
(1999) 07 NCDRC CK 0018

In the National Consumer Disputes Redressal Commission

ESTATE OFFICER, URBAN ESTATE, PUNJAB URBAN
DEVELOPMENT AUTHORITY

APPELLANT

Vs

BACHAN RAM And SONS

RESPONDENT

Date of Decision : 07-07-1999

Acts Referred:

Citation : 1999 2 CLT 356 : 1999 2 CPR 550 : 1999 3 CPJ 282 : 2000 1 CPC 159

Hon'ble Judges : A.L.Bahri , Jasbir Singh , Davinder Kaur Bhamrahs J.

Final Decision : Appeal allowed

Judgement

1. DISTRICT Forum, Ropar on August 18, 1998 allowed the complaint filed by M/s. Bachan Ram and Sons against Estate Officer, Punjab Urban Planning and Development Authority (PUDA), Mohali. A direction was given to the opposite party to allot equivalent area of plot No. D-35 to the complainant within three months and in case no equivalent of plot No. D-35 was available, then to provide some vacant equivalent area as per his choice on the price prevalent in the year 1979 to the complainant and to adjust the difference, if any. The opposite party was directed to pay compensation of Rs. 2 lacs besides cost of Rs. 5,000/-. The Chief Administrator of PUDA was directed to hold enquiry to find out the errant official(s) and to recover the amount of Rs. 2,05,000/- from his salary. This order has been challenged by the opposite party, PUDA, in this appeal.

2. THE State Government took a decision on July 16, 1979 to allot a plot to the complainant. THE decision related to allotment of plot No. D- 35 measuring th of an acre in Phase I at Industrial Focal Point, Mohali. THE allotment was to be made to enable the complainant to set up a factory for manufacturing of wooden and steel furniture. While issuing such a letter to the complainant, copy thereupon was sent to Estate Officer, PUDA, Mohali for compliance, copy of letter is Annexure P-I. Vide letter P-2, the Estate Officer, Urban Estate, Punjab, issued a letter to the complainant informing him about the plot and he was requesting to furnish Declaration Bond on the enclosed prof orma on a non-judicial stamp paper worth Rs. 3/-. In the meantime, Bachan Ram, the complainant, inspected

the plot which was sought to be allotted and found there was some construction on it and intimated the Estate Officer, Urban Estate, Punjab, vide letter dated Annexure P-3 about it with the request to allot him a vacant plot. THE necessary Declaration (Ex. P-4) was sent by the complainant. Subsequently, when no such plot or any alternative plot was allotted, he filed the complaint before the District Forum. In the meantime, it may be observed that the aforesaid plot No. D-35 was earlier allotted to Harbhajan Kaur and it is she who has raised some construction and the plot was sought to be resumed as the matter was pending before the Appellate Authority. Vide orders P-5 and P-6 dated January 2, 1996 and March 4, 1997, she succeeded in restoration of the plot to her. Thus, the opposite party took up the plea that the complainant could not be treated as a consumer by the Estate Officer in his favour further explaining that since the plot D-35 which was sought to be allotted to the complainant was restored to its original allottee, there was no question of deficiency in rendering service as far as the complainant is concerned. THERE was no other plot available which could be allotted to the complainant. THE following question had been addressed by the Counsel for the parties which require consideration : (1) As to whether the complainant could be considered as a consumer, as defined, entitled to file the complaint. (2) Is it a case of unfair trade practice that on receipt of earnest money of Rs. 1,000/-, the case of the complainant for allotment of plot was not being considered. (3) Whether the complaint is barred by time.

Taking up the question of limitation first, the complaint could not be treated as barred by time. It was finally when a decision was taken not to allot the plot that the cause of action accrued prior thereto, the consistent view was as decided by the Government to allot plot No. D-35 to the complainant. Since there was no specific denial of allotment of plot, it cannot be said that limitation for filing the complaint ever started. The question of complaint being barred by time, therefore, will not arise. Reference be made to the decision of Haryana State Commission in Ram Kant Bhardwaj v. Haryana State Industrial Corporation, III (1998) CPJ 304.

There is no question of unfair trade practice involved in the facts of the present case. Since plot No. D-35 which was earlier allotted to Harbhajan Kaur and when it had become available for allotment, the same having been resumed, the Government could take up the case for its allotment. If subsequently, the authorities (Appellate or Revisional) decided to restore the plot to Harbhajan Kaur, and on that account the Estate Officer, PUDA was unable to issue allotment letter to the complainant, it cannot be said that any mis-representation was made initially to the complainant with respect to the nature of the plot that it can be held that it is a case of unfair trade practice. The ratio of decision of Supreme Court in Lucknow Development Authority v. M.K. Gupta, III (1993) CPJ 7 (SC) is not attracted to the case in hand.

3. THE complainant cannot be held to be a consumer only on the decision of the Government and a direction to the Estate Officer for allotment of plot No. D-35 to

the complainant as referred to above. Factually, allotment letter has not so far been issued and no right title or interest in the aforesaid plot, thus, ever vested with the complainant. It is not a case where applications were invited for allotment of aforesaid plot from the public that giving equal treatment to the complainant in the matter of consideration of respective merits of the applicants was involved. It appears to be a discretionary relief to be granted to the complainant by the Government that a direction was given to the Estate Officer to allot the aforesaid plot to the complainant. On failure to allot such a plot, it cannot be said that the complainant had hired the services of opposite party for consideration. In this respect, reference be made to the decision of National Commission in Chandigarh Housing Board v. Shri Ramesh Chander Sethi, III (1998) CPJ 6 (NC)=1999 CON.LT 122 (NC), wherein it was held that allottee of discretionary quota could not be held to be a consumer. Since the complainant is not a consumer as defined, no relief could be granted to him by the Fora. For the reasons recorded above, this appeal is allowed and the order of the District Forum is set aside. Appeal allowed.