

**IN THE NATIONAL CONSUMER DISPUTES REDRESSAL  
COMMISSION AT NEW DELHI**

**RESERVED ON : 18.07.2025  
PRONOUNCED ON : 22.08.2025**

**FIRST APPEAL NO. 1408 OF 2018**

(Against order dated 30.05.2018 in Complaint No. 17/2010 of  
State Consumer Disputes Redressal Commission Kerala)

**WITH**

**IA/6900/2023 (Exemption for filing official translation)**

K.M.George  
S/o Mathai,  
Kakoothil House, Kanhangad Quarters,  
Padnakad P.O., Kanhangad South,  
Kasaragod District (Kerala) ... Appellant

**Versus**

1. Secretary,  
Kanhangad Municipality  
Kanhangad P.O., Kanhangad,  
Kasargod District, Kerala State

2. Chairman,  
Kanhangad Municipality  
Kanhangad P.O., Kanhangad,  
Kasargod District. Kerala State

... Respondents

**BEFORE:**

**HON'BLE AVM J. RAJENDRA, AVSM VSM (Retd), MEMBER**

**HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA, MEMBER**

For the Appellant : Ms. Anubha Aggarwal, Amicus Curiae (VC)

For the Respondents : Ms. Anna Oommen, Advocate for R1  
R2-Experte

**JUDGMENT**

**AVM J. RAJENDRA, AVSM VSM (Retd), MEMBER**

1. This First Appeal has been filed against the Order dated 30.05.2018 passed by the learned State Consumer Disputes Redressal Commission, Kerala ("the State Commission"), in Consumer Complaint No. 17/2010, wherein the Complaint filed by the Complainant was partly allowed.

2. For convenience, the parties are being referred to as per their respective positions held in the Consumer Complaint.

3. Brief facts of the case, as per the Complainant, are that he participated in an auction conducted by the OPs for Stall No. 8 of the Municipality and paid Rs.1,00,000/- as earnest money on 28.11.2007. His bid was duly confirmed. Although he approached the OPs with six months' rent in accordance with the tender conditions, the OPs did not accept the same and told him that the rent would be accepted on 01.12.2007 i.e. after Municipal Council approves the auction. Relying on OPs' assurance that possession would be given before 15.12.2007, the Complainant made necessary arrangements and paid advance for goods to start a bakery on 17.12.2007. However, the OPs failed to hand over the room as promised, preventing him from commencing his business, resulting in financial loss and mental agony. He issued a notice to the OPs on 05.01.2008 with respect to inaction in handing over possession of the room. In reply dated 25.05.2008, the OPs cited a pending a Writ Petition by the previous tenant before the High Court as the reason for delay. However, even after the said Writ Petition was disposed of, the possession was not given, prompting the Complainant to file WP(C) No. 5690/08 dated 10.03.2008. Pursuant to the High Court's direction to consider the Complainant's notice and take a decision, the OPs issued a notice to the Complainant. However, without addressing his claims, they directed him to take possession after executing an agreement, warning that failure to do so would result in recovery of compensation from the Rs. 1,00,000/- deposited by him. So, the Complainant was constrained to take the room from the OPs. But the articles of the previous tenant were kept in the room and those were removed only on 11.04.2008. Further, the condition of the room was not fit for conducting a business and it required several

repairs. Even though the Complainant approached the OPs, they failed to undertake necessary repairs and orally directed him to undertake the repairs and agreed that the amount spent by him would be adjusted in the funds of the Municipality. The Complainant had spent Rs.37,000/- for repairs. The OPs issued a notice demanding Rs.1,69,332/- as arrears of rent from April to December 2008, and threatening prosecution for non-payment. Left with no choice, he executed an agreement on 16.02.2009 and began business in the room. In May 2009, due to roof leakage during heavy rain, rainwater entered the room, making it unfit for business. Despite requests, OPs did not carry out repairs, resulting in damage to the Complainant's goods and forcing him to stop business on 12.05.2009. He informed the OPs and sought a rent waiver, but instead they cancelled his licence citing rent arrears. The room was subsequently re-auctioned and allotted to another person. Although the room was auctioned to him on 28.11.2007, he could start business only in February 2009 and for a brief period. It is the case of the Complainant that there were latches, negligence and deficiency of service on the part of OPs, due to which the Complainant suffered financial loss and mental agony.

