
(1990) 06 NCDRC CK 0003

In the National Consumer Disputes Redressal Commission

K.T.SHIVAIAH

APPELLANT

Vs

Chairman

RESPONDENT

Date of Decision : 12-06-1990

Acts Referred:

Citation : