

Supreme Court Of India

Civil Appeal No. 3410 Of 2003

Judgment Date:

10-08-2004

Haryana Urban Development Authority

..Petitioner

S Rekha Sharma

..Respondent

Bench :

{ HON'BLE MR. JUSTICE S.N. VARIVAHON'BLE MR. JUSTICE ARIJIT
PASAYAT }

Citation :

2004 (III) CPJ 31 (SC) ; (2005) 9 SCC 457 ; AIR 2004 SC 4143 ; (2004) 2 CPC
360 ; JT 2004 (6) SC 391 ; 2004 (6) SCALE 517 ;

Judgment

S.N. Variava, J.

1. Before this Court a large number of Appeals have been filed by the Haryana Urban Development Authority and/ or the Ghaziabad Development Authority challenging Orders of the National Consumer Disputes Redressal Commission, granting to Complainants, interest at the rate of 18% per annum irrespective of the fact of each case. This Court, has in the case of Ghaziabad Development Authority vs. Balbir Singh 2004 SCCL.com 330 reported in (2004) 5 SCC 65, deprecated this practice. This Court has held that interest at the rate of 18% cannot be granted in all cases irrespective of the facts of the case. This Court has held that the Consumer Forums could grant damages/ compensation for mental agony/ harassment where it finds misfeasance in public office. This Court has held that such compensation is a recompense for the loss or injury and it necessarily has to be based on a finding of loss or injury and must co-relate with the amount of loss or injury. This Court has held that the Forum or the Commission thus had to determine that there was deficiency in service and / or misfeasance in public office and that it has resulted in loss or injury. This Court has also laid down certain other guidelines which the Forum or the Commission has to follow in future cases.

2. This Court is now taking up the cases before it for disposal as per principles set out in earlier judgment. On taking the cases we find that the copies of the Claim / Petitions made by the Respondent / Complainant and the evidence, if any, led before the District Forum are not in the paper book. This Court has before it the Order of the District Forum. The facts are thus taken from that Order.

3. In this case the Respondent was allotted a plot bearing No. 211, Sector 12A, Gurgaon vide memo dated 23rd January, 1986. The Respondent paid all dues but was not offered possession.

4. On these facts, the District Forum directed to deliver an alternate plot at the same price and to pay interest @ 10%, as per HUDA policy, after two years from the date of deposit till the date of delivery of physical possession of alternate plot.

5. The State Forum upheld the order of the District Forum and dismissed the Appeal. The Respondent did not go in Revision before the National Commission. The Appellants went in Revision before the National

Commission. The National Commission has increased the rate of interest to 18% p.a.

6. For reasons set out in the judgment in the case of Ghaziabad Development Authority vs. Balbir Singh (supra), the order of the National Commission cannot be sustained and is hereby set aside. As stated above, the relevant papers regarding the claim made, the affidavits filed, the evidence submitted before the District Forum are not produced before this Court. In this case, the Appellant have paid interest @ 12% only on 28th July, 2004. They have delivered possession of an alternate plot bearing No. 1269, Sector 45, Gurgaon in 2003. The District Forum has not awarded compensation for mental agony and harassment. Where possession is given at old rate, the party has got benefit of escalation in price of land. Thus, normally there should not also be award of interest on the money deposited. However, as the allotment was in 1986 and possession given only in 2003 the Respondent has suffered mental agony and harassment and the costs of construction has gone up, the Respondent should have been compensated for these. We thus, take it that the interest awarded and paid is towards compensation on these counts.

7. In spite of there being no stay, to payment of interest beyond 12% and in spite of clarification given by this Court's order (reported in (2004) 5 SCC 65), the amounts were only paid on 28th July, 2004. We feel that for the lapse Appellants must pay interest at the rate of 15% from 17th March, 2004 till 28th July, 2004. Appellants shall also pay costs fixed at Rs. 500/- to the Legal Aid Society of the Supreme Court. The Appellants must recover the amount paid towards costs personally from the officers, who were responsible for not paying even after clarification by this Court.

8. A complaint is made that the Appellants are not executing the sale deed and are not giving permission to construct. We, therefore, direct the Appellants to execute the sale deed and to give permission to construct without claiming any amounts whatsoever, except the registration charges, from the Respondent. The same is to be done within one month from today.

9. We clarify that this Order shall not be taken as a precedent in any other matter as the order is being passed taking into account special features of the case. The Forum/ Commission will follow the principles laid down by this Court in the case of Ghaziabad Development Authority vs. Balbir Singh (supra) in future cases.

10. This Appeal is disposed of accordingly.