
(2017) 07 NCDRC CK 0027

In the National Consumer Disputes Redressal Commission

Case No : 3030 of 2012

JALANDHAR IMPORVEMENT TRUST & ANR.

APPELLANT

Vs

SARWAN SINGH

RESPONDENT

Date of Decision : 31-07-2017

Acts Referred:

[Consumer Protection Act, 1986](#), [Section 21\(b\)](#) - Jurisdiction of the National Commission

Citation : (2017) 07 NCDRC CK 0027

Hon'ble Judges : B.C. Gupta, S.M. Kantikar

Advocate : Aditya Singh, Sumeet Tahilramani, Balvinder Singh

Judgement

1. This revision petition has been filed under section 21(b) of the consumer Protection Act, 1986 challenging the impugned order dated 30.03.2012, passed by the Punjab State Consumer Disputes Redressal Commission (hereinafter referred to as "the State Commission") in First Appeal No. 520/2008, "Sarwan Singh versus Jalandhar Improvement Trust & Ors.", vide which, while accepting the appeal, the order dated 25.02.2008, passed by the District Forum Jalandhar in consumer complaint No. 353/2006, filed by the present respondent, Sarwan Singh, was modified.

2. Briefly stated, the facts of the case are that the complainant Sarwan Singh made an application for allotment of a plot measuring 250 sq. yard in the 170-acre scheme of the opposite party (OP), the Jalandhar Improvement Trust, the present petitioner, in response to their advertisement. The complainant deposited a sum of 75,000/- vide bank draft No. 578261 dated 04.12.2003 drawn on UCO Bank, Jalandhar Branch. The draw of lots for the Scheme was conducted on 07.02.2004. However, the complainant was not successful in the said draw of lots, but his name appeared at Sl. No. 7 in the waiting list drawn by the OP. It has been alleged in the consumer complaint that the OP Trust sent a letter dated 07.04.2006 to the complainant, asking him to meet the Chairman of the Trust on 13.04.2006, after which the allotment shall be made in his favour.

3. However, when he contacted the office of the Trust, certain illegal demand was made from him. The complainant approached the State Government in support of his demand, but despite the State Government writing a letter dated 17.05.2006 to the Trust, the allotment of the plot was not made. Alleging deficiency in service on the part of the opposite party Trust, the complainant filed the consumer complaint in question, seeking directions to the OP Trust for allotment of plot and grant of compensation of 2 lakh for mental agony etc. and 20,000/- as cost of litigation.

4. The complaint was contested by the OP Trust by filing a written reply before the District Forum in which they stated that the name of the complainant was at serial No. 7 in the waiting list and hence, the plot could not be allotted till the waiting list matured.

5. The District Forum allowed the consumer complaint vide their order dated 25.02.2008 and directed the OP Trust to refund the amount deposited by the complainant alongwith interest @9% p.a. from the date of deposit till realisation. The District Forum held that the complainant was not entitled to any plot, as he had filed the complaint after two years of the date of draw. However, the Trust was deficient in service, as they had not refunded the amount deposited by him within 180 days from the date of draw as laid down in their rules. Being aggrieved against the order of the District Forum, the complainant challenged the same by way of an appeal before the State Commission. Vide impugned order dated 30.03.2012, the State Commission allowed the appeal and directed the OP Trust to allot Plot No. 721A to the complainant, which had been surrendered by one Amit Gupta. The State Commission also directed that if the said plot was not vacant, a similar plot of the same value be allotted to him in the said scheme. The Trust was also directed to pay a compensation of 1 lakh to the complainant alongwith 20,000/- as cost of litigation. While passing this order, the State Commission held that seven persons had surrendered their plots including one Amit Gupta and hence, the same could be allotted to the persons in the waiting list including the complainant. The State Commission also directed the competent authority to hold an inquiry into the matter and fix the responsibility of the official who was instrumental in not allotting the plot to the complainant. Being aggrieved against the order of the State Commission, the OP Trust is before this Commission by way of the present revision petition.

6. During hearing before us, the learned counsel for the petitioner/OP Trust contended that the impugned order passed by the State Commission was not in accordance with law as the complainant had filed his claim after the expiry of 2 years from the date of draw of lots for the Scheme. The draw of lots had been held on 07.02.2004, whereas the consumer complaint in question was filed on 04.08.2006. The learned counsel also stated that the complainant had failed to produce any evidence before the Trust regarding the availability of the plot. The learned counsel further stated that in response to the order passed by the District Forum, the Trust had already made a demand draft dated 28.08.2008 in

favour of the complainant and sent the same to him, but the said demand draft had remained unpaid.

7. The learned counsel for the complainant/respondent stated, however, that Shri Jitender Singh, Executive Officer of the OP Trust had filed an affidavit before this Commission, in which he stated that the Trust had already allotted plots to the persons upto Serial No. 6 in the waiting list. In the order dated 10.01.2013 recorded by this Commission, there is a mention of the said affidavit. The executive officer has also stated that the persons in the waiting list shall be accommodated whenever the plots will be available. However, this Commission directed that one plot shall be kept vacant till the disposal of the revision petition. However, the Trust had failed to make the allotment of the said plot to the complainant. The learned counsel further stated that the amount deposited with the Trust had not been refunded to the complainant. The order passed by the State Commission was, therefore, in accordance with law and should be upheld.

8. We have examined the entire material on record and given a thoughtful consideration to the arguments advanced before us.

9. The facts of the case bring out clearly that the complainant was not successful in the draw of lots held on 07.02.2004, but his name appeared at serial number 7 of the waiting list drawn by the OP Trust. It is also made out from the order passed by the State Commission that the Trust allotted plots to some of the persons mentioned in the waiting list. In the affidavit filed by the Executive Officer of the Trust, it is clearly stated that the persons upto Serial No. 6 had been allotted the plots. The State Commission have brought out in the impugned order that one Amit Gupta had also surrendered the plot, in addition to six others and hence, the said plot could have been allotted to the complainant, but the Trust failed to allot the same without assigning any reason. The State Commission directed the OP Trust to allot the said plot to the complainant and in case the plot was not available, to allot an alternative plot to the complainant. The petitioner has not been able to point out any infirmity or inconsistency in the direction made by the State Commission in the impugned order. The main ground taken by the petitioner Trust says that the complainant was not entitled for the allotment of plot, because he had made his claim after the lapse of two years from the date of draw of lots for the plots. This contention of the petitioner Trust is not tenable, because they themselves wrote a letter to him on 07.04.2006 only, informing him that his name was at Sl. No. 7 in the waiting list. Moreover, the Trust had made allotment in favour of other persons, or names that figured above the complainant in the waiting list. It cannot be stated, therefore, by any stretch of imagination that there was delay in filing the consumer complaint in question.

10. Further, the plea taken by the petitioner Trust that they had returned the money deposited with them to the complainant by means of bank draft dated 28.08.2008 is not tenable, because the said draft remained unpaid as brought

out by the State Commission, based on a letter from the concerned Bank. Moreover, the petitioners have not been able to provide any explanation as to why they failed to return the money deposited by the petitioner if there was no scope for making allotment of plot to him. Moreover, the ground regarding the attempt made to return the money to the complainant has not been taken in the grounds of revision petition before this Commission.

11. Based on the discussion above, it is held that there is no infirmity, irregularity or illegality in the order passed by the State Commission which may merit any interference in the exercise of the revisional jurisdiction by this Commission. This revision petition is, therefore, ordered to be dismissed and the order passed by the State Commission is upheld. There shall be no order as to costs.