

RESERVED

STATE CONSUMER DISPUTES REDRESSAL COMMISSION,
UTTAR PRADESH, LUCKNOW

COMPLAINT CASE NO. 18 OF 2012

Surendra Kumar Verma
S/o Late Radha Krishna Lal Verma
R/o Block No. 8 Baradari Shakhya-4
Chauwal Market, Govind Nagar
Kanpur Nagar.

...Complainant

Vs.

Kanpur Development Authority
Kanpur
through its Competent Authority,
Vice Chairman, situated at Moti Jheel,
Kanpur Nagar.

...Opposite Party

BEFORE:

HON'BLE MR. JUSTICE VIRENDRA SINGH, PRESIDENT
HON'BLE MR. R C CHAUDHARY, MEMBER

For the Complainant : Sri J P Yadav, Advocate.

For the Opposite Party : Sri N C Upadhyaya, Advocate.

Dated : 01.10.2013

JUDGMENT

PER MR. JUSTICE VIRENDRA SINGH, PRESIDENT

Sri Surendra Kumar Verma the complainant preferred this complaint seeking the relief that the opposite party Kanpur Development Authority be directed to allot the property bearing Plot No. 85 Block-L, Govind Nagar, Kanpur Nagar in favour of the complainant and a compensation of Rs.5,00,000/- be also awarded to the complainant against the opposite party for harassment and mental torture.



Briefly stated the facts of the complaint are that the complainant was interested to purchase Plot No. 85 Block-L, Govind Nagar, Kanpur Nagar which was published for auction by the opposite party. He deposited an amount of Rs.4,48,300/- as earnest money. The auction was held on 27-01-2012 wherein the complainant was the highest bidder for a sum of Rs.11,200/- per sq. mtr. but the opposite party did not issue the allotment letter in favour of the complainant despite the request of the complainant to the Chairman, Kanpur Development Authority, Kanpur. Therefore, the complainant filed a writ petition No. 10424 of 2012 Surendra Kumar Verma V/s Kanpur Development Authority, Kanpur before the Hon'ble High Court of judicature at Allahabad with a prayer that necessary directions be passed to the Authority to dispose of the application dated 03-02-2012 which was given by the complainant to the opposite party and the Hon'ble High Court was pleased to pass an order for disposal of the application dated 03-02-2012. The opposite party in compliance of the order of the Hon'ble High Court disposed of the said application of the complainant with malafide intention on 29-02-2012 and did not consider the claim of the complainant and the complainant could not get the allotment order of the aforesaid plot as the application of the complainant was wrongly rejected by the opposite party. The complainant is the consumer of the opposite party under the Consumer Protection Act and it was the duty of the opposite party to issue an allotment order regarding auction property to the highest bidder. Therefore, the complainant prayed for the relief as aforesaid by way of this complaint.

The opposite party filed written statement saying therein that vide



alleged public action advertisement dated 25-12-2011, the Vice Chairman of the Kanpur Development Authority is the fully authorized person to accept or reject any Auction Bid. Since at the time of the alleged auction there were only two bidders and one of them was the complainant and the other was his relative, therefore, there was no competition in between the bidders and both of them created a monopoly in the auction in collusion with each other and since no other bidders could participate in the aforesaid auction, therefore, the auction dated 27-01-2012 was cancelled by the Vice Chairman vide order dated 01-02-2012 and this fact was duly communicated vide letter dated 29-02-2012 to the complainant. In compliance of the order dated 28-02-2012 passed by the Hon'ble High Court as is aforesaid by the complainant, the opposite party duly decided the representation of the complainant vide order dated 14-09-2012 and the same was duly communicated to the complainant. There is no deficiency on the part of the opposite party to any type of service to the complainant and the complaint is false, fake and misconceived. The complaint is barred by law of resjudicata. Since the complainant had already got decided his writ petition from the Hon'ble High Court regarding his grievance, therefore, this complaint is not maintainable and it is liable to be dismissed.

The complainant Sri Surendra Kumar Verma filed his affidavit in support of the contents of his complaint. The photocopy of the advertisement of Kanpur Development Authority pertaining to auction published in the news paper, the information received by the complainant from the Kanpur Development Authority pertaining to his bid as well as the bid of one another person named Bal Kishan, the photocopy of the



first page of registration booklet of Kanpur Development Authority, the challan form of depositing a sum of Rs.4,83,000/- by the complainant for Kanpur Development Authority, the representation dated 03-02-2012 made by the complainant to the opposite party, the photocopy of the order dated 28-02-2012 passed by the Hon'ble High Court in writ petition no. 10424 of 2012, the auction rejection letter dated 29-02-2012 sent by the Kanpur Development Authority to the complainant have been produced by the complainant as documentary evidence in support of his complaint.

