

(2016) 07 NCDRC CK 0052

In the National Consumer Disputes Redressal Commission

Case No : 618 of 2010

**DDA?Vikas Sadan, INA Vs RADHAY SHYAM SRIVASTAV (DECEASED) &?
ORS.**

Date of Decision : 22-07-2016

Acts Referred:

Citation : 2016 3 CPR 479

Hon'ble Judges : B.C. Gupta

Advocate : Girija Wadhwa, Sumit Bansal, ?Richa Oberoi

Judgement

1. This revision petition has been filed by the Delhi Development Authority (DDA) challenging the impugned order dated 27.11.2009, passed by the Delhi State Consumer Disputes Redressal Commission (hereinafter referred as "State Commission") in First Appeal No. FA-09/716, vide which, while dismissing the appeal, the order passed by the District Consumer Disputes Redressal Forum dated 10.8.2009, allowing the consumer complaint in question, was upheld.

2. Briefly stated, the facts of the case are that the complainant/respondent Radhey Shyam Srivastava (now deceased and represented through his legal representatives, respondents no.1 to 5), applied before the petitioner/OP, DDA for allotment of 90 sq. mtr. plot under the MIG category at Rohini Residential Scheme of the DDA. It is alleged that the name of the complainant did not figure in the draw of lots for the said scheme three times, because his application form alongwith FDR dated 17.2.1981 was received from the UCO Bank in December, 1987 only. A Deputy Director of the DDA dealing with the scheme, informed the complainant, vide letter dated 19.6.1986 that his name had not figured in the three draw of lots, but it shall be included in the future draw of lots for Rohini Residential Scheme and subsequently, he was informed vide letter dated 28.3.1988 that his application form alongwith FDR dated 17.2.1981 was received from the UCO Bank in December, 1987. Again, the complainant was informed vide letter dated 12.9.1989 that his priority was fixed at Serial no.16378 and it will take about four years for the allotment of plot. On his failure to get the plot, the complainant filed the consumer complaint in question, seeking directions to

the DDA to allot him a plot or in the alternative, pay him Rs.2 lakhs as compensation. The District Forum vide its order dated 17.2.2003, allowed the complaint and passed the following order against the OP-DDA. "We are therefore left with no alternative but to conclude that priority number given to the complainant is against the facts and direct the OP to allot him a proper priority number on the basis of his application in February, 1981 and below the persons where the applications had been received upto 16-02-1981, and include his name in next draw of lots whenever it is held and also direct the OP to pay the complainant a compensation of Rs. One lakh".

3. Being aggrieved against the said order, the DDA challenged the same by way of an appeal before the State Commission. Vide order dated 11.1.2005, the State Commission reduced the compensation to Rs.75,000/- plus Rs.5,000/- as cost of litigation and directed the DDA to include the name of the complainant in the next draw of lots on the highest priority. The complainant filed execution application no.998/2005 on 19.10.2006 before the District Forum, seeking compliance of the order passed by the State Commission /District Forum. In the meantime, the DDA allotted a plot measuring 60 sq. mtrs., vide allotment letter dated 2.12.2005. The complainant, however, objected to the said allotment, saying that he should have been allotted a plot of 90 sq. mtrs.

4. The main issue in dispute in the present revision petition, therefore, is that the complainant wants to have allotment for a plot measuring 90 sq. mtrs. at the old rates, whereas the petitioner DDA relied upon some decision taken by the Government of India on 9.7.1999, according to which, it was decided to limit the size of the plot under MIG category to 60 sq. mtrs. The case of the complainant is that since his application had been made much before the said decision of the Government of India and that his name was not included in the three draw of lots, because of non-receipt of application from the bank, the complainant should be entitled to allotment of 90 sq. mtr. plot only.

5. The District Forum vide their order dated 10.8.2009 stated that DDA shall allot a plot of 90 sq. mtrs. within 30 days to the complainant in the Rohini Residential Scheme and the price of the plot shall be as on the date of earlier allotment and not on the prevailing price. Being aggrieved against this order, the DDA challenged the same by way of appeal before the State Commission and the said appeal having been dismissed vide impugned order dated 27.11.2009, the DDA is before this Commission by way of the present revision petition.

