

MAHARASHTRA STATE HUMAN RIGHTS COMMISSION

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SHRC/VGM/05/2009/ 1523

Case No. -1259/2006-07

Name of the Complainant : Anant D Dalal
"Dharyaveer",
41, Presidency Soc., 8th N.S. Road,
J V P D Scheme, Mumbai - 400 049

Vs.

The Sr. Police Inspector
Police Station Juhu
Mumbai.

Date : 13 May 2009

Coram : **Justice V G Munshi, Member**

ORDER

Read the allegations made in the complaint and report received from the Sr. Police Inspector, Police Station Juhu. Read the case papers. Heard the parties.

2. Before proceeding with the merits of the case points to be decided etc it is necessary to acquaint ourselves with the facts and circumstances of the case, with which are concerned.

Complainant Anant Dhirajlal Dalal resides along with his family members on the given address. The house property fully described in the complaint is of ownership of the complainant Anant Dalal and his brothers Anup Dalal and Gautam Dalal. They all decided to develop this house property and therefore, on 02.01.2004 they entered into an agreement to develop the house property with one Respondent, Dhanesh



Ranchoddas Shah, Proprietor of Firm M/s. Tirupati Estate Services (Developer). In response to the said agreement the Respondent started the work of development of the house property. According to the complainant the Respondent Developer did not carry the work as per the terms and conditions of the agreement and thus, committed breach of terms and conditions of the agreement.

3. That on 09.12.2006 Respondents Dhanesh Shah and his relatives came on the spot of the incident along with 30-35 persons and demolished walls, glass windows, doors of the ground floor. When the complainant objected and opposed the same, the Respondents abused and insulted him and they continued the demolition work and in doing that they injured the wife of the complainant. Despite of the strong protest by the complainant, the Respondent did not stop the demolition work. Therefore, the complainant was required to go in police station. According to him on 09.12.2006 he did lodge written complaint in Police Station. The Police registered NC Case No. 3085/06 u/s 323, 504, 506, 427 of IPC. It was the grievance made by the complainant though he lodged complaint in police station, the Police neither stopped the demolition work nor did take any action against the Respondents. According to the complainant, because of inaction on the part of the Police Officers, the Respondents continued the demolition work. The complainant held Police Inspector S K Tadlapurkar alone responsible in this incident. The complainant made number of complaints to different Authorities. When he could not get any relief, he moved the Commission for necessary action in this matter.

4. The Respondent Sr. Police Inspector Police Station Juhu by filing their report denied and disputed all the allegations made in the complaint. **Firstly**, according to them, the dispute that arose among the parties was of civil nature and therefore, the Police did not take any action and directed the parties to approach Civil Court. **Secondly**, the allegations made in the complaint, did amount to happening of a non-cognizable offence and therefore, NC case was registered and the complainant was directed to



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avail proper civil remedy. In short according to the Respondent they have taken proper action in this matter and calls for no adverse remarks.

5. Therefore, it is necessary to view the case of the complainant in the light of facts and circumstances brought on record and also in the light of legal position.

(i) The complainant has filed on record the copy of agreement dated 02.01.2004, in support of his case that such agreement did take place with the Respondent (Developer). It was alleged that Respondent (Developer) did commit breach of terms and conditions of the Agreement (contract). The Report mentions that, Respondent Hasmukhbhai Ranchoddas Shah did produce the copy of Agreement before Station Officer. According to Respondent Police, it was agreed between the parties that Respondent should construct first and second floor and should handover its possession to the complainant and thereafter the possession of ground floor should be given to Dhanesh Shah brother of Respondent Hasmukhbhai Shah. Accordingly, the Respondent though constructed first floor and second floor, possession of only first floor was given to the complainant. In other words possession of second floor was not given to the complainant. The report mentions that Dhanesh Shah not only retained possession of second floor, but demolished walls of ground floor and thereby damaged the house. After pointing out all these things, it was submitted that, it was a matter of civil nature and Police could not take any action in this matter. The Respondent Police, therefore, directed the complainant to avail proper remedy by approaching Civil Court. On this background we have to view the case of the complainant.

