

(2004) 08 SC CK 0038

In the Supreme Court Of India

Case No : Civil Appeal No. 5119 of 2004 Arising out of SLP (C) No. 13083 of 2003

Haryana Urban Development Authority

APPELLANT

Vs

Nirmal Mittal

RESPONDENT

Date of Decision : 10-08-2004

Acts Referred:

Citation : (2004) AIRSCW 4688 : (2004) 3 CPJ 36 : (2004) 6 JT 602 : (2004) 6 SCALE 513 : (2005) 9 SCC 473 : (2004) 6 Supreme 70 : (2004) 3 UPLBEC 2859

Hon'ble Judges : S. N. Variava, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : Aditya Kumar Chaudhary, Neeraj Kumar Jain, Sanjay Singh, Bharat Singh and Ugra Shankar Prasad, for the Appellant; Manish Mohan and S.S. Khanduja, for the Respondent

Final Decision : Allowed

Judgement

S.N. Variava, J.—Leave granted.

2. Before this Court a large number of Appeals have been filed by the Haryana Urban Development Authority and/or the Ghaziabad Development Authority challenging Orders of the National Consumer Disputes Redressal Commission, granting to Complainants, interest at the rate of 18% per annum irrespective of the fact of each case. This Court has, in the case of Ghaziabad Development Authority Vs. Balbir Singh, , deprecated this practice. This Court has held that interest at the rate of 18% cannot be granted in all cases irrespective of the facts of the case. This Court has held that the Consumer Forums could grant damages/compensation for mental agony/harassment where it finds misfeasance in public office. This Court has held that such compensation is a recompense for the loss or injury and it necessarily has to be based on a finding of loss or injury and must co-relate with the amount of loss or injury. This Court has held that the Forum or the Commission thus had to determine that there was deficiency in service and/or misfeasance in public office and that it has resulted in loss or

injury. This Court has also laid down certain other guidelines which the Forum or the Commission has to follow in future cases.

3. This Court is now taking up the cases before it for disposal as per principles set out in earlier judgment. On taking the cases we find that the copies of the Claim/Petitions made by the Respondent/Complainant and the evidence, if any, led before the District Forum are not in the paper book. This Court has before it the Order of the District Forum. The facts are thus taken from that Order.

4. In this case the Respondent was allotted a residential plot bearing No. 354, Sector 8, Ambala City on 12th April, 1989 at a tentative price of Rs. 1,32,850/-. The full payment was made. Thereafter, the Appellant demanded payment of enhanced compensation of Rs. 1,62,048.43 which was also paid by the Respondent. Then in 1995 the Appellant again demanded 2nd enhanced compensation of Rs. 1,95,432.65 which too was paid by the Respondent. On 1st December, 1999 the Appellant informed the Respondent that the 2nd enhanced compensation payment has been reduced. The Appellant purported to return Rs. 54,499/- on 10th April, 2000. As the Appellant did not pay any interest on this amount, the Respondent filed a complaint claiming interest on the amount refunded.

5. The District Forum directed payment of interest at the same rate at which the Appellants charge for the delayed payment, and, if that was not paid within time allowed, then to pay interest @ 15% p.a. The District Forum also directed payment of costs at Rs. 1,000/-.

6. The State Forum reduced the rate of interest to 10% p.a. The Respondent did not go in Revision before the National Commission. The Appellants went in Revision before the National Commission. The National Commission has increased the rate of interest to 18% p.a.

7. For reasons set out in the Judgment in the case of Ghaziabad Development Authority v. Balbir Singh (supra), the order of the National Commission cannot be sustained. As stated above, the relevant papers regarding the claim made, the affidavits filed, the evidence submitted before the District Forum are not produced before this Court.

8. The counsel could not agree whether interest @ 12% has been paid or not. If interest @ 12% p.a. has been paid then, in our view, no interference is called for as we have already held in our earlier mentioned Order that no refund can be claimed. Even though we would have been inclined to uphold the order of the District Forum as, in such cases, interest @ 10% would suffice. If interest has not been paid then the Appellant are to pay interest @ 10% p.a. from the date of deposit till payment as directed by the State Forum. In that case in spite of their being no stay payment of interest beyond 12% and in spite of clarification given by this Court's order Ghaziabad Development Authority Vs. Balbir Singh, , the amounts have still not been paid. We feel that for the lapse Appellants must pay interest at the rate of 15% from 17th March, 2004 till payment. In such a case

the Appellants shall also pay costs fixed at Rs. 500/- to the Legal Aid Society of the Supreme Court. The Appellants must recover the amount paid towards costs personally from the officer/s, who were responsible for not paying even after clarification by this Court.

9. A complaint is also made that the Respondent now wishes to sell this plot but permission to sell is not being granted on the ground that this Appeal is pending in this Court. We fail to understand what pendency of this Appeal has got to do with permission to sell. The Respondent being the owner of the plot is entitled to sell. The Appellants cannot unreasonably refuse permission to sell. This Appeal is restricted to the question of rate of interest payable by the Appellant to the Respondent. Thus, pendency of this Appeal would not prevent Appellants from giving permission to sell, We direct that permission to sell be given to the Respondent forthwith.

10. We clarify that this Order shall not be taken as a precedent in any other matter as the order IS being passed taking into account special features of the case. The Forum/Commission will follow the principles laid down by this Court in the case of Ghaziabad Development Authority v. Balbir Singh (*supra*) in future cases.

11. This Appeal is disposed of accordingly.