

A M/S. NARNE CONSTRUCTION P. LTD. ETC. ETC.
v.
UNION OF INDIA AND ORS. ETC.
(Civil Appeal Nos. 4432-4450 of 2012)

MAY 10, 2012

B [T.S. THAKUR AND GYAN SUDHA MISRA, JJ.]

C *Consumer Protection Act, 1986: s.2(1)(o) –Activities of appellant-company involving offer of plots for sale to its customers with assurance of development of infrastructure/ amenities, lay-out approvals etc. – Whether activities of the appellant-company was a ‘service’ within the meaning of clause (o) of s.2(1) of the Act and amenable to the jurisdiction of the fora established under the Act – Held: Having regard to the nature of the transaction between the appellant-company and its customers-purchasers which involved much more than a simple transfer of a piece of immovable property, it is clear that the same constituted ‘service’ within the meaning of the Act – It was not a case where the appellant-company was selling the given property with all advantages and/or disadvantages on “as is where is” basis – It was a case where a clear cut assurance was made to the purchasers as to the nature and the extent of development that would be carried out by the appellant-company as a part of the package under which sale of fully developed plots with assured facilities was to be made in favour of the purchasers for valuable consideration – Thus, the appellant-company had indeed undertaken to provide a service – Any deficiency or defect in such service would make it accountable before the competent consumer forum at the instance of purchasers.*

G The question which arose for consideration in the instant appeals was whether the High Court was justified in holding that the appellant-company was a service provider within the meaning of the Consumer Protection

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Act and thus amenable to the jurisdiction of the fora under the said Act. A

Dismissing the appeals, the Court

HELD: The High Court was perfectly justified in holding that the activities of the appellant-company involving offer of plots for sale to its customers/members with assurance of development of infrastructure/amenities, lay-out approvals etc. was a 'service' within the meaning of clause (o) of Section 2(1) of the Consumer Protection Act and would, therefore, be amenable to the jurisdiction of the fora established under the statute. Having regard to the nature of the transaction between the appellant-company and its customers which involved much more than a simple transfer of a piece of immovable property, it is clear that the same constituted 'service' within the meaning of the Act. It was not a case where the appellant-company was selling the given property with all advantages and/or disadvantages on "as is where is" basis. It was a case where a clear cut assurance was made to the purchasers as to the nature and the extent of development that would be carried out by the appellant-company as a part of the package under which sale of fully developed plots with assured facilities was to be made in favour of the purchasers for valuable consideration. Thus, the appellant-company had indeed undertaken to provide a service. Any deficiency or defect in such service would make it accountable before the competent consumer forum at the instance of consumers like the respondents. [Para 7] [581-E-H; 582-A-C] B
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Lucknow Development Authority v. M.K. Gupta (1994) 1 SCC 243; 1993 (3) Suppl. SCR 615; Bangalore Development Authority v. Syndicate Bank (2007) 6 SCC 711; 2007 (7) SCR 47 – relied on. G

U.T. Chandigarh Administration and Anr. v. Amarjeet H

A *Singh and Ors.* (2009) 4 SCC 660: 2009 (4) SCR 541 – distinguished.

Case Law Reference:

B 1993 (3) Suppl. SCR 615 relied on Para 1, 3
2009 (4) SCR 541 distinguished Para 7
2007 (7) SCR 47 relied on Para 8

C CRIMINAL APPELLATE JURISDICTION : Civil Appeal No. 4432-4450 of 2012.

D From the Judgment & Order dated 13.08.2010 of the High Court of Judicature Andhra Pradesh at Hyderabad in Writ Petition Nos. 28246 of 2009, 302, 3947, 5091 of 2010, 26520 of 2009, 360, 364, 405, 429, 304, 305, 339, 356, 357, 5003, 5088, 5121, 5131 and 5903 of 2010.

T. Anamika for the Appellants.

E Mohan Parasaran, ASG, Indra Sawhney, D.L. Chidanand, Sushma Suri, C. Mukund, Pankaj Jain, P.V. Sarvana Raja, Bijoy Kumar Jain, Ram Swarup Sharma, AP Roi, K. Maruthi Rao, K. Radha, Anjani Aiyagari, Priya Hingorani, Dr. Aman Hingorani, Hingorani & Associates, D. Mahesh Babu, Savita Devi, G.V.R. Choudhary, K. Shivraj Choudhuri, A. Chandra Sekhar, B. Ramana Murthy for the Respondents.

