

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3897 OF 2019
(Arising out of SLP(C) No.19926/2013)

PARVEEN SAYEEDUDIN RAZACK

APPELLANT(s)

VERSUS

GREENLAND APT. OWNERS ASS. AND ORS.

RESPONDENT(s)

WITH

CIVIL APPEAL NO.3898 OF 2019
(Arising out of SLP(C) No.20953/2013)

O R D E R

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Leave granted.

This appeal arises from a decision of the National Consumer Disputes Redressal Commission¹ dated 11 February 2013.

The grievance of the appellant is that she was neither impleaded as a party to the complaint under the Consumer Protection Act, 1986 nor to the execution proceedings which were instituted, in pursuance of the decision of the State Consumer Disputes Redressal Commission². The direction which affects the appellant is for the demolition of a pent-house which the appellant claims to have purchased on 24 December 1996 under a registered sale deed. When the appellant moved the SCDRC with an application under Section 151 of the Code of

1 NCDRC

2 SCDRC

Civil Procedure, 1908³, the application was dismissed on the ground that the main complaint having been disposed of, the application was not maintainable. The NCDRC has confirmed this order. It is under these circumstances, that this Court has been moved under Article 136 of the Constitution.

The appellant claims to have purchased a pent-house in the building known as Greenland Apartments at Ameerpet, Hyderabad, together with the terrace and a parking space in the basement from the developer on 24 December 1996 for a consideration of Rs 4.80 lakhs. The sale deed is stated to have been registered. The appellant claims that, a notice was issued to the Commissioner of the Municipal Corporation of Hyderabad under Section 208 of the Hyderabad Municipal Corporation Act 1955 in regard to the assessment of the appellant. In response, by a communication dated 2 July 2007, the Deputy Commissioner informed the appellant that her name has been recorded in the assessment register on the strength of the documents produced by her.

Complaints were filed before the SCDRC by the purchasers of residential flats in Greenland Apartments with similar allegations. They alleged that the builder and developer who had entered into agreements with the flat buyers had carried out unauthorized constructions. The grievance of the flat buyers was that though the

builder had entered into sixteen agreements, he proceeded to carry out unauthorized constructions, including of the pent-house in dispute. The complaints were allowed on 27 April 2001. Insofar as the pent-house is concerned, the following directions were issued by the SCDRC:

"The further grievance of the complaints is that the opposite parties have raised pent house almost occupying the entire terrace and also laid a lawn carting earth in about 2000 sq.ft with a height of 2 feet. This in our view is objectionable. If the pent house is without Municipal sanction it goes without saying that the same will have to be removed. Further the carting of earth of 2000 sq.ft on the terrace will in our view cause damage to the building itself. Therefore the same shall be removed by the opposite parties within a period of six weeks from today. So also if the construction of the pent house is not without sanctioned plan it shall also be removed within the said period of six weeks from today."

After the order of the SCDRC, execution proceedings, styled as penalty proceedings, were initiated by the Association representing the owners of the flats. The SCDRC, by its order dated 22 April 2006, appointed an Advocate-Commissioner. On 27 April 2006, the SCDRC permitted the Commissioner to avail of police protection for executing its order. The Commissioner, on 10 May 2006, informed the SCDRC in his report that he was unable to take steps for the demolition of the pent-house since in the meantime the brother of the appellant claimed that the property had been sold by the developer to the appellant. The appellant moved an application under Section 151 of the CPC before the SCDRC stating that she

is a Non-Resident Indian who lives in the US and that the order for the demolition of the pent-house was passed without impleading her as a party either to the consumer complaint or to the penalty proceedings. The SCDRC, by its order dated 28 August 2007, rejected the application as not being maintainable since there was no consumer dispute pending before it. Moreover, it held that even the penalty proceedings had been disposed of.

In the meantime, according to the appellant, the Greater Hyderabad Municipal Corporation has, on 26 June 2009, regularized Flat No.401 comprising of the pent-house. A copy of the order is Annexure P-22 to these proceedings. In this background, the appellant sought to challenge the order of the SCDRC in revision before the NCDRC. However, the revisional proceedings were dismissed on the ground that both the consumer dispute as well as the execution proceedings had been disposed of, as a consequence of which the application under Section 151 of the CPC was not maintainable. However, the appellant was granted liberty to seek redressal of her grievance before any other forum in accordance with law.

The above narration of facts would indicate that the appellant claims title and interest in the pent-house, Flat No.401, as it is described, on the basis of a registered sale deed.

Learned counsel appearing on behalf of the Apartment Owners' Association as well as the owners of the land

submits that the appellant is the sister of the developer. He urges that though the appellant was not impleaded as a party to the consumer complaint, the developer was a party to the proceedings.

The consumer complaints were instituted in 1993. The appellant claims to have acquired title to the pent-house on 24 December 1996. The complaints were disposed of on 27 April 2001. In this background, we are of the view that the claim of the appellant that she has title to the pent-house, in pursuance of a registered sale agreement, and that an order of regularization has been passed by the Greater Hyderabad Municipal Corporation are circumstances which ought to be borne in mind. The appellant has not been heard on the merits of her grievance either when the consumer dispute was disposed of on 27 April 2001 or, for that matter, subsequently, either in the execution proceedings or when she moved an application under Section 151 of the CPC. The validity of the sale deed or of the order of regularization cannot be determined in the proceedings before the consumer fora. In this view of the matter and without this Court expressing any final view on the merits of the claim of the appellant, we are of the considered opinion that the order passed by the SCDRC on 27 April 2001 must not prejudice the rights which the appellant claims and shall not be pressed in aid as against the appellant for the demolition of Flat No.401 in respect of which the

appellant claims a title and interest. We, however, leave it open to the Association representing the flat buyers to move proceedings before a competent forum in accordance with law if they are aggrieved by the order of regularization or by any deviation in the sanctioned plans. Nothing contained in the present order shall amount to any expression of opinion on the merits of the respective rights and contentions of the parties.

We accordingly dispose of the appeal by holding and directing that since the appellant was not impleaded as a party to the proceedings before the SCDRC which culminated in the order dated 27 April 2001, nothing contained in that order shall bind the appellant and shall be enforced against her.

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Leave granted.

The appeal stands disposed of in terms of the order passed today in Civil Appeal No.3897 OF 2019 (Arising out of SLP(C) No.19926/2013).

.....J.
(DR DHANANJAYA Y CHANDRACHUD)

.....J.
(HEMANT GUPTA)

NEW DELHI
APRIL 12, 2019

ITEM NO.35

COURT NO.11

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

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Date : 12-04-2019 These appeals were called on for hearing today.

CORAM : HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE HEMANT GUPTA

For Petitioner(s) Mr. Raja Venkatappa Naik, Adv.
Mr. M.P. Singh, Adv.
Ms. Ranjan K. Singh, Adv.
Ms. Manju Jetley, AOR
Mr. Sachin Pahwa, Adv.

Mr. Rameshwar Prasad Goyal, AOR

For Respondent(s) Mr. Sadineni Ravi Kumar, AOR

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The Appeals are disposed of in terms of the signed order.

Pending application, if any, stands disposed of.

(SANJAY KUMAR-I)
AR-CUM-PS

(SAROJ KUMARI GAUR)
COURT MASTER

(Signed order is placed on the file)