Consumer Disputes Redressal Commission Haryana, Panchkula was dismissed on the ground of limitation citing a delay of 413 days.

2. Briefly summarized facts of the case are that respondent No.1-Savitri Devi was an allottee of plot No.32-P, Sector-6, Panipat vide Allotment Letter No.692 dated 24.10.2001. She had deposited Rs.7,26,339/- (Rs.662488/- deposited up to 01.05.2003 + Rs. 63851/- deposited under strong protest vide cheque No. 317949 dated 18.04.2016) with the petitioners against a demand of Rs.6,31,488/-. Respondent No.1 thus deposited an excess amount of Rs.31,000/- as interest and Rs.63851/- as principal balance amount. Thereafter, respondent No.1 visited the office of the petitioners and wrote letters to know the remaining balance that was due but the petitioners failed to disclose the same. After a considerable delay, petitioners vide letter No.2176 dated 30.03.2016 issued show cause notice to respondent No.1, calling upon her to deposit Rs.2,46,969/-and threatened to impose a penalty of Rs.24697/-. Respondent No.1 further alleged that the petitioners levied an amount of Rs.47,213/- as extension charges, Rs.40,002/- as extension surcharge and Rs.2,610/- as service tax whereas as per the policy of petitioner-HUDA (now HSVP) dated 29.01.2007, no extension charges could have been levied in case of a widow allottee. It was further alleged that the petitioners levied a delay interest of Rs.84,137/- and an installment of Rs.63,581/- on respondent No.1 despite her willingness to deposit the dues during the year 2002-2003 and did not intimate the same to

her. Apart from this, the petitioners had also levied possession interest of Rs.24871/- even when actual physical possession of the plot was not handed over to respondent No.1. Requests by her to remedy the error failed to resolve the dispute.

3. Respondent No.1-Savitri Devi thus filed Complaint No.146 of 2016 before the respondent No.4-District Consumer Disputes Redressal Commission, Panipat (hereinafter referred to as 'DCDRC'). DCDRC vide its order dated 09.11.2017 allowed the complaint of respondent No.1 while making the following observations:-

> *"Accordingly, we direct the OP no.1 to withdraw that show cause notice with regard to plot no. 32-P, Sector 6, HUDA, Panipat vide allotment letter No.692 dated 24.01.2001. OPs are further directed to withdraw the extension fee, extension fee surcharge, service tax in view of the Haryana Government policy Ex.C-16. OPs are also directed to withdraw interest levied on delayed installments, possession interest and extension charges for the given reason that when full and final payment has already been deposited in excess within two years from the date of original allotment of the said plot, then also question arise why any due is pending with regard to the installments also, when no possession of the plot has been offered till yet i.e after a period of sixteen years, then also question of demand of possession interest does not arise when there is no clause with regard to that in the allotment letter of the said plot. OPs are directed to count the period of construction of fifteen years after two years from the date on which physical possession of the said plot is ;made or handed*

over to the complainant by OPNo.1. By not giving physical possession/offer of possession to the complainant despite a long period of 16 years, amounts to grave negligency and deficiency on account of services rendered by OPs to the complainant wherein she (complainant) was deprived of her right to construct the house on the plot allotted to her and for this negligence and deficiency we, therefore, award Rs.50,000/- as compensation to the complainant for the mental pain, agony and harassment she being a widow suffered at the hands of OPs despite making full payment of the plot in the year 2003 allotted to her by the OPs in the year 2001. The complainant is also entitled to Rs.11000/- as litigation charges to be paid by the OPs jointly and severally. OPs are also directed to pay interest on the excess amount @9% on the amount so excess deposited by the complainant with the OPs. The said amount as per complainant is Rs.49745/- . The interest @9% is to be calculated from the date i.e. 8.1.2003, as per Ex.C1 upto date. As the OPs have deliberately failed to deliver the possession of the plot to the complainant till date which in our view also shows the act and conduct of the OPs towards the complainant, so the OPs are also directed to pay interest @9% on the amount so deposited by the complainant in respect of the plot allotted to her by the OPs. The said interest is to be calculated after a period of two years from the date of total deposit i.e. as the total payment has been deposited by the complainant on 8.1.2003, the OPs shall pay interest on the said amount from 8.1.2005 till offer of possession of the plot by the OPs to the complainant. OPs are also directed to give physical possession of the plot to the complainant immediately.

