
(1994) 07 NCDRC CK 0052

In the National Consumer Disputes Redressal Commission

ADMINISTRATOR, CIDCO

APPELLANT

Vs

SHAIKH MOHAMMED MUSTAQ AHMED

RESPONDENT

Date of Decision : 25-07-1994

Acts Referred:

Citation : 1994 2 CPC 430 : 1994 2 CPR 644 : 1994 3 CPJ 41

Hon'ble Judges : V.Balakrishna Eradi , Y.Krishan , B.S.Yadav J.

Advocate : Arun Tripathi , Sarwa Mitter , S.K.Bandhopadhyay , S.V.Deshpande

Final Decision : Order Set Aside

Judgement

1. THIS is a Revision Petition against the order dated 22.6.1993 in Appeal No. 295/92 by the State Commission of Maharashtra. The respondent in this Revision Petition was the complainant before the District Forum and will be described as the complainant in this order. Likewise, the appellant before the State Commission and the Opposite Party before the District Forum and Revision Petitioner before us will be described as Opposite Party.

2. THE Complainant is Shaikh Mohammed Ahmed, the Chief Promoter of the Beauty Hill Co-operative Housing Society Ltd., Aurangabad. According to the complainant by virtue of his being the Chief Promoter, he had paid Rs. 50,000/- to CIDCO for plot No. 6 N-11 Sector M in New Aurangabad for allotment of the plot to the Co-operative Housing Society which was then to be formed. THE total lease premium for the plot was Rs. 4,34,250/- which was required to be paid in two instalments in July and August, 1990. THE Complainant society requested the Opposite Party CIDCO to extend the time for payment of the lease premium but instead of extending the time, it cancelled the allotment and forfeited the amount of Rs. 50,000/-. The District Fourm and the State Commission, after examination, came to the finding that the forfeiture of Rs. 50,000/- and the cancellation of allotment of the plot amounted to imposition of penalty. It further held that the cancellation of the plot and forfeiture of the amount was without authority and that this amounted to deficiency in service inasmuch as before inflicting the penalty of forfeiture and cancellation, no reasonable opportunity

was granted to the complainant. The State Commission confirmed the order of the District Forum quashing the cancellation of the allotment of the plot and forfeiture of the sum of Rs. 50,000/- paid as registration of the original plot be given to the society on payment of the full lease amount.

It is against this order of the State Commission that the Opposite Party CIDCO has come in Revision Petition.

3. THE Opposite Party CIDCO has attacked the orders of the lower Forums on the following fact:- (i) Under the scheme CIDCO allotted plots only to Co-operative Housing Societies. (ii) THE interested Co-operative Housing Societies were to submit tenders for the allotment of plots. THE tender or offer was to be accompanied by a demand draft of Rs. 50,000/- in favour of CIDCO as registration charges. (iii) THE amount of lease premium claimed by Opposite Party CIDCO was to be paid in two instalments, first within 30 days from the date of allotment and second, another 30 days thereafter. THE amount paid with the tender by way of registration charges was to be adjusted in the first instalment of the lease premium. (iv) Under the Scheme, no extension of time was permitted for payment of the lease premium under any circumstances. If the society failed to pay the lease premium by the stipulated dates, the registration charges of Rs. 50,000/- could be forfeited. (v) Under the terms and conditions of allotment of plots under the scheme, no society could transfer or assign its rights in the land except with the permission of the Corporation.

In addition, no Member of the society and interest transfer his share in the society or his rights and interest in the tenement allotted to him by the society without the prior permission of the Opposite Party CIDCO.

4. THE Opposite Party CIDCO has submitted that the society in this case has violated the terms and conditions of allotment which led to the cancellation of the allotment of the plot and the forfeiture of the registration amount. In this case, it has placed the following facts before us: (i) THE lease premium (figures in the round) of Rs. 1.67 lakhs (first instalment Rs. 2.17 lakhs minus Rs. 50,000/- registration charges) by 10.7.1990 and second instalment of Rs. 2.17 lakhs payable by 9th of August, 1990. No extension of time for payment of the lease premium was permissible. Nonetheless the Opposite Party CIDCO extended time for making payment of the first instalment of the lease premium till 31st of August, 1990 but no payment was made of the above amount till April, 1991 when the allotment of plot was cancelled and registration charges of Rs. 50,000/- were forfeited.

(ii) THE Opposite Party CIDCO has placed on record the original list of Members of the society (page 14-15 of the paper book) and also the names of the Members of the society as in December, 1991. THESE names have been obtained by the Opposite Party CIDCO from the Deputy Registrar of the Co-operative Societies, Aurangabad.

It is observed from the two lists that out of 10 members who were on rolls in

December, 1991, nine are new and only one member namely, Shaikh Mohammed Mustaq Ahmed, the complainant, who was originally the promoter, continues to be a member as per the position obtaining in December, 1991. Thus, there were 12 members originally including Shaikh Mohammed Mustaq Ahmed and out of these 11 members have ceased to be the members of the society.

5. THE Opposite Party CIDCO has, therefore, argued that there has been violation of the lease conditions prohibiting transfer or assigning of rights by the society and prohibiting the members from transferring their shares in the society or their rights and interests in the tenements allotted.

6. IT is evident from the above that there is sufficient admission contained in the affidavit of the complainant that there has been clear violation of the terms and conditions of the lease. Hence, the cancellation or allotment of the plot and the forfeiture of the registration money was for good and sufficient reasons and in proper exercise of the authority vesting in the revision petitioner CIDCO. The forfeiture of the registration charge and the cancellation of the plot do not amount to the imposition of any penalty on the complainant. Further, the complainant Sheikh Mohd. Mustaq Ahmed has no locus standi to maintain the complaint before the Consumer Forums as the plot was allotted to the Co-operative Housing Society which has not been impleaded by him in the proceedings before the District Forum. Hence, there is wrongful exercise of jurisdiction by the lower Forums. We hold that the Opposite Party CIDCO has not committed any deficiency in service for which it is liable. In the light of the foregoing discussion, the orders of the District Forum and the State Commission are manifestly unsustainable and they are therefore, set aside. No order as to costs. Order accordingly.