

(2009) 05 SC CK 0039

In the Supreme Court Of India

Case No : C.A. No. 5329 of 1996 and Con. P. 324/96, CA 8316/95, 794 and 4794/97, 2758, 5748, 5749 and 5812/98, 234, 375, 2210, 5689 and 6988/99, 187-188, 1422 and 2025 of 2000, C.P. 428/98, CA 8482/97, 620/98, 4174-4175 and 6239 of 1999 and 2370 of 2000 and CA 3404

Ghaziabad Development Authority etc.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 12-05-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 34

Constitution of India, 1950 — Article 14, 226

Uttar Pradesh Urban Planning and Development Act, 1973 — Section 4

Citation : (2000) 2 MPJR 37

Hon'ble Judges : S. Rajendra Babu, J;R.C. Lahoti, J

Bench : Division Bench

Advocate : M. Raju Ramchandra, for the Appellant; Sudhir Kulshrestha, Kamini Jaiswal, Prashant Bhushan, Arvind Singh, C.V. Subha Rao, B.K. Prasad, P. Parmeswaran, B.D. Sharma, Girish Chandra, Sanjay Parikh, Pravir Choudhay, B.K. Satiya, S. Prasad, Praeen Swaroop, B.R. Sabharwal, R.V. Upadhyay, R.N. Keshwani, K.B. Sounder Rajan, Manjeet Chawla, for the Respondent

Final Decision : Disposed Of

Judgement

R.C. Lahoti, J.—Leave granted in SLP (C) No. 18887/99.

2. In this batch of appeals, Ghaziabad Development Authority constituted u/s 4 of the Uttar Pradesh Urban Planning and Development Act, 1973 is the appellant. The Authority has from time to time promoted and advertised several schemes for allotment of developed plots for construction of apartments and/or flats for occupation by the allottees. Several persons who had subscribed to the schemes approached different forums complaining of failure or unreasonable delay in accomplishing the schemes. Some have filed complaints before the Monopolies and Restrictive Trade Practices Commission and some have raised disputes before the Consumer Disputes Redressal Forum. In two cases Civil Writ Petitions

under Article 226 of the Constitution were filed before the High Court seeking refund of the amount paid or deposited by the petitioners with the Authority. In all the cases under appeal the Court or Commission or Forum concerned has found the appellant-Authority guilty of having unreasonably delayed the accomplishment of the announced scheme or guilty of failure to perform the promise held out to the claimants and therefore directed the amount paid or deposited by the respective claimants to be returned along with interest in the cases filed before the High Court of Allahabad there was term in the brochure issued by the Authority that in the event of the applicant withdrawing its offer or surrendering the same no interest whatsoever would be payable to the claimants. The High Court has held such term of the brochure to be unconscionable and arbitrary and hence violative of Article 14 of the Constitution. The High Court has directed the amount due and payable to be refunded with interest calculated at the rate of 12 per cent per annum from the date of deposit to the date of refund. In all the other appeals before us the impugned order passed by the Commission or the Forum directs payment of the amount due and payable to the respective claimants with interest at the rate of 18 per cent per annum. In Civil Appeal No. 8316 of 1995 G.D.A. v. Brijesh Mehta, the MRTTP Commission has held the claimants entitled to an amount of Rs. 50,000/- payable as compensation for "mental agony" suffered by the claimants for failure of the Authority to make available the plot as promised by it.

3. As all these appeals raise the following common questions of law, they have been heard together and are being disposed of by this common judgment. The questions arising for decision are :

(i) Whether compensation can be awarded "for mental agony" suffered by the claimants ?

(ii) Whether in the absence of any contract or promise held out by the Ghaziabad Development Authority any amount by way of interest can be directed to be paid on the amount found due and payable by the Authority to the claimants?

(iii) If so, the rate at which the interest can be ordered to be paid ?