> *So as a result of our aforementioned discussion, we accept the present complaint mentioned above in para no.8 of this order and direct the OPs to make the compliance of this order within a period of thirty days from the date of receipt of the copy of this order. The parties concerned be communicated of the order accordingly and the file be consigned to the record room after due compliance."*

4. Aggrieved thereof, the petitioners preferred Appeal No. 483 of 2018 before respondent No.3-State Consumer Disputes Redressal Commission Haryana, Panchkula (hereinafter referred to as 'SCDRC') which, vide order dated 10.11.2022, disposed off the appeal by modifying the order passed by DCDRC, Panipat to the extent that HUDA could not have charged possession interest, service tax (extension fee), extension amount as well as extension surcharge since actual physical possession had not been given to respondent No.1 and that HUDA could have only charged installment amount, delay interest and enhancement cost of the plot in question while upholding the rest of the order passed by DCDRC, Panipat.

5. The petitioners then preferred Revision Petition No. 1439 of 2024 before respondent No.2-National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as 'NCDRC') and Ld. NCDRC vide order dated 27.05.2024 dismissed the petition citing a delay of 413 days on the ground of non-compliance of Regulation 14 of the CP (Consumer Commission Procedure) Regulations, 2020 which *inter alia* stipulate that: -

"*Subject to the provisions of Sections 40, 41, 50, 51, 60, 67 and 69, `the period of limitation in the following matters shall be as follows: -*

i. *Revision Petition shall be filed within ninety days from the date of receipt of certified copy of the order…*"

6. Hence, the present petition.

7. Learned Counsel for the petitioners relies upon the judgment of Hon'ble Supreme Court in the matter of ***HUDA vs Sunita*** (2005) 2 SCC 479 to buttress the argument that the National Commission, State Commission as well as the District Commission had erred in not adjudicating the question of whether they had jurisdiction in the matter or not and had erroneously dismissed the petition without considering the fact that they had no jurisdiction to go into the correctness of the demand of "composition fees" and "extension fees". The relevant paragraphs are extracted as under:-

> *"**3.** After perusing the order of the National Commission and hearing learned counsel for the parties we find that the National Commission has held that the statutory obligations of HUDA and plot-holder under the provisions of the HUDA Act and the Regulations are not acts or omissions constituting "deficiency in service" within the meaning of the Consumer Protection Act.*
>
> ***4.** On the above finding, the National Commission had no jurisdiction to go into the correctness of the demand of "composition fee" and "extension fee" made by HUDA from the respondent complainant.*

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> *5. On the National Commission's own reasoning and the interpretation of provisions of law with which we agree, this appeal deserves to be allowed. In our opinion, the National Commission having held that it has no jurisdiction to go into the correctness of the demands made by HUDA ought to have set aside the orders of the District Forum and the State Commission setting aside the demand of "composition fee" and "extension fee." We, therefore, allow this appeal upholding the order of the National Commission. We set aside the order of the District Forum and the State Commission to the extent of quashing the demand of "composition fee" of Rs 53,808 and "extension fee" of Rs 6300. "*

8. Learned Counsel for the petitioner also relies upon the judgment of NCDRC in Review Petition No. 3473 of 2011 titled as '**HUDA vs Bal Kishan**', wherein NCDRC vide order dated 02.05.2012 held that the policy decision of HUDA cannot be the subject matter of challenge before a consumer court and that all the consumer fora went beyond their jurisdiction to go into the correctness of the demand of "composition fees" and "extension fees".

