

SUPREME COURT OF INDIA

Chief Administrator, H.U.D.A. & Anr.

Vs.

Shakuntla Devi

C.A.No.7335 of 2008

(T.S.Thakur,CJI., Dr.D.Y.Chandrachud and L.Nageswara Rao,JJ.,)

08.12.2016

JUDGMENT

L.Nageswara Rao,J.,

1. This Appeal is filed challenging the order dated 25.09.2007 of the National Consumer Disputes Redressal Commission, New Delhi (hereinafter referred to as 'National Commission') by which an order of the State Consumer Disputes Redressal Commission, Union Territory, Chandigarh (hereinafter referred to as 'State Commission') awarding compensation to the Respondent was confirmed.

2. The Respondent was allotted Plot No. 40, measuring 40 marlas in Sector 8, Urban Estate, Karnal on 03.04.1987. As physical possession of the plot was not given to her by the Appellants, the Respondent filed Original Complaint No. 54 of 1997 before the State Commission. In the said complaint, the Respondent alleged that she had paid the full price of the plot including the enhancement fee as per the terms and conditions of the allotment letter. She averred that she was not given the possession of the plot in spite of repeated requests. The Respondent also pleaded in the complaint that the Appellants were required to complete the development work within 2 years from the date of the allotment letter and hand over the physical possession. She further stated that she wanted to construct a house and the delay in handing over physical possession of the plot resulted in additional expenditure for the building as the price of construction material increased manifold from 1988 to 1997. On the basis of the above averments, the Respondent sought for the following reliefs in Original Complaint No. 54 of 1997:

i. "That the opposite party be directed not to charge any extension fees for not constructing the plot within the stipulated period which could not be done because of non delivery of the physical possession of the plot.

ii. HUDA be directed not to charge interest at all on the amount because the HUDA had offered a paper possession in the year 1982 and had not handed over the physical /actual possession till date.

iii. HUDA be directed to deliver the physical possession immediately after completing development work as per the brochure and advertisement and after providing the community service such as schools, community centre, hospital etc. in the sector.

iv. The HUDA be directed to give compensation of 1.00 lac against harassment mental agony suffered due to the act and conduct of HUDA.

v. Directed to give cost to the complainant for Rs. 20,000/- against the expenditure incurred in filing this complaint and as well as for spending the amount for visiting the office of the last 8 years.

vi. The complainant be awarded interest at the rate of 18 % on the amount deposited on various time till the actual possession of the plot is given.

vii. The Respondent be directed to pay Rs. 5.00 lac escalation cost of the construction material.”

3. The Appellants filed a written statement in which it was stated that the Respondent was allotted the plot from the Government Discretionary Quota vide Allotment Letter No. 5049 dated 03.04.1987. The Appellants alleged that the Respondent did not seek delivery of possession prior to 16.07.1997. It was also stated in the written statement that an amount of Rs.28,000/- was still outstanding. It was further alleged that the Respondent was not interested in constructing a house and that no building plan was submitted for approval.

4. The State Commission by its order dated 21.12.1998 held that the Respondent has established deficiency of service by the Appellants as there was delay in handing over physical possession of the plot. The complaint was allowed and the Appellants were directed to deliver vacant physical possession of the plot, if not already done, to the Respondent within one month from the date of receipt of the order. There was a further direction to pay interest on the amount deposited by the Respondent at the rate of 12% with effect from 03.04.1989 and to pay a sum of Rs.2 lakhs as compensation on account of escalation in the cost of construction etc. The Appellants were also directed to pay Rs.20,000/- towards compensation for monetary loss and mental harassment suffered by the Respondent.

5. Aggrieved by the said order dated 21.12.1998 of the State Commission, the Appellants filed an appeal before the National Commission. The National Commission confined the dispute in First Appeal No. 154 of 1999 only to the award of compensation of Rs.2 lakhs relating to escalation in cost of construction. The other reliefs pertaining to payment of compensation towards monetary loss and mental harassment of Rs. 20,000/- and interest on the amount deposited by the Respondent were confirmed. The National Commission remanded the matter for re-consideration of compensation for escalation of cost of construction in accordance with CPWD rates.

6. The State Commission reconsidered the matter and permitted both sides to produce evidence which would enable it to compute the compensation for escalation of construction cost as per CPWD rates. The Respondent produced evidence to show that the escalation in cost of construction between April, 1989 and January, 2000 would be Rs. 18,67,000/-. An affidavit dated 06.02.2007 was filed by Sh. Vikram Singh Malik, Estate Officer, HUDA, Karnal on behalf of the Appellants in which it was stated that the physical possession of the plot was given to the Respondent on 21.01.2000. The Respondent submitted a building plan only on 14.02.2006 which would clearly prove that the Respondent was not interested in constructing the house. The submission of the Appellants that the Respondent was not entitled for more than Rs. 2,00,000/- towards increase in the construction cost was rejected by the State Commission on the ground that the National Commission directed computation of compensation at CPWD rates and that there was no restriction in the order of remand. The material produced by the Respondent to prove escalation in the cost of construction was accepted by the State Commission which held that the Respondent was entitled for a sum of Rs. 18,67,000/- as compensation. However, the State Commission held that since the Respondent did not commence construction till 2006 with a view to get more compensation. Therefore, she was awarded a compensation of Rs. 15,00,000/- instead of Rs. 18,67,000/- towards increase in the cost of construction.

7. The National Commission by an order dated 25.09.2007 dismissed Appeal No. 525 of 2007 filed by the Appellants and confirmed the order passed by the State Commission holding that the compensation awarded was just and reasonable. According to the National Commission even if 15 % interest on the amount of Rs.5 lakhs claimed by the Respondent for 10 years is awarded, the Respondent would be entitled to Rs. 12.5 lakhs. Aggrieved by the order dated 15.09.2007 in First Appeal No. 525 of 2007 of the National Commission, the Appellants have filed this Appeal.