4. In C.A. 8316/1995, Ghaziabad Development Authority had announced a scheme for allotment of developed plots which was known as "Indirapuram Scheme". The Authority informed the claimants that a plot of 35 sq. metres was reserved for them, the estimated cost of which was Rs. 4,20,000/- payable in specified installments. An allotment of plot was also informed. Then at one point of time the claimants were informed that due to some unavoidable reasons and the development work not having been completed there has been delay in handing over possession. Having waited for an unreasonable length of time the claimants approached the MRTTP Commission.

5. When a Development Authority announces a scheme for allotment of plots, the brochure issued by it for public information is an invitation of offer. Several members of public may make applications for availing benefit of the scheme.

Such applications are offers. Some of the offers having been accepted Subject to rules of priority or preference laid down by the Authority result into a contract between the applicant and the Authority. The legal relationship governing the performance and consequences flowing from breach would be worked out under the provisions of the Contract Act and the Specific Relief Act except to the extent governed by the law applicable to the Authority floating the scheme. In case of breach of contract damages may be claimed by one party from the other who has broken its contractual obligation in some way or the other. The damages may be liquidated or unliquidated. Liquidated damages are such damages as have been agreed upon and fixed by the parties in anticipation of the breach. Unliquidated damages are such damages as are required to be assessed. Broadly, the principle underlying assessment of damages is to put the aggrieved party monetarily in the same position as far as possible in which it would have been if the contract would have been performed. Here the rule as to remoteness of damages comes into play. Such loss may be compensated as the parties could have contemplated at the time of entering into the contract. The party held liable to compensation shall be obliged to compensate for such losses as directly flow from its breach. Chitty on Contracts (27th Edition, Vol. 1, Para 26.041) stated.... "Normally, no damages in contract will be awarded for injury to the plaintiffs feeling, or for his mental distress, anguish, annoyance, loss of reputation or social discredit caused by the breach of contract,.... The exception is limited to contract whose performance is "to provide peace of mind or freedom from distress".... Damages may also be awarded for nervous shock or an anxiety state (an actual breakdown in health) suffered by the plaintiff, if that was, at the time the contract was made, within the contemplation of the parties as not unlikely consequence of the breach of contract. Despite these development, however, the Court of Appeal has refused to award damages for injured feelings to a wrongfully dismissed employee, and confirmed that damages for anguish and vexation caused by breach of contract cannot be awarded in an ordinary commercial contract."

6. The ordinary heads of damages allowable in contract for sale of land are settled. A vendor who breaks the contract by failing to convey the land to the purchaser is liable to damages for the purchasers' loss of bargain by paying the market value of the property at the fixed time for completion less the contract price. The purchaser may claim the loss of profit he intended to make from a particular use of the land if the vendor had actual or imputed knowledge thereof. For delay in performance the normal nature of damages is the value of the use of the land for the period of delay, viz. usually its rental value (See Chitty on Contracts, Ibid, para 26. 045).

7. In our opinion, compensation for mental agony could not have been awarded as has been done by the MRTP Commission.

8. However, the learned counsel for the respondents has invited our attention to Lucknow Development Authority Vs. M.K. Gupta - (1994) 1 SCC 243 wherein

this Court has upheld the award by the Commission of a compensation of Rs. 10,000/- for mental harassment. The basis for such award is to be found in paras 10 and 11 wherein this Court has stated inter alia. "Where it is found that exercise of discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover. When the citizen seeks to recover compensation from a public authority in respect of injuries suffered by him for capricious exercise of power and the National Commission finds it duly proved then it has a statutory obligation to award the same." The Court has further directed the responsibility for the wrong done to the citizens to be fixed on the officers who were responsible for causing harassment and agony to the claimants and then recover the amount of compensation from the salary of officers found responsible. The judgment clearly shows the liability having been fixed not within the realm of the law of contracts but under the principles of administrative law. We do not find any such case having been pleaded much less made out before the Commission. Indeed, no such finding has been arrived at by the Commission as was reached by this Court in case of Lucknow Development Authority (supra). The award of compensation of Rs. 50,000/- for mental agony suffered by the claimants is held liable to be set aside.