9. No other argument has been raised.

10. I have gone through the contentions of learned counsel for the respective parties as well as the documents appended along with the present petition.

11. As far as the reliance placed by learned Counsel for the petitioners on the judgment of Hon'ble Supreme Court in the matter of

Sunita *(supra)* is concerned, the same is misconceived since the correctness of ***Sunita*** *(supra)* was already a subject matter of consideration in ***Punjab Urban Planning & Development Authority v. Vidya Chetal*** (2019) 9 SCC 83, wherein a 3-judge bench of the Hon'ble Supreme Court overruled the law laid down in ***Sunita*** *(supra).* The relevant paragraphs from ***Vidya Chetal*** *(supra)* are extracted as under:-

> *"**5.** Heard the learned counsel appearing on behalf of the petitioner and the learned Amicus Curiae in this case. The precise question raised before us is whether the law laid down by this Court in Sunita [HUDA v. Sunita, (2005) 2 SCC 479] is valid. We may note that the validity of interpretation furthered in Sunita [HUDA v. Sunita, (2005) 2 SCC 479] hinges on the interpretation of Sections 2(1)(d), 2(1)(e), 2(1)(f), 2(1)(g) and 2(1)(o) of the Act.*
>
> ***6.** At the outset, we must remind ourselves that answer to majority of legal questions before courts essentially lie in the process of interpretation. [Justice Felix Frankfurter, "Some Reflections on Reading of Statutes", Columbia Law Review, Vol. 47, Issue 4, pp. 527-46.] This Court in Commr. of Customs v. Dilip Kumar [Commr. of Customs v. Dilip Kumar, (2018) 9 SCC 40] , had emphasised that the purpose of interpretation is to find the legislative intent of an Act. It is established by umpteen number of cases in India and abroad that beneficial or remedial legislation needs to be given "fair and liberal interpretation" (refer Om Prakash v. Reliance General Insurance [Om Prakash v. Reliance General Insurance, (2017) 9 SCC 724 : (2017) 4 SCC (Civ) 759]). In this regard we may note that, the liberal construction, extends the letter to include*

matters within the spirit or purpose. [Sutherland, Statutes and Statutory Construction, §5505 (Callaghan, 1943).]

7. *Having observed the law on beneficial interpretation, we need to observe the statutory provisions concerned of the Act:*

*"**2. (1)(g)** "**deficiency**" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service."*

Thus, meaning of "deficiency" is explained as any fault, imperfection, shortcoming or inadequacy in quality, nature and manner of performance of any service or supply of goods, in terms of standards set by the parties themselves through contract or otherwise, or imposed by the law in force. The basis for application of the consumer laws hinges on the relationship between the service provider and consumer. The usage of "otherwise" within the provision subsumes other modes of standard setting alternative instruments other than contracts such as laws, bye-laws, rules and customary practices, etc.

8. *"Service" is defined under Section 2(1)(o) of the Act, which reads as under:*

*"**2. (1) (o)** "**service**" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering*

of any service free of charge or under a contract of personal service;"

This definition is not exhaustive, rather the legislature has left the task to expound the provision on a case-to-case basis to the judiciary. The purpose of leaving this provision open ended, without providing an exhaustive list indicates the requirement for a liberal interpretation. Broadly speaking, it is inclusive of all those services performed for a consideration, except gratuitous services and contract of personal services. Moreover, the aforesaid provision reflects the legislative intent of providing impetus to "consumerism". It may be noted that such a phenomenon has had a benevolent effect on the government undertakings, wherein a new dynamism of innovation, accountability and transparency are imbibed.