4. On notice, OP-1 contested the complaint by filing written version. OP-1 denied the Complainant's allegation that they agreed to hand over possession of the room by 15.12.2007. It was contended that the assertion of the Complainant that he approached OPs with six months' rent to execute the agreement and that the OPs refused to accept the same is false. The possession could not be handed over due to an interim order passed by the High Court in a Writ Petition filed by the previous tenant, challenging the auction proceedings. Even after disposal of the said Writ Petition, the Complainant did not approach the OPs for taking possession but instead filed another Writ Petition.

Pursuant to the directions issued therein, OPs heard the Complainant and issued a letter requiring him to execute the agreement and take possession of Stall No. 8. OP-1 admitted that some belongings of the previous tenant remained in the stall, and were cleared on 11.04.2008. The OPs denied the Complainant's claim that the room was in poor condition and that they directed him to carry out repair works with promise to reimburse the amount through municipal funds. It was further contended that despite repeated requests, the Complainant failed to execute the agreement and take possession. However, on humanitarian grounds, the Municipal Council, in its meeting dated 21.01.2009, resolved to permit the Complainant to execute the rent agreement and take possession of the stall from 01.02.2009, and also waived the rent arrears from 04.04.2008 to 31.01.2009. This decision was informed to the Complainant vide notice dated 31.01.2009. The OPs also denied the Complainant's claim that he spent Rs. 37,000/- on repairs or that he was compelled to stop business due to seepage of rainwater. It was contended that the business disruption was due to his own failure to pay rent despite notice, which led to licence cancellation and re-auction of the stall. Denying any deficiency in service, it was submitted that the complainant was not entitled to relief or compensation. OP No. 2 did not file any written statement.

5. The learned State Commission, vide order dated 30.05.2018 partly allowed the complaint and directed the OPs as under: -

***“In the result, complaint is partly allowed. First opposite party is directed to return the amount of Rs.one lakh deposited by the complainant with them without deducting any amounts towards arrears of rent and to pay Rs.50000/- (Rupees Fifty thousand only) as compensation to him together with Rs.5000/- (Rupees Five thousand only) towards cost of the proceedings.”***

6. Aggrieved by the impugned order of the State Commission, the Complainant has filed this present Appeal seeking the following:

***“I. Admit the appeal, call for the records, hear the parties and allow the appeal there by enhancing the quantum of compensation and damages originally awarded by the State Commission, to the further extent as sought by the appellant before the State Commission or to a proper, sufficient and adequate extent as this Hon'ble National Commission may deem fit.***

***II. Grant such further reliefs that may be found to be just, proper and necessary by this Hon'ble National Commission including the cost of the Appellant.”***

7. In the Appeal, the Appellant/Complainant has mainly raised the following grounds:

- A. The State Commission failed to appreciate that the OPs admitted its own lapses which led to the non-delivery of the room for a prolonged period of 15 months until February 2009. It was also an admitted fact that there were pending litigations between OPs and the earlier tenant, which were never disclosed to him prior to the auction. He was not allowed to inspect or assess the actual state of affairs of the room until six months after the auction. Despite representations from the Municipal authorities that the room was fit for occupation and any shortcomings would be rectified, the OPs failed to ensure such condition.
- B. The State Commission ignored the fact that the Complainant had undertaken essential repairs himself before occupying the room and that the OPs failed to produce any evidence to the contrary.
- C. The State Commission erred in disregarding the Complainant evidence showing that he had made all necessary preparations to commence his bakery business in December 2007, relying on the representations made by the Municipality.

- D. The State Commission failed to appreciate that the Complainant had availed a business loan from the Gramin Bank specifically for setting up the bakery business in the leased room. This fact was established through bank statements and oral evidence.
- E. The State Commission erred in not considering that he initially sought termination of the lease and refund of deposited earnest money due to delayed delivery of the room. It was only under threat from OPs, and owing to his inferior bargaining capacity, he was forced to accept the room under compulsion, fearing forfeiture of the earnest money. Thus, it was incumbent on the OPs to hand over the room in a habitable condition after carrying out necessary repairs, which it failed to do.