(ii) Admittedly, agreement to develop house properly taken place among the parties and the parties, taken active parts towards the execution of said contracts. The complainant alleged the breach of terms and conditions of agreement by the



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other side. There is no scope for doubt that it was a matter of civil nature and the complainant should have approached competent Civil Court. There cannot be any difference of opinion on the point that it is beyond the scope of powers and jurisdiction of the Commission to enter so deep into the merits of the case and to come to the conclusion that there was breach of terms and conditions of the contract etc. In this the complaint the complainant never made any prayer for grant of possession of flat no.2 or damages etc. In other words the complainant in this complaint never made any prayer which can be granted by Civil Court, alone. The complainant kept this option open and he is at liberty to approach competent Civil Court accordingly. Therefore, the Commission in this matter, is not required to consider this civil aspect.

(iii) Now the next question arises for consideration is whether the Respondent Police were justified in not taking any action in this matter, only on the ground that it was a matter of civil nature. The simple answer to such question is, if anybody commits wrong and if it is punishable under the law, the Police have to take proper action according to law. If any party to an agreement commits wrong and if it is punishable under the law, the Police have to take proper action according to law. If any party to an agreement commits any offence as alleged, the Police cannot deny action only on the ground that it was matter of civil nature. In other words, it was incumbent upon Police to take proper action according to law, when a civil dispute gave rise to commission of an offence and problem of law order and peace.

(iv) On the basis of complaint lodged in Police Station NC case No. 3085/2006 was registered against the Respondents u/s 323, 504,506, 427 of IPC. The report mentions that



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- (a) The Respondents fell down the walls of the ground floor.
- (b) The Respondents abused the complainant
- (c) The wife of the complainant received injuries when Respondents with the help of other persons fell down walls of the ground floor

Firstly, if the construction was made up to the level of second floor, the Respondents had no reason to fall down the walls of ground floor. The Investigating Officer should have taken into consideration aspect that such demolition of walls ~~was~~ of ground floor was beyond the terms and conditions of the Agreement. The complainant in the complaint dated 15.12.2006 addressed to Addl Commissioner of Police, Mumbai mentioned that number of persons demolished the ground floor with malafide intention and motive and to rob the articles kept in cupboards. These were the allegations of house breaking and theft etc. All these aspects were ignored by the Investigating Officer, on the ground that, it was a matter of civil nature.

Secondly, when wife of the complainant did sustain injuries, it was incumbent upon the Investigation Officer, to refer her for medical examination.

Thirdly, when the complainant apprehended danger to his life and person, it was incumbent upon Investigating Officer, to initiate preventive action by filing chapter proceedings under Sec. 107 Cr PC. No such action was taken by Police.

Fourthly, when there was dispute in respect of house property and when there was apprehension of breach of peace, law and order, it was incumbent upon the Investigating Officer, to propose proceeding under Sec. 145 Cr. PC. No such action was taken by Police.

Lastly, if we read the averments made in the complaint then it will come to the notice that, the offence alleged to have



been committed, was of serious nature and not minor. It was incumbent upon the Investigating Officer, to handle the entire situation properly, taking into consideration the fact that the complainant is the owner of the house and the Respondent, who was developer had only limited right to develop the said property.

If all the circumstances, are taken and considered together, then it will come to the notice that, the Investigating Officer did not act properly and did not take proper action in this matter and the case of the complainant is true. It is necessary to mention that, though the complainant made number of complaints to different Authorities, Police did not take any action in this matter. Therefore, the complainant was required to knock the doors of Commission. In view of this situation following recommendations are made in this matter.

- (A) **The Respondent Senior Police Inspector Police Station Juhu, Mumbai to move the Magistrate in view of the provisions of Section 155 (2) of Cr PC and to seek permission to investigate offence in NC Case No. 3085/2006 registered in Police Station Juhu on 9/12/2006 and to do the needful according to law.**
- (B) **The copy of this order be sent to Senior Police Inspector Police Station Juhu through Commissioner of Police, Mumbai for necessary action.**
- (C) **The copy be sent through Secretary, Maharashtra State Human Rights Commission, Mumbai.**

Therefore, Case No. 1259/2006-07 is disposed of accordingly.

Dated : 13 May 2009



V G Munshi
(Justice V G Munshi)
Member, SHRC