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31.07.2023
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IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

W.P.A. No. 15995 of 2023

Rajendra Singh
Vs.
The State of West Bengal & Ors.

Mr. S.R. Kundu,
Mr. S.K. Das,
Mr. R. Mukhopadhyay
...for the petitioner

Mr. Jayanta Samanta,
Mr. Ritesh Kumar Ganguli
... for the State

Mr. Tanmoy Mukherjee,
Mr. Souvik Das,
Mr. Rudranil Das
...for the respondent nos. 5 & 8

Mr. Debdoot Mukherjee,
Mr. U.K. Bhattacharyya
...for the respondent nos. 7 & 9

Learned counsel appearing for the petitioner submits that initially the petitioner had entered into an agreement for purchase of a flat in a property to be developed. Subsequently, having not got the said flat, the petitioner approached the District Consumer Forum and obtained an award of payment of damages as well as handing over of the flat.

However, the said order was modified by the State Consumer Forum to the effect that the part of the District Forum order, whereby possession was

directed to be handed over, was set aside. Being so aggrieved, the petitioner moved the National Commission. Ultimately, before the National Commission, a new plea was taken to the effect that the signatures of the landlords, appearing in the Memorandum of Understanding between the landlords and the developer dated May 11, 1999, were disputed. On such premise, the National Commission remanded the matter back to the District Forum.

The District Forum, after such remand, directed the petitioner to deposit costs for appointment of hand writing expert. The petitioner duly deposited such costs. However, subsequently, the expert's report was never filed and the matter was dismissed before the District Forum.

Learned counsel appearing for the respondent nos. 5 and 8 submits that the writ petition is not maintainable at all. It is submitted that on April 17, 2019, contrary to the impression sought to be created by the petitioner, the matter was dismissed for default due to the complainant/petitioner being absent and having taken no steps in the said proceeding.

That apart, it is submitted that the said respondents have obtained a decree from a competent civil court against the developer,

whereby the challenge of the said respondents to the purported agreement between the developer and the respondents/landlords, was allowed.

At present, the petitioner is setting up a purported agreement, which was never relied upon by the petitioner before any of the abovementioned forums, and seeking implementation of the same. It is, thus, submitted that the writ petition ought to be dismissed.

Learned counsel appearing for the respondent nos. 7 and 9 adopts the submissions of respondent nos. 5 and 8 and, in addition, points out that the present writ petition has virtually been preferred to challenge the order of the National Commission.

It is submitted that the well-settled judicial view is that even the Supreme Court is not an appellate authority against the National Commission.

Upon hearing learned counsel for the parties, it is seen that, by way of the present writ petition, the petitioner has virtually sought the implementation of a purported document/ agreement dated August 31, 2001.

However, the dismissal of the matter before the District Forum, as it appears from the copy of the order dated April 17, 2019 passed by the said Forum, was due to the absence of the petitioner. That apart, the respondent nos. 7 and 9/landlords

are armed with a decree of a competent civil court, which was never challenged and has attained finality, there is no scope of reopening the issues decided by the civil court or the National Consumer Commission.

In the event the petitioner seeks to implement a purported agreement/understanding dated August 31, 2001, the petitioner is required to obtain an appropriate decree from a competent civil court, subject to the law of limitation and in accordance with law.

However, the writ court does not have any jurisdiction to entertain the matter, even at the threshold.

Hence, W.P.A. No. 15995 of 2023 is dismissed as not maintainable, with liberty to the petitioner to approach the competent civil court with the remedy as sought in relief-(a) of the present writ petition, in accordance with law and subject to the law of limitation.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)