An affidavit of Sri Mayank Yadav, Deputy Secretary in the office of Kanpur Development Authority has been filed in support of the written statement of Kanpur Development Authority by the opposite party. The photocopy of publication published in Amar Ujala pertaining to auction, photocopy of the proceedings of auction, the information pertaining to rejection of the auction sent by Tehsildar Zone-3 to the complainant, photocopy of the order dated 28-02-2012 passed by the Hon'ble High Court, the rejection order of the representation of the complainant by the Vice President of Kanpur Development Authority dated 14-09-2012 have also been filed on behalf of the opposite parties as documentary evidence in this complaint.

We have heard Sri J P Yadav, learned Counsel for the complainant and Sri N C Upadhyaya, learned Counsel on behalf of the opposite party and we have gone through the pleadings, the documentary evidence and the written arguments brought on record by both the parties.

There is no dispute on this fact that Plot No. 85 situated at Block-L



Govind Nagar, Kanpur was proposed to be auctioned by the opposite party and the complainant was a bidder bidding the auction to the tune of Rs.11,200/- per sq. mtr. The another bidder was Sri Bal Kishan who had bid for Rs.11,100/- per sq. mtr. The opposite party did not accept the bid auction being it found collusive in between the two bidders only and the auction dated 27-01-2012 was cancelled by the opposite party.

The stress of the complainant remained before us on this fact that there were two bidders in auction and since the complainant was the highest bidder, therefore, he was entitled to get the plot purchased by him in the aforesaid auction and the opposite party malafidely rejected the auction wherein, being the highest bidder, the complainant is entitled to get the property as the Hon'ble Supreme Court has stated in the case of Syndicate Bank V/s Estate Officer & Manager (Recoveries) and others reported in 2007(14) SCJD 211(SC) that where no other bidders who were in position to match the offer with positive results, the sale in favour of the applicant was conformable.

The learned Counsel for the opposite party vehemently argued that since the complainant is not a consumer as is the law laid down by the Hon'ble Supreme Court in the case of U.T. Chandigarh Administration and another V/s Amarjeet Singh and others (supra), therefore, this complaint is not maintainable by this Commission and the law laid down by the Hon'ble Supreme Court as is the aforesaid in the case cited by the complainant is not applicable before this Commission being the Commission not the authority to entertain the dispute to be decided in the regular Civil Court.

In the light of the contentions as aforesaid, we have gone through



both the aforesaid citations referred by both the parties in support of their contentions. In the case of Syndicate Bank (supra), no doubt the Hon'ble Supreme Court has held that where there is no other bidder in a position to match the offer with positive results as that of applicant of that case, such sale in favour of the applicant of that case should be confirmed but in that case the dispute of confirmation of the auction was not before the Consumer Forum while in the case of Amarjeet Singh (supra) the Hon'ble Supreme Court has dealt with directly the case pertaining to Consumer Fora and since the Hon'ble Supreme Court has held that with reference to a public auction of existing sites (as contrasted from sites to be formed), the purchaser/lessee is not a consumer, the owner is not a 'trader' or 'service provider' and the grievance does not relate to any matter in regard to which a complaint can be filed and, therefore, any grievance by the purchaser/lessee will not give raise to a complaint or consumer dispute and the Fora under the Act will not have jurisdiction to entertain or decide any complaint by the auction purchaser/lessee against the owner holding the auction of sites.

Hence in the light of the aforesaid law laid down by the Hon'ble Supreme Court we find this case squarely covered with the case of Amarjeet Singh (supra) wherein admittedly, the complainant had purchase the site in question in an open auction held by the opposite parties being the highest bidder on as and where basis and no assurance was given by the opposite party as service provider, as is the case before us that the complainant participated in the open auction which have been rejected by the opposite party being the auction collusive by the two bidders only. In our view the case before us is more appropriate case



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wherein the Consumer Fora have no jurisdiction because the auction purchase was not complete in between the parties. Since the Hon'ble Supreme Court has held that even an auction purchaser cannot file a complaint before the Consumer Fora being not a consumer for redressal of his grievance pertaining to the assurances given by the opposite party as service provider, therefore, the person who even has not become a auction purchaser, how can be a consumer. Since such type of dispute has not been termed by the Hon'ble Supreme Court as a consumer dispute, therefore, we need not to go further to consider as to whether the complainant was entitled to get the plot on the basis of auction purchase or not and we find this complaint is liable to be dismissed.

ORDER

The complaint is hereby dismissed.

Let copy of this order be made available to the parties as per rules.


01-10-13
(JUSTICE VIRENDRA SINGH)
PRESIDENT


(R C CHAUDHARY)
MEMBER

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