8. In his arguments, the learned counsel for the Complainant reiterated the facts of the case and the grounds of appeal and argued that the State Commission erred in not awarding compensation and costs to the complainant, despite rightly holding the OPs guilty of deficiency in service. It was contended that such omission was unjust, particularly because OPs did not challenge the finding of deficiency, which had attained finality, amounting to an unqualified admission of liability. The Complainant was thus legally entitled to the amounts claimed towards compensation and reimbursement. It was further argued that the Complainant, relying on the assurance of possession by 15.12.2007, deposited Rs.1,00,000/- on 28.11.2007 and took steps to commence his bakery business. However, possession was delayed by nearly 15 months and was finally handed over in February 2009 in a dilapidated condition with a leaking roof. It was contended that the complainant, due to financial constraints, was coerced into accepting possession under threat of deduction of Rs.1,69,332/–, arbitrarily demanded as rent for the intervening period when no possession was

offered. He relied on the findings of the State Commission, and asserted that it had rightly found that the Complainant was forced to accept possession solely due to the OPs unlawful demand, and that the delay from November 2007 to February 2009 was attributable to the OPs lapses entirely. He argued that the Complainant had incurred substantial expenses on bakery items, along with advances to various suppliers and service providers in anticipation of starting the bakery, which ultimately went in vain due to the OPs inaction. He asserted that while refund of Rs.1,00,000/- was rightly directed, the State Commission erred in not awarding interest on the amount, which was wrongfully retained for over a decade. Once deficiency in service stood established and unchallenged, all consequential reliefs, including compensation and reimbursement of incurred costs, ought to have been granted. It was submitted that in May 2009, heavy rains aggravated the already leaking roof, damaging bakery items and forcing the Complainant to shut down operations on 12.05.2009. Despite inspection and acknowledgment of the leakage by the OPs representative, no remedial action was taken. Formal requests dated 15.05.2009 and 16.07.2009 seeking waiver of rent, refund of the deposited amount, and reimbursement of Rs.37,000/- spent on repairs were ignored. Instead, the OPs issued a notice on 27.07.2009 arbitrarily threatening re-auction for non-payment of rent from April to July. The learned counsel further argued that the complainant and his wife had borrowed a total of Rs.5,60,000/- to set up the bakery, which went in vain solely due to the OPs conduct, thereby affecting the complainant's right to livelihood and dignity. It was further argued that the State Commission erred in rejecting documentary evidence on technical grounds, despite the admitted condition of the premises. Thus, it was prayed that the present appeal be allowed.

9. On the other hand, the learned Counsel for OP Municipality contended submitted that the OP had issued a public notice dated 13.11.2007 for auction of Room No.8 in the Municipal Bus Stand Shopping Complex for a period of three years. Pursuant to which the Complainant's bid was accepted on 28.11.2007. Although there was a delay in handing over possession, it was solely due to the pendency of W.P.(C) No. 35508/2007 filed by the previous tenant, which was beyond the control of OP. He further argued that immediately after disposal of the said writ petition, the Complainant was informed to take possession and commence business. However, he himself filed W.P.(C) No. 5690/2008 before the High Court of Kerala, which directed the Municipality to consider the Complainant's representation. Pursuant to which the OP issued notice to him to execute the agreement and take possession. The seal of the room was removed on 04.04.2008. It was contended that the room was in good condition with a concreted floor and functional shutter, and that the Complainant, having inspected the premises prior to auction, raised no objection at that stage. She vehemently argued that the complainant does not qualify as a consumer under the Consumer Protection Act, 1986, because the complainant is an auction purchaser/lessee. She asserted that despite reminders, the complainant did not execute the agreement or remit rent. However, by resolution dated 21.01.2009, the Municipal Council, on humanitarian grounds, permitted him to execute the agreement and take possession from 01.02.2009, and waived the rent arrears for the intervening period. The agreement was finally executed on 16.02.2009. The Complainant discontinued the business in May 2009 without valid reason and failed to pay rent thereafter. He was accordingly issued a notice on 03.07.2009. Upon continued default, the licence was cancelled on 04.11.2009 and the room was

