

**STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW**

APPEAL NO. 309 OF 2009

(Against the judgment/order dated 01-11-2008 and 17-01-2009
in Complaint Case No.234/2007 of the District Consumer Forum,
Ghaziabad)

Sri V K Chaturvedi

.....Appellant

Vs.

Commissioner, Municipal Corporation
and another

.....Respondents

BEFORE:

**HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT
HON'BLE MR. RAMPAL SINGH, MEMBER**

For the Appellant : Sri V K Chaturvedi in person

For the Respondent : None appears

Dated : 6.7.11

JUDGMENT

PER MR. JUSTICE BHANWAR SINGH, PRESIDENT

This appeal is directed against the judgment and order dated 01-11-2008 and 17-01-2009 whereby the complaint of the appellant was dismissed and another application for reconsideration of the matter was also rejected.

The appellant filed his complaint for a direction to the Commissioner, Municipal Corporation, Ghaziabad not to realize any taxes from him as his colony was not supervised or maintained by the Municipal Corporation. He pleaded in his complaint that the House No. 256/5 Sector-16, Vasundhara, Ghaziabad was at the relevant time not located within the territorial limits of his Municipal Corporation and thus the latter was not competent to levy water, sewer, drainage and house taxes. The District Consumer Forum rejected the appellant's complaint on the ground that it was not maintainable before the Consumer Forum.

The complainant moved an application dated 12-11-2008 praying for recall of the judgment dated 01-11-2008 on the ground that the said order was not in consonance with the judgment of this Commission

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issued on 18-07-2007 in Appeal No. 1035/SC/2007. The District Consumer Forum having scrutinized the appellant's plea arrived at a conclusion that the State Consumer Commission's judgment had been carried out by delving upon the issue of taxes and, therefore, the recall/review application was devoid of merit. On the basis of its conclusion the Forum below rejected the review/recall application by means of order dated 17-01-2009.

Let us take the second order of January 17, 2009 first for our scrutiny. The original complaint of the appellant was dismissed by the Forum below vide its judgment dated 16-04-2007. The propriety of the said judgment was questioned by way of Appeal No. 1035/SC/2007. We have disposed of the said appeal by issuing a direction which is contained in the concluding para of our judgment dated 18-07-2007 which may be quoted as below.

“Accordingly the impugned order dated 16-04-2007 so far as it relates to the disposal of the appellant's complaint pertaining to recovery of taxes, is set aside. The matter is remanded to the District Consumer Forum, Ghaziabad for rehearing of the said issue and a fresh decision in accordance with law. In case the complainant prays for amendment of his complaint, his application shall be allowed, and then the complaint is heard on the issue of taxes alone.”

The complainant was heard and a fresh decision dated 01-11-2008 was passed by the Forum below with the finding that a complaint pertaining to the municipal board taxes was not maintainable before the District Consumer Forum and accordingly it was dismissed on 01-11-2008. In our considered opinion, the judgment of this Forum passed on 18-07-2007 had been fully carried out. The complainant was to be heard on the merit of his plea relating to the issue of taxes alone and the District Consumer Forum clearly spelled out that such an issue was not cognizable by it and as such his complaint being not maintainable was liable to be dismissed. Obviously, there was no question of any breach of

our judgment. The contention of the appellant that it was not sincerely carried out is absolutely misconceived and accordingly it is rejected. His contention that some other issues pertaining to deletion of name of Sri Hari Singh Karnyal were not dealt with is not sustainable as the judgment of the State Commission specifically mentioned that the issue of taxes alone would be re-examined and decided. It was implied in this order that any other issue except the taxes was not to be examined and adjudicated upon. The appellant must have been convinced with this factual position and should not have raised any other issue. We are, therefore, of the considered opinion that the appeal against the order dated 17-01-2009 is merit-less and as such it deserves to be dismissed.

The other issue relates to taxes which were allegedly levied by the Municipal Board, Ghaziabad without any jurisdiction, as alleged by the appellant. In this regard, it may be observed that the appellant knocked at a wrong door of the District Consumer Forum. As a matter of fact, he should have filed civil suit in a civil court of competent jurisdiction praying for a prohibitory injunction against the Municipal Board or Corporation, restraining it from realizing the taxes on the basis of his alleged plea that the colony in which he was residing was not located within the municipal limits of Ghaziabad Municipal Corporation. But instead of taking the right course of action before a competent Forum, he filed his complaint under the Consumer Protection Act before the District Consumer Forum, Ghaziabad without realizing that it was not a case of deficiency in service as the complainant himself stated that neither any service was rendered by the Municipal Board, nor his residential colony could have been subjected to levy of municipal board taxes. How then a question of deficiency in service would have arisen? It is a settled law that municipal board taxes are realized by a Municipal Board or a Corporation not for the services rendered but for maintaining the roads, streetlights, managing and maintaining the sewer line and regulating the water ferrule. Since these facilities are not extended to the citizens on payment of consideration, question of a deficient service would not be attracted. In other words, these facilities are arranged on payment of

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token fees as taxes and not as a consideration. Therefore, on the basis of this fine distinction it can be observed that the matter relating to municipal board taxes are not cognizable before the Consumer Fora. And, in the case of the complainant, the complainant himself has alleged that the service of municipal board ^{Pe} ~~taxes~~ being not available during the relevant years (for which the taxes were allegedly levied), ^{Pe} where would come the plea of deficiency? On the face of the complaint of the appellant it is abundantly clear that neither any service was available, nor liability was attached. In this situation the complainant was expected to have moved his application before a Civil Court for appropriate relief on payment of stamp fees as prescribed. By no stretch of reasoning, thus the complaint of the appellant was maintainable before the District Consumer Forum. It has rightly been dismissed by the District Consumer Forum and we have no cogent reason to record a different finding.

The appellant has raised irrelevant issues in his memorandum of appeal. We do not consider it worthwhile to refer to them. We have dealt with the point of the complainant's main grievance and as held above, we are of the decisive view that his complaint was not maintainable before the Forum below.

In the result, this appeal being devoid of merit is hereby dismissed. As none was present on behalf of the respondents, there is no order as to costs.


(JUSTICE BHANWAR SINGH)
PRESIDENT


(RAMPAL SINGH)
MEMBER