9. The next question is the award of interest and the rate thereof. It is true that the terms of the brochure issued by the Authority relevant to any of the cases under appeal and the correspondence between the parties do not make out an express or implied contract for payment of interest by the Authority to the claimants. Any provision contained in the Consumer Protection Act, 1986 the Monopolies and Restrictive Trade Practices Act, 1969 and U.P. Urban Planning and Development Act, 1973 enabling the award of such interest has not been brought to our notice. The learned counsel for the claimants have placed reliance on a recent decision of this Court in *Sovintorg (India) Ltd. Vs. State Bank of India, New Delhi* - (1999) 6 SCC 40 wherein in similar circumstances the National Consumer Disputes Redressal Commission directed the amount deposited by the claimants to be returned with interest at the rate of 12 per cent per annum. This Court enhanced the rate of interest to 15 per cent per annum. To sustain the direction for payment of interest reliance was placed on behalf of the claimants on Section 34 of the CPC and payment of interest at the rate at which moneys are lent or advanced by National Banks in relation to commercial transactions was demanded. This Court did not agree. However, it was observed :-

There was no contract between the parties regarding payment of interest on delayed deposit or on account of delay on the part of the opposite party to render the services. Interest cannot be claimed u/s 34 of CPC as its provisions have not been specifically made applicable to the proceedings under the Act. We, however, find that general provision of Section 34 being based upon justice, equity and good conscience would authorise the Redressal Forums and Commissions to also grant interest appropriately under the circumstance of each case. Interest may also be awarded in lieu of compensation or damages in

appropriate cases. The interest can also be awarded on equitable grounds.

The State Commission as well as the National Commission were, therefore, justified in awarding the interest to the appellant but in the circumstances of the case we felt that grant of interest at the rate of 12% was inadequate as admittedly the appellant was deprived of the use of a sum of Rs. one lakh for over a period of seven years. During the aforesaid period, the appellant had to suffer the winding-up proceedings under the ground of financial crunch. We are of the opinion that awarding interest at the rate of 15 per cent per annum would have served the ends of justice.

10. We are therefore of the opinion that interest on equitable grounds can be awarded in appropriate cases. In *Sovintorg (India) Ltd.*'s case the rate of 15 per cent annum was considered adequate to serve the ends of justice. The Court was apparently influenced by the fact that the claimant had to suffer winding-up proceedings under the Companies Act and the defendant must be made to share part of the blame. However, in the cases before us, the parties have not tendered any evidence enabling formation of opinion on the rate of interest which can be considered ideal to be adopted. The rate of interest awarded in equity should neither be too high nor too low. In our opinion awarding interest at the rate of 12 per cent per annum would be just and proper and meet the ends of justice in the cases under consideration. The provision contained in the brochure issued by the Development Authority that it shall not be liable to pay any interest in the event of an occasion arising for return of the amount should be held to be applicable only to such cases in which the claimant is itself responsible for creating circumstances providing occasion for the refund. In the cases under appeal the fault has been found with the Authority. The Authority does not therefore have any justification for resisting refund of the claimant's amount with interest.

11. For the foregoing reasons, the direction made by the MRTP Commission for payment of Rs. 50,000/- as compensation for mental agony suffered by the claimants-respondents in Civil Appeal No. 8316/1995 is set aside. In all the other cases the direction for payment of interest at the rate of 18 per cent shall stand modified to pay interest at the rate of 12 per cent per annum.

Civil Appeal No. 8482/1997

12. This case relates to allotment of a flat. The MRTP Commission has held the claimant entitled to allotment of a flat. An option has been given to the claimant. If the claimant may refuse to take the flat in terms of the direction made by the Commission he will be entitled to the refund of the amounts deposited by him with interest at the rate of 18 per cent per annum from the dates of deposit of the various amounts by the claimant. During the course of hearing before this court the possibility of the claim being satisfied by allotment of an alternative flat was explored but that could not materialise as the claimant was not agreeable to accept that flat offered by the Authority submitting that it was located in a deserted area and was heavily priced. That being the position the direction of the

Commission for refund of the amount shall stand though the rate of interest shall be 12 per cent and not 18 per cent.

13. All the appeals and contempt petitions stand disposed of accordingly. No order as to the costs.