F The Judgment of the Court was delivered by

G **T.S. THAKUR, J.** 1. The short question that falls for determination in these appeals by special leave is whether the appellant-company was, in the facts and circumstances of the case, offering any 'service' to the respondents within the meaning of the Consumer Protection Act, 1986 so as to make it amenable to the jurisdiction of the fora established under the said Act. Relying upon the decision of this Court in *Lucknow Development Authority v. M.K. Gupta* (1994) 1 SCC 243, the
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High Court has answered the question in the affirmative and held that the respondents were 'consumers' and the appellant was a 'service' provider within the meaning of the Act aforementioned, hence amenable to the jurisdiction of the fora under the said Act.

2. The undisputed facts in the context of which the question arises have been summed up by the High Court in the following words:

"Indisputable facts are that the opposite party promoted ventures for development of lands into house-sites and invited the intending purchasers through paper publication and brochures to join as members. The complainants responded and joined as members on payment of fees. It is also indisputable that the sale and allotment of plots were subject to terms and conditions extracted supra. The sale is not open to any general buyer but restricted only to the persons who have joined as members on payment of the stipulated fee. The members should abide by the terms and conditions set out by the seller. The sale is not on "as it is where it is" basis. The terms and conditions stipulated for sale of only developed plots and the registration of the plots would be made after the sanction of lay out by the concerned authorities. The sale price was not for the virgin land but included the development of sites and provision of infrastructure. The opposite party has undertaken the obligations to develop the plots and obtain permissions/ approvals of the lay outs. The opposite party itself pleaded in its counters that the plots were developed by spending huge amounts and subsequent to the amounts paid by the complainants also plots were developed. It pleaded that huge amounts were spent towards protection of the plots from the grabbers and developed roads, open drains, sewerage lines, streetlights etc. It is therefore, manifest that the transaction between the parties is not a sale simplicitor but coupled with obligations for development and provision

A of infrastructure. Inevitably, there is an element of service in the discharge of the said obligations.”

B 3. In *Lucknow Development Authority's* case (*supra*) this Court while dealing with the meaning of the expressions ‘consumer’ and ‘service’ under the Consumer Protection Act observed that the provisions of the Act must be liberally interpreted in favour of the consumers as the enactment in question was a beneficial piece of legislation. While examining the meaning of the term ‘consumer’ this Court observed:

C “..... 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. In Oxford Dictionary a consumer is defined as, “a purchaser of goods or services”. In Black’s Law Dictionary it is explained to mean, “one who consumes. Individuals who purchase, use, maintain, and dispose of products and services. A member of that broad class of people who are affected by pricing policies, financing practices, quality of goods and services, credit reporting, debt collection, and other trade practices for which state and federal consumer protection laws are enacted.” The Act opts for no less wider definition.”

F 4. Similarly, this Court while examining the true purport of the word ‘service’ appearing in the legislation observed:

G “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’ dictionaryly 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’

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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 other word 'potential' is again very wide. In Oxford Dictionary it is defined as 'capable of coming into being, possibility'. In Black's Law Dictionary it is defined as "existing in possibility but not in act. Naturally and probably expected to come into existence at some future time, though not now existing; for example, the future product of grain or trees already planted, or the successive future instalments or payments on a contract or engagement already made." In other words service which is not only extended to actual users but those who are capable of using it are covered in the definition. The clause is thus very wide and extends to any or all actual or potential users. But the legislature did not stop there. It expanded the meaning of the word further in modern sense by extending it to even such facilities as are available to a consumer in connection with banking, financing etc. Each of these are wide-ranging activities in day to day life. They are discharged both by statutory and private bodies. In absence of any indication, express or implied there is no reason to hold that authorities created by the statute are beyond purview of the Act. When banks advance loan or accept deposit or provide facility of locker they undoubtedly render service. A State Bank or nationalised bank renders as much service as private bank. No distinction can be drawn in private and public transport or insurance companies. Even the supply of electricity or gas which throughout the country is being made, mainly, by statutory authorities is included in it. 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

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A nature of the duty and function performed by it is service or even facility.”

