



IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 4388 OF 2022

1. Sau. Sulekha W/o. Veyanket Reddy,
Aged 52 years, Occupation : Service,
2. Shri Veyankat S/o. Sitaram Reddy,
Aged 55 years, Occupation : Business,

Both resident of Plot No.14, Behind
Uskelwar I.T.I., Saraswati Nagar,
Hudkeshwar Road, Nagpur-440034.

.... **PETITIONERS.**

// VERSUS //

Shri Raju Bhakarusrao Mahajan,
Aged about 61 years, Occupation :
Service, Resident of House No.248-A,
Jaganath Budhwari, Deoghar Pura,
Bajirao Line, Nagpur – 440 002.

.... **RESPONDENT.**

Shri M.D.Samel, Advocate for Petitioners.
Shri Kunal Nalamwar, Advocate for Respondent.

CORAM : ANIL S. KILOR, J.

DATE OF RESERVING THE JUDGMENT : 29/02/2024

DATE OF PRONOUNCING THE JUDGMENT: 30/05/2024

JUDGMENT :

1. Heard.

2. **RULE.** Rule made returnable forthwith. Heard finally by consent of the parties.

3. In the present writ petition a challenge is raised to the order dated 02/11/2021 passed in Consumer Complaint No.CC/20/167 passed by Additional District Consumer Disputes Redressal Commission, Nagpur directing the petitioners to refund the amount of Rs.27,13,000/- along with interest @18% per annum w.e.f. 28/09/2017 till its realisation. It is further directed to refund the amount of Rs.1,67,120/- paid towards stamp duty and registration charges for the agreement and also registration fees for the General Power of Attorney along with interest @ 9% per annum w.e.f. 28/09/2017 till its realisation. It is also directed to pay compensation to the tune of Rs.3,00,000/- towards compensation for mental and physical agony.

4. The petitioner No.1 acquired ownership over 3471 sq.ft. land as her share in the ancestral agricultural land, on 03/02/2004. The petitioners thereafter carved out plots on the said land and Plot No.7 was agreed to sell to the respondent for a consideration of Rs.19,50,000/- on as is where is basis. Accordingly, on 28/09/2017 a registered Agreement

of Sale and a General Power of Attorney were executed in favour of the respondent and also executed a Deed of Possession, delivering possession of the aforesaid Plot No.7.

5. Thereafter, the respondent filed a complaint before the District Consumer Disputes Redressal Commission for claiming money paid by the respondent back along with the compensation on the ground of failure of the petitioners to execute a sale deed. The said complaint was objected by the petitioners on the ground that it relates to the open plot and further on the ground that possession was handed over to the respondent with powers to the respondent to execute sale deed.

6. The learned Commission rejected the said objection to the maintainability of the complaint and allowed the complaint in the above referred terms. Hence, this petition.

7. I have heard the learned counsel for the respective parties.

8. The only argument made by the learned counsel for the petitioners is on the point of jurisdiction of the learned District Commission to entertain the complaint in view of the fact that the plot is an open plot.

9. The said argument that the plot in question is a simpliciter land without a promise to provide any services, was rejected by the District Commission on the ground that from the perusal of the agreement it appears that there was an agreement for development also. Accordingly, it is held that since the services were promised to be provided by the petitioners to the respondent, the complaint is tenable and accordingly it was entertained and the impugned order was passed.

10. The learned counsel for the respondent opposed the petition on the ground that by way of appeal remedy is provided under the Consumer Protection Act, 2019. It is further pointed out that the writ petition is not maintainable as the petitioner has already filed an appeal before the State Commission.

11. However, in reply, the learned counsel for the petitioners has pointed out that the said appeal was withdrawn by the petitioners. It is further pointed out that the rule of exclusion of writ jurisdiction due to availability of an alternate remedy is a rule of discretion and not one of the compulsion. It is further argued that since the point raised in the present writ petition goes to the root of the jurisdiction of the District Commission, the writ is maintainable.

12. The Hon'ble Supreme Court of India in the case of *M.P.State Agro Industries Development Corpn. Ltd...vs.. Jahan Khan*, reported in 2007(10) SCC 88, has observed thus :

“12. Before parting with the case, we may also deal with the submission of learned counsel for the appellants that a remedy by way of an appeal being available to the respondent, the High Court ought not to have entertained his petition filed under Articles 226/227 of the Constitution. There is no gainsaying that in a given case, the High Court may not entertain a writ petition under Article 226 of the Constitution on the ground of availability of an alternative remedy, but the said rule cannot be said to be of universal application. The rule of exclusion of writ jurisdiction due to availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of the availability of an alternative remedy, a writ court may still exercise its discretionary jurisdiction of judicial review, in at least three contingencies, namely, (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. In these circumstances, an alternative remedy does not operate as a bar. (See: Whirpool Corpn. Vs. Registrar of Trade Marks, Harbanslal SahniaVs. Indian Oil Corpn. Ltd., State of H.P. Vs. Gujarat Ambuja Cement Ltd. and Sanjana M. Wig Vs. Hindustan Petroleum Corpn. Ltd.).”

13. From the above referred observations it is evident that the rule of exclusion of writ jurisdiction due to availability of an alternate remedy is a rule of discretion and not one of the compulsion. In an appropriate case, in spite of availability of an alternative remedy, a writ court may still exercise its discretionary jurisdiction of judicial review, in the contingencies namely, (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles

of natural justice or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

14. In the present matter, after going through the impugned order, it is evident that the point of jurisdiction was not decided by the District Commission by taking all the relevant facts into consideration.

15. The learned District Commission in the matter at hand failed to consider the important facts, namely the petitioner No.1 while executing the registered agreement in favour of the respondent also executed General Power of Attorney on the same day i.e. on 28/09/2017 giving powers to perform all the obligations of the petitioner No.1, stated in the agreement. The learned District Commission further failed to appreciate that the effect of execution of the General Power of Attorney in favour of the respondent and handing over the possession of the plot in question by executing a Deed of Possession dated 28/09/2017.

16. In the circumstances, since the point of jurisdiction has not been decided by the District Commission by taking relevant and necessary facts into consideration, I am of the opinion that despite there is an alternate remedy, in view of the observations made by the Hon'ble

Supreme Court of India in the case of *M.P. State Agro Industries* (supra) the petitioners maintain the present writ petition.

17. Moreover, for the reasons recorded herein above that the District Commission has failed to consider the point of jurisdiction and the important facts in right perspective, I am of the opinion that this matter needs to be remanded back to the District Commission for deciding the point of jurisdiction afresh, after hearing both the parties.

18. Accordingly, I pass the following order :

- i) The Writ Petition is partly allowed.
- ii) The impugned order dated 02/11/2021, passed by the Additional District Consumer Disputes Redressal Commission, Nagpur in Consumer Complaint No. CC/20/167, is hereby quashed and set aside.
- iii) The matter is remanded back to the Additional District Consumer Disputes Redressal Commission, Nagpur for deciding the same afresh.
- iv) The parties shall appear before the Additional District Consumer Disputes Redressal Commission, Nagpur on **26/06/2024** at 11:00 a.m.

v) The Additional District Consumer Disputes Redressal Commission, Nagpur shall decide the matter on its own merits, considering the point of jurisdiction, after hearing both the parties, within **three months** from the date of appearance of the parties.

The Writ Petition is **disposed of** accordingly. No order as to costs.

(ANIL S. KILOR, J)

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