reauctioned, with total arrears including service tax amounting to Rs. 54,992/-. He argued that the State Commission had already granted adequate relief by directing refund of earnest money of Rs. 1,00,000/-, along with Rs.50,000/- as compensation and Rs. 5,000/- as costs. Hence, there was no justification for further enhancement. The allegations of water leakage and damage to goods are unsubstantiated as the complainant failed to produce credible evidence. Further, the photographs were not proved since the photographer was not examined, the estimated repair bills were not supported by evidence, and the person who allegedly executed the agreement for repairs was also not examined. It was also pointed out that the complainant, vide application dated 24.03.2010, expressed willingness to re-occupy the room at an enhanced rent, which undermined his claim of unfit condition of the premises. While the Complainant claimed to have taken a loan for starting a bakery and relied on documents, the same were not produced and no material was placed on record to show the actual investment or loss suffered. She sought this Appeal as well as the complaint filed before the State Commission be dismissed.

10. We have examined the pleadings placed on record, associated documents and rendered thoughtful attention to the arguments advanced by the learned counsels for both the parties.

11. The primary issues in the case is whether the Complainant is a consumer under the Consumer Protection Act, 1986? Whether there was deficiency in service on the part of the OP in handing over proper possession of the auctioned stall to the Complainant in time, despite acceptance of bid and deposit of earnest money? Whether the Complainant is entitled to enhancement of compensation?

12. It is an admitted position that the Complainant had filled his bid and participated in the open auction notice published on 13.11.2007 for auction of stall No.8 at Kanhangadu Bus Stand Shopping complex belonging to OPs. For participating in the auction, he paid Rs.1,00,000 as EMD. The minimum monthly rent fixed by the OPs was Rs.4525 and he was the highest bidder with the bid to pay Rs.16030. The auction was held on 28.11.2007 and his bid was duly accepted. It is not in dispute that the Complainant deposited Rs.1,00,000 as EMD pursuant to the auction. It is also an admitted position that the possession of the stall was not immediately handed over to him since the belongings of the previous tenant remained in the room allotted to the Complainant until 11.04.2008. He ultimately executed a rent agreement on 16.02.2009 and began business operations in February 2009. He allegedly discontinued the business in May 2009, following which the OPs issued a notice for arrears of rent, and eventually cancelled the licence and re-auctioned the stall on 04.11.2009.

13. It is thus undisputed that the Complainant was allotted the stall in question from the Respondents/OPs in auction. The entire dispute pertains to the auction allotment. In this regard, Hon'ble Supreme Court in **UT Chandigarh Administration & Anr. Vs. Amarjeet Singh & Ors. (2009) 4 SCC 660**, had held as under:

***“14. ....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 which a complaint can be filed. Therefore, any grievance by the purchaser/ lessee will not give rise 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.” The National Commission after taking submissions of both sides observed that in view of the settled law in regard to an auction purchaser not being entitled to be***

***treated as a 'consumer' under the Act, the lower fora have certainly acted without jurisdiction in entertaining and adjudicating in this matter in the Consumer Complaint and First Appeal respectively. Therefore, the revision petition was found to have merits and was allowed.***

14. Considering the admitted position that the Complainant is an auction allottee, the transaction he entered into with the OPs does not give rise to relationship between them as consumer and service provider.

15. In view of the above, as the Complainant is an auction allottee, does not qualify as a consumer under the Consumer Protection Act, 1986. Accordingly, the complaint filed by the Complainant before the State Commission is dismissed. Consequently, the First Appeal No. 1408 of 2018 is also dismissed.

16. All pending Applications, if any, also stand disposed of accordingly.

17. Needless to say, the Complainant has right to approach appropriate legal fora to seek relief in respect of his grievances against the OPs. He may also seek benefit of the provisions of Section 14 of the Limitation Act, 1963 in doing so with respect to the time spent in pursuing this litigation.

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**(AVM J. RAJENDRA, AVSM, VSM (Retd.)  
PRESIDING MEMBER**

.....  
**(ANOOP KUMAR MENDIRATTA, J.)  
MEMBER**

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