(emphasis supplied)

B 5. In the context of the housing construction and building activities carried on by a private or statutory body and whether such activity tantamounts to service within the meaning of clause (o) of Section 2(1) of the Act, the Court observed:

C “As pointed out earlier the entire purpose of widening the definition is to include in it not only day to day buying and selling activity undertaken by a common man but even such activities which are otherwise not commercial in nature yet they partake of a character in which some benefit is conferred on the consumer. Construction of a house or flat is for the benefit of person for whom it is constructed. He may do it himself or hire services of a builder or contractor. The latter being for consideration is service as defined in the Act. Similarly when a statutory authority develops land or allots a site or constructs a house for the benefit of common man it is as much service as by a builder or contractor. The one is contractual service and other statutory service. If the service is defective or it is not what was represented then it would be unfair trade practice as defined in the Act. Any defect in construction activity would be denial of comfort and service to a consumer. When possession of property is not delivered within stipulated period the delay so caused is denial of service. Such disputes or claims are not in respect of Immovable property as argued but deficiency in rendering of service of particular standard, quality or grade. Such deficiencies or omissions are defined in Sub-clause (ii) of Clause (r) of Section 2 as unfair trade practice. If a builder of a house uses substandard material in construction of a building or makes false or misleading representation about the condition of the house then it is denial of the facility or benefit of which a consumer is entitled to claim value under

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the Act. When the contractor or builder undertakes to erect A
a house or flat then it is inherent in it that he shall perform
his obligation as agreed to. A flat with a leaking roof, or
cracking wall or substandard floor is denial of service.
Similarly when a statutory authority undertakes to develop B
land and frame housing scheme, it, while performing
statutory duty renders service to the society in general and
individual in particular.”

(emphasis supplied)

6. This Court further held that when a person applies for C
allotment of building site or for a flat constructed by
development authority and enters into an agreement with the
developer or a contractor, the nature of the transaction is
covered by the expression ‘service’ of any description. The
housing construction or building activity carried on by a private D
or statutory body was, therefore, held to be ‘service’ within the
meaning of clause (o) of Section 2(1) of the Act as it stood
prior to the inclusion of the expression ‘housing construction’
in the definition of ‘service’ by Ordinance No.24 of 1993.

7. In the light of the above pronouncement of this Court the E
High Court was perfectly justified in holding that the activities
of the appellant-company in the present case involving offer of
plots for sale to its customers/members with an assurance of
development of infrastructure/amenities, lay-out approvals etc.
was a ‘service’ within the meaning of clause (o) of Section 2(1) F
of the Act and would, therefore, be amenable to the jurisdiction
of the fora established under the statute. Having regard to the
nature of the transaction between the appellant-company and
its customers which involved much more than a simple transfer G
of a piece of immovable property it is clear that the same
constituted ‘service’ within the meaning of the Act. It was not a
case where the appellant-company was selling the given
property with all advantages and/or disadvantages on “as is
where is” basis, as was the position in *U.T. Chandigarh*

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- A *Administration and Anr. v. Amarjeet Singh and Ors. (2009) 4 SCC 660.* It is a case where a clear cut assurance was made to the purchasers as to the nature and the extent of development that would be carried out by the appellant-company as a part of the package under which sale of fully developed plots with assured facilities was to be made in favour of the purchasers for valuable consideration. To the extent the transfer of the site with developments in the manner and to the extent indicated earlier was a part of the transaction, the appellant-company had indeed undertaken to provide a service.
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- C Any deficiency or defect in such service would make it accountable before the competent consumer forum at the instance of consumers like the respondents.

8. This Court in *Bangalore Development Authority v. Syndicate Bank (2007) 6 SCC 711*, dealt with the nature of the relief that can be claimed by consumers in the event of refusal or delay in the transfer of the title of the property in favour of the allottees/purchasers and observed:

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E “Where full payment is made and possession is delivered, but title deed is not executed without any justifiable cause, the allottee may be awarded compensation, for harassment and mental agony, in addition to appropriate direction for execution and delivery of title deed.”

F 9. Suffice it to say that the legal position on the subject is fairly well-settled by the pronouncements of this Court and do not require any reiteration. The High Court has correctly noticed the said pronouncements and applied them to the facts of the case at hand leaving no room for us to interfere with the answer given by it to the solitary question raised by the appellant-company.

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10. In the result, these appeals are hereby dismissed but in the circumstances without any order as to cost.

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Appeals dismissed.