8. The Counsel for the Appellants submitted that the Respondent was allotted the plot in the Government Discretionary Quota and that the Respondent did not approach the Appellants seeking possession of the plot till 1997. He also submitted that the Respondent did not Commence the construction till 2006 though she was given possession on 21.01.2000. He further contended that the State Commission erred in awarding Rs. 15 lakhs as compensation when the earlier order granting Rs. 2 lakhs as compensation was not challenged by the Respondent. According to him, the remand by the National Commission was to examine whether the Respondent was entitled to Rs. 2 lakhs as compensation which meant that she cannot be given any compensation beyond Rs. 2,00,000/-.

9. The Counsel for the Respondent submitted that there was no restriction in the remand by the National Commission as the compensation towards escalation of the cost of construction was directed to be calculated as per CPWD rates. He submitted that the State Commission was right in awarding Rs. 15 lakhs as compensation when the deficiency of service by the Appellant in not handing over the possession of the plot till 2000 was proved. He also urged that the Civil Procedure Code has limited application in the Consumer Fora and relief cannot be denied on the grounds of defective pleadings and the relief sought. He also submitted that

cogent material was placed before the State Commission to prove the escalation in the cost of construction between 1989 and 2000.

10. The avowed object of the Consumer Protection Act, 1986 is to provide for better protection of the interest of consumers. The statement of the objects and reasons, inter alia, provides for a speedy and simple redressal to consumer disputes. The quasi judicial bodies at the District, State and Central levels were empowered to give relief to the consumers and award, wherever appropriate, compensation to consumers.

11. Section 14 (1) (d) of the Act which is relevant for the adjudication of the dispute in this case is as follows:

“14. Finding of the District Forum.- (1) If, after the proceeding conducted under section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely:
(d) to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.”

12. The sine qua non for entitlement of compensation is proof of loss or injury suffered by the consumer due to the negligence of the opposite party. Once the said conditions are satisfied, the Consumer Forum would have to decide the quantum of compensation to which the consumer is entitled. There cannot be any dispute that the computation of compensation has to be fair, reasonable and commensurate to the loss or injury. There is a duty cast on the Consumer Forum to take into account all relevant factors for arriving at the compensation to be paid.

13. In *Charan Singh v. Healing Touch Hospital and Others*, reported in¹ this Court held as follows:

“12 Indeed, calculation of damages depends on the facts and circumstances of each case. No hard and fast rule can be laid down for universal application. While awarding compensation, a Consumer Forum has to take into account all relevant factors and assess compensation on the basis of accepted legal principles, on moderation. It is for the Consumer Forum to grant compensation to the extent it finds it reasonable, fair and proper in the facts and circumstances of a given case according to the established judicial standards where the claimant is able to establish his charge.”

In *Ghaziabad Development Authority v. Balbir Singh*, reported in (2004) 4 SCC 65, this Court was considering the compensation to be awarded to the consumers in cases of deficiency of service by Development Authorities like the Appellant herein and

Ghaziabad Development Authority. Considering a situation similar to the one that arises in the instant case, it was held as follows:

“9. That compensation cannot be uniform and can best be illustrated by considering cases where possession is being directed to be delivered and cases where only monies are directed to be returned. In cases where possession is being directed to be delivered the compensation for harassment will necessarily have to be less because in a way that party is being compensated by increase in the value of the property he is getting.

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11. Further, in cases where the Commission/Forum has directed delivery of possession, the party has to a certain extent already got a benefit. The cost of the land/flat would have gone up in the meantime. Of course, even in cases, where delivery of possession has been directed there could be compensation for the harassment/ loss. But such compensation has to be worked out after looking into the facts of each case and after determining what is the amount of harassment/loss which has been caused to the consumer.”

14. It is undisputed that the Appellant handed over the plot to the Respondent only in the year 2000 instead of 1989. The Respondent had paid Rs.1,22,400/- towards the cost of the plot at the rates prevailing in the year of allotment i.e. 1986. There is no dispute that the Respondent was paid Rs.1,28,188/- towards interest awarded by the State Commission. There is also no dispute about the fact that the Respondent did not commence construction till 2006. The State Commission while awarding the compensation of Rs. 15 lakhs towards escalation in the cost of construction commented on the conduct of the Respondent in delaying the construction only with a view to claim higher compensation.

15. The point that falls for our consideration in this case is whether the State Commission was justified in awarding Rs. 15 lakhs towards the escalation in the cost of construction as compensation. We are of the view that the Respondent is not entitled to such compensation awarded by the State Commission and confirmed by the National Commission. The Respondent suffered an injury due to the delay in handing over the possession as there was definitely escalation in the cost of construction. At the same time the Respondent has surely benefited by the increase in the cost of plot between 1989 to 2000. In our opinion, the order of the State Commission is vitiated for non application of mind to a vital and relevant factor and hence, suffers from the vice of unreasonableness. The State Commission criticized the conduct of the Respondent in intentionally delaying the construction for 6 years but still proceeded to award compensation. In the facts and circumstances of this case, we are of the opinion that award of interest would have been sufficient to compensate the Respondent for the loss suffered by him due to the delay in handing over the possession of the plot. The compensation of Rs. 15 lakhs awarded by the State Commission is excessive. As we have not reversed the impugned order on any other ground, it is not necessary for us to delve into other points that were urged by the Respondent.

16. For the aforementioned reasons, the Order of the State Commission dated 05.07.2007 as confirmed by the National Commission is set aside and the Appeal is allowed. No costs.

Judgment Referred.

¹(2000) 7 SCC 0668