
(2001) 05 NCDRC CK 0050

In the National Consumer Disputes Redressal Commission

Improvement Trust, Ludhiana

APPELLANT

Vs

SHAHEED BHAGAT SINGH CO-OP. HOUSE BLDG. SOCIETY
LTD.

RESPONDENT

Date of Decision : 28-05-2001

Acts Referred:

Citation : 2001 2 CPR 65 : 2001 3 CPJ 40

Hon'ble Judges : D.P.Wadhwa , C.L.Chaudhry , J.K.Mehra , Rajyalakshmi Rao ,
B.K.Taimni J.

Final Decision : Revision Petition dismissed with costs

Judgement

1. THIS is a revision petition filed by the petitioner/respondent - Improvement Trust, Ludhiana against the order of the State Commission, Punjab passed in Appeal No. 79/96 on 17.10.1996.

2. THE brief facts of the case are that the respondent/complainant Society owned land measuring about 16,800 yards in village Dogri, District Ludhiana. This land was acquired in 1974 by the petitioner for the scheme known as Model Town Extension Part II, Block C, Ludhiana Notification under Sections 4 and 6 of the Land Acquisition Act for this purpose were issued. Award was also announced but the respondents went in appeal against this award. In the High Court of Punjab and Haryana, petition was dismissed as withdrawn in May, 1976. In the meantime, the petitioner also applied for exemption of his land from acquisition by the Trust, which was granted in 1981 with certain conditions. In pursuance of the conditional exemption granted to respondent Society, they were also allotted 58 plots for allotment to its members. This allotment also had certain conditions as well as payment on account of development charges and exemption fee were also spelled out. Out of these 58 plots, 25 plots were allotted to its members by the respondent Society. Respondent Society could not establish the existence of the remaining 33 plots, it is this which is the cause of action before us. Respondent Society approached the District Forum with the prayer that the petitioner Trust be directed to allot 33 vacant plots to the respondent/

complainant. THE learned District Forum after hearing both the parties ordered the petitioner to give possession of the 33 plots allotted earlier or in the alternative allot these many plots in the adjacent equally well developed area of the same dimension. Petitioner filed an appeal against the order before the State Commission who after hearing both the parties dismissed the appeal and reaffirmed the directions given by the District Forum. The learned Counsel for the petitioner vehemently argued that a fraud has been perpetrated by the then Chairman of the Trust while allotting 58 plots to the respondent Society against which enquiry has already been conducted and FIR against the defaulting persons of the Trust have also been filed. His main line of argument is that since possession of the land belonging to the respondent was never taken, and since exemption was granted to the respondent Society before taking possession, the order of the then Chairman of Trust was not right and was based on erroneous understanding of the Notification granting exemption under Section 56 of the Punjab Town Improvement Trust. Since the original land stood restored to the respondent, they had no claim to any other plot. Respondents are making a case now for allotment of plots from the petitioner Trust as the land-originally belonging to the respondent Society is and was under encroachment which they are unable to get vacated; he also argued that the Society never complied with the payment conditions stipulated in the allotment order. Based on these facts, respondent Society has no right to get 33 plots; they are free to do whatever with their original land which has been exempted from acquisition. It is in this light that orders of both the lower Forum/Commission cannot be maintained. On the other hand learned Counsel for the respondent Society argued that it is for the first time that petitioner is raising the whole question of fraud committed by its earlier Chairman based on which the petitioner wants the decision of both the lower Forums set aside. According to him it has been held repeatedly that no new plea can be raised in revision, for this he relied upon several judgments of the National Commission. In II (1995) CPJ 49 (NC), Sagar Mal Dulama v. The Assistant Director, State Insurance and GPF Department, Rajasthan, this Commission had held "Revision" question which were not raised before the District Forum and the State Commission whether can be raised before the National Commission in revisional jurisdiction ? No".

According to the learned Counsel, all other points raised by the learned Counsel for the petitioner have been gone into thoroughly and need no further arguments at this stage. He also stated that plots allotted and possession not given amounts to deficiency of service, I (1997) CPJ 74 (NC), Para 9; III (1993) CPJ 7 (SC) (16, 17). He also argued that once there is an allotment by a statutory body, it has to stand upon its commitment and it cannot unilaterally withhold the further procedure of allotment and handing over the possession to the allottees. (1997-2) Punjab Law Reporter (P-507-Para 5). It was also argued by him that the main plea of the petitioner Trust, that the possession was never taken by the Trust hence question of plots at alternative site cannot be given, is not maintainable for the simple fact that evidence of their own sales clerk is on

record confirming that possession was taken by the Trust. In the lay out plan notified in 1988 land belonging to society is shown as open space; since this was done after extensive survey hence the question of this piece of land being under encroachment does not arise. Respondent Trust is manoeuvring to get out of the situation by bringing in new facts and pleas, hence the revision petition needs to be dismissed with costs.

3. WE have gone through the material on record and the arguments advanced by the parties. There is no dispute about the basic facts of this case which have been gone into by the two learned Fora below and have independently arrived at the conclusion that the petitioner Trust should take steps to allot 33 plots to the respondent society for allotting it amongst its members. The society's land was acquired, then it was exempted with certain conditions pursuant to which 58 plots were allotted by the Trust to the respondent out of which 25 plots were allotted to its members by them. The new element of fraud committed by the then Chairman of the Trust, enquiry ordered by the State Government, FIRs lodged against certain functionaries are quite alien at this stage. As has been held by the National Commission, new facts/pleas cannot be produced at the revisional stage. What we see is a valid order by a Competent Authority based on a Resolution of the Trust, based on which plots were allotted to the respondent society. What we also see is that the Resolutions have not been annulled, they remain valid. Mere filing FIR against certain functionaries does not in any way vitiate the valid resolution which stands even today. Another fact noticed is that the land acquired from the respondent society is shown as "open space" (in the Lay Out Plan (Map) of Model Town Extension which means that no construction can come up on this land - thus literally depriving the respondent society of allotting plots to its members on their original piece of land. What was granted through exemption on the one hand was taken away by notifying the land as "open space", hence ineligible for construction on the other hand. In fact if any fraud has been committed it is by the petitioner Trust. What they seem to give with one hand is taken away by the other. It is the case of the petitioner that since exemption granted to the respondent society entitled them to make plots for use by its members, it was defeated by the Lay Out Plan Notified in 1988. Till date i.e. 2001, no action has been taken by the Improvement Trust to bring any change in the Lay Out Plan of Block - E where the land of the respondent is situated and yet expecting the respondent Society to carve out plots for its members, leads us to the inexorable conclusion that the petitioner has not come with clean hands before us. The choices before the Trust were two fold - either to change the "purpose" in the Lay-out Plan to Residential as against "open-space" with regard to the Society's land or to compensate them with alternative plots. The Trust, it seems decided to pursue the second option. It does not become of the petitioner now to come before us with the plea of fraud on the part of the then Chairman. They could have cancelled/modified the Lay-out Plan; only then they could have come before us stating that the original piece of land of society stands restored to them with the requisite conditions; only under these

circumstances allotment of plots by the Trust in other locations would have appeared unwarranted. But this is not what the petitioners have done. Having deprived the respondent Society of the use of land for residential purposes, petitioner Trust is obliged to allot alternative plots for the members of the society. We do not see any infirmity - legal or otherwise with the orders passed by the learned District Forum and State Commission. Revision petition is dismissed with costs of Rs. 10,000/- payable to the respondent society. Revision Petition dismissed with costs.