6. During hearing, the learned counsel appearing for the DDA based her arguments mainly on the decision taken by the Government of India, Ministry of Urban Development on 9.7.1999, a copy of which has been placed on record as well. She stated that as per minutes of the meeting held on 9.7.1999 under the Chairmanship of Secretary, Urban Development, Government of India, it was decided that the plot size may be restricted to 60 sq. mtrs. for the MIG category, since the availability of land was limited. The learned counsel stated that the DDA was bound by the said decision of the Government. Moreover, it was within

the powers of the DDA to make changes in the size of the plot, while making allotment to the prospective allottees. The orders passed by the consumer fora below were therefore, not in accordance with law and should be set aside.

7. Per contra, the learned counsel for the respondent argued that the complainant had made application for the allotment of plot as early as in 1981 and they were entitled for the allotment of a plot of 90 sq. mtrs. only. The learned counsel argued that the change in the policy as stated to have been made in the meeting on 9.7.1999, had not been brought to the notice of the District Forum when the proceedings in the consumer complaint were pending before them. The learned counsel stated that the consumer complaint had been filed in the year 1996 and decided on 17.2.2003, but the DDA never took the plea that the size of the plot under the MIG category had been reduced from 90 sq. mtrs. to 60 sq. mtrs. The learned counsel further argued that if the name of the complainant had been included in the first three draws, he had reasonable chance for getting the plot of 90 sq. mtrs. and hence, at this stage, the DDA should not deny the allotment of plot of that area to the complainant (or his legal representatives).

8. I have examined the entire material on record and given a thoughtful consideration of the arguments advanced before me.

9. It is made out from the order dated 17.2.2003 passed by the District Forum that a Deputy Director of the DDA informed the complainant vide letter dated 19.6.1986 that his name could not figure in the first three draw of lots because of the fact that the application filed by him in the year 1981 was received by the DDA from UCO Bank in December, 1987 only. Vide the said letter, the DDA assured the complainant that his name shall figure in the subsequent draw of lots. It is clear, therefore, that the complainant was deprived of the opportunity to have his name included in the draw of lots for no fault of his own. The contention raised on behalf of complainant that, had his name been included in those draw of lots, he had reasonable chance of getting the plot of 90 sq. mtrs. is not without any basis. Further, it is also clear that in the proceedings before the District Forum in the consumer complaint decided on 17.2.2003, the DDA failed to bring to the notice of the said Forum that any change in policy had taken place at the level of Government of India and the size of the plot was being restricted to 60 sq. mtrs. in the MIG category. At this stage, therefore, it is not desirable on the part of the DDA to take the stand that they shall make allotment of plot of area measuring 60 sq. mtrs. only. A perusal of the grounds of the revision petition in the present case indicates that the DDA has made mention of an order passed by the Hon''ble High Court dated 15.2.2005, vide which the writ petition filed by various persons, feeling aggrieved against the decision of the Government for restricting the size of the plot in MIG category was dismissed. It may be true that the Hon''ble High Court upheld the decision of the Government of India for restricting the size of plot under the MIG category, but it does not mean that the complainant was entitled for allotment of 60 sq. mtrs. plot only,

keeping in view the facts as described above that he made an application in the year 1981, but despite that, his name was wrongfully not included in the draw of lots due to non-receipt of his application from the Bank for a long time.

10. Based on the discussion above, it is held that the contentions raised by the DDA in the grounds of revision petition as well as during arguments before me do not hold any force. The orders passed by the consumer fora below do not suffer from any illegality, irregularity or jurisdictional error of any kind. Moreover, it has been held by the Supreme Court in the case, *Mrs. Rubi (Chandra) Dutta vs. United India Insurance Company*, 2011 (3) Scale 654 that in the exercise of revisional jurisdiction, the concurrent findings of the consumer fora below should be interfered only, if there was patent error of jurisdiction or law. In the present case, there is no such error in the orders passed by the consumer fora below. It is held, therefore, that this revision petition is without any merit and the same is ordered to be dismissed. The orders passed by consumer fora below are upheld with no order as to costs.