10. *Sovereign functions like judicial decision-making, imposition of tax, policing, etc., strictly understood, qualify for exemption from the Act, but the welfare activities through economic adventures undertaken by the Government or statutory bodies are covered under the jurisdiction of the consumer forums. Even in departments discharging sovereign functions, if there are subunits/wings which are providing services/supply goods for a consideration and they are severable, then they can be considered to come within the ambit of the Act. (Refer to Standard Chartered Bank Ltd. v. B.N. Raman [Standard Chartered Bank Ltd. v. B.N. Raman, (2006) 5 SCC 727] .)*

11. *Having observed the provisions and the interpretation of pertinent provisions, we need to refer to LDA case [LDA v. M.K. Gupta, (1994) 1 SCC 243] , wherein this Court was concerned with the question as to the amenability of statutory* *authorities like Lucknow Development Authority, for development of plots, to the Consumer Protection Act, 1986.*

12. *This Court in LDA case [LDA v. M.K. Gupta, (1994) 1 SCC 243] elaborated the meaning of "consumer", as occurring under Section 2(1)(b), in the following manner : (SCC pp. 253-54, para 3)*

"3. … The word "consumer" is a comprehensive expression. It extends from a person who buys any commodity to consume either as eatable or otherwise from a shop, business house, corporation, store, fair price shop to use of private or public services.

***

It is in two parts. The first deals with goods and the other with services. Both parts first declare the meaning of goods and services by use of wide expressions. Their ambit is further enlarged by use of inclusive clause. For instance, it is not only purchaser of goods or hirer of services but even those who use the goods or who are beneficiaries of services with approval of the person who purchased the goods or who hired services are included in it."

(emphasis supplied)

13. *Further, this Court elaborated on the meaning of the "service" in the following manner: (LDA case [LDA v. M.K. Gupta, (1994) 1 SCC 243], SCC pp. 254-55, para 4)*

"4. What is the meaning of the word "service"? Does it extend to deficiency in the building of a house or flat? Can a complaint be filed under the Act against the statutory authority or a builder or contractor for any deficiency in respect of such property.

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It is in three parts. The main part is followed by inclusive clause and ends by exclusionary clause. The main clause itself is very wide. It applies to any service made available to potential users. The words "any" and "potential" are significant. Both are of wide amplitude. The word "any" in dictionary means "one or some or all". In Black's Law Dictionary it is explained thus, 'word "any" has a diversity of meaning and may be employed to indicate "all" or "every" as well as "some" or "one" and its meaning in a given statute depends upon the context and the subject-matter of the statute'. The use of the word "any" in the context it has been used in clause (o) indicates that it has been used in wider sense extending from one to all. … The legislative intention is thus clear to protect a consumer against services rendered even by statutory bodies. The test, therefore, is not if a person against whom complaint is made is a statutory body but whether the nature of the duty and function performed by it is service or even facility."

(emphasis supplied)

***14.** Thereafter, this Court answered the relevant question in the following manner : (SCC pp. 255-56, 258 & 260, paras 5, 6 & 8)*

> *"5. This takes us to the larger issue if the public authorities under different enactments are amenable to jurisdiction under the Act. It was vehemently argued that the local authorities or government bodies develop land and construct houses in discharge of their statutory function, therefore, they could not be subjected to the provisions of the Act. … Any attempt, therefore, to exclude services offered by statutory or official bodies to the common man would be against the provisions of the*

Act and the spirit behind it. … A government or semi-government body or a local authority is as much amenable to the Act as any other private body rendering similar service. Truly speaking it would be a service to the society if such bodies instead of claiming exclusion subject themselves to the Act and let their acts and omissions be scrutinised as public accountability is necessary for healthy growth of society.

6. What remains to be examined is if housing construction or building activity carried on by a private or statutory body was service within the meaning of clause (o) of Section 2 of the Act as it stood prior to inclusion of the expression "housing construction" in the definition of "service" by Ordinance No. 24 of 1993. … So any service except when it is free of charge or under a constraint of personal service is included in it. Since housing activity is a service it was covered in the clause as it stood before 1993.

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8. … Under our Constitution sovereignty vests in the people. Every limb of the constitutional machinery is obliged to be people oriented. No functionary in exercise of statutory power can claim immunity, except to the extent protected by the statute itself. Public authorities acting in violation of constitutional or statutory provisions oppressively are accountable for their behaviour before authorities created under the statute like the commission or the courts entrusted with responsibility of maintaining the rule of law. … Therefore, when the Commission has been vested with

> *the jurisdiction to award value of goods or services and compensation it has to be construed widely enabling the Commission to determine compensation for any loss or damage suffered by a consumer which in law is otherwise included in wide meaning of compensation."*
>
> *(emphasis supplied)*

15. *Coming back to Sunita case [HUDA v. Sunita, (2005) 2 SCC 479] , this Court held that NCDRC had no jurisdiction to adjudicate the legality behind the demand of composition or extension fee by a developmental authority. This Court observed that the statutory obligations of a developmental authority and the plot-holder under the authority's statutory framework cannot be construed as acts or omissions resulting in a "deficiency in service". In view of the law laid down by us, the interpretation provided by Sunita case [HUDA v. Sunita, (2005) 2 SCC 479] cannot be sustained as the service provided by the petitioner herein squarely comes under the ambit of "service".*

22. *We may also refer to GDA [GDA v. Balbir Singh, (2004) 5 SCC 65] wherein this Court, relying upon LDA case [LDA v. M.K. Gupta, (1994) 1 SCC 243] , held that the power of the consumer forum extends to redressing any injustice rendered upon a consumer as well as over any mala fide, capricious or any oppressive act done by a statutory body. The relevant para of the judgment reads as under : (GDA case [GDA v. Balbir Singh, (2004) 5 SCC 65] , SCC pp. 79-80, para 6)*

"6. … Thus, the law is that the Consumer Protection Act has a wide reach and the Commission has jurisdiction even in cases of service rendered by statutory and public authorities. Such authorities become liable to compensate for misfeasance in

> *public office i.e. an act which is oppressive or capricious or arbitrary or negligent provided loss or injury is suffered by a citizen. … Where there has been capricious or arbitrary or negligent exercise or non-exercise of power by an officer of the authority, the Commission/Forum has a statutory obligation to award compensation. If the Commission/Forum is satisfied that a complainant is entitled to compensation for loss or injury or for harassment or mental agony or oppression, then after recording a finding it must direct the authority to pay compensation and then also direct recovery from those found responsible for such unpardonable behaviour."*
>
> *(emphasis supplied)*
>
> ***23.** Therefore, in line with the law laid down by us, we hold that the determination of the dispute concerning the validity of the imposition of a statutory due arising out of a "deficiency in service", can be undertaken by the consumer fora as per the provisions of the Act. The decision of this Court in Sunita [HUDA v. Sunita, (2005) 2 SCC 479], wherein it was held that NCDRC has no jurisdiction to adjudicate the legitimacy of the aforementioned statutory dues, was rendered without considering any of the previous judgments of this Court and the objects of the Act. Consequently, the law laid down in the aforesaid case does not hold good before the eye of the law, and is thereby overruled.*

12. According to paras no. 12 and 13 of the above said judgment of Hon'ble Supreme Court in ***Vidya Chetal*** *(supra),* not only the purchaser of goods or hirer of services but even those who use the goods or who are

beneficiaries of services with approval of the person who purchased the goods or who hired services are included in it. Moreover, the legislative intention is to protect a consumer against services rendered even by statutory bodies. The test, therefore, is not if a person against whom complaint is made is a statutory body but whether the nature of the duty and function performed by it is service or even facility. Hence, the argument of learned Counsel for the petitioner that policy decisions of HUDA cannot be a subject matter of challenge before the Consumer courts and that consumer fora had no jurisdiction to go into the correctness of the demand of "composition fees" and "extension fees," is ex-facie fallacious and goes against the spirit of Consumer Protection Act, 1986 as well as the law laid down by Hon'ble Supreme Court of India in its various judgments.

13 Further, it was not in dispute that the property in question had been allotted in favour of the respondent-allottee on 24.10.2001 and that she had been repeatedly submitting correspondence asking for the payable dues but the petitioner failed to respond to any of the communications and failed to offer possession on completion of the development works and the basic amenities.

14. In the response filed by the petitioner, it is averred that the demand was raised vide Memo No.2176 dated 30.03.2016, but there is no reference to the applicable policy and as to whether she was entitled to any benefits under the said policy or not. The SCDRC specifically observed as under:-

"9. It is admitted case of both the parties that the plot in question was allotted to the complainant. It is also not disputed that the complainant received show cause notice demanding Rs.2,62,684/- and Rs.24,697/- from the OPs. It is not disputed that the plot was allotted to the complainant in the year 2001. Perusal of the file shows that the complainant did not deposit the installment of Rs.63851/-, delay interest of Rs.84137/- possession interest of Rs.24871/- and service tax of Rs.2610/- alongwith extension amount and extension surcharge. Although as per HUDA policy, no extension fee shall be levied on residential plots owned exclusively by widows, however, the complainant was covered under policy w.e.f. 01.01.2006. The HUDA authority shall charge extension fee only for a period before 2006 only. Further, objection has also been raised on the so called offer of possession issued by the appellant. Perusal of the same brings out that the last line of the allotment letter is handwritten, which is as under:-

"The possession can be obtained on any working day."

The above said line did not declare that possession letter was issued in favour of the complainant. The possession should have been given within three years from the date of allotment.

10. In view of the facts and circumstances of the case, the Impugned order dated 09.11.2017 is modified to the extent that the HUDA cannot charge possession interest, service tax (extension fee) extension amount as well as extension surcharge as the physical possession has not been given till date to her. The HUDA Authority- appellant can charge only installment amount, Delay interest as well as enhancement cost *of the plot in question. The learned District Commission rightly directed to withdraw the Show Cause Notice with regard to plot in question. The complainant is also entitled to interest on the deposited amount as per the HUDA policy. Rest of the impugned order is maintained. With this modification, the appeal stands disposed of.*

15. Learned counsel for the petitioner contends that the HSVP did not take any immediate action on the said award and instead filed review petition only after a delay of 413 days. The reasons assigned by the petitioner leading to delay are that various meetings took place about the case and eventually it was decided to approach the National Commission. A counsel was engaged to file the petition on 18.10.2023 and the record was provided on 18.11.2023. The missing documents were obtained and provided to the counsel on 28.11.2023. Hence, the petitioner Department claims to have been considering the matter as to whether an appeal is to be filed or not for a period of nearly 11 months and took more than a month to approach the counsel thereafter. Such an explanation cannot be considered as a satisfactory explanation. In any case, the merits of the claim of the petitioner-HSVP have also been considered by the NCDRC as well as the SCDRC and that in a revisional jurisdiction or in the exercise of power of judicial review, this Court does not sit as a Court of Appeal and can only examine the illegality or impropriety in the order. The counsel for the petitioner has failed to point out any such illegality in the orders of NCDRC and SCDRC and that the entire argument of petitioner was based upon the

judgment in the matter of **Sunita (supra)**. The argument itself is fallacious since the ratio laid down in the matter of **Sunita (supra)** has already been considered by the Hon'ble Supreme Court in the matter of **Vidya Chetal (supra)** and the law laid down in **Sunita (supra)** has been ruled as not laying down good law and was thus overruled. The attempt on behalf of the petitioner in advancing an argument by placing reliance on an overruled judgment is deprecated. It is expected that before citing a judgment in furtherance of the case, the primary check as to whether the said judgment still holds the field or not is undertaken by the petitioner as well as the counsel.

16. I find that it is not a fit case for this Court to exercise its powers under Article 226 of the Constitution of India since the petition lacks merit and deserves to be dismissed in light of the observations made above.

17. The present petition is accordingly dismissed in *limine*.

July 18, 2024 **(VINOD S. BHARDWAJ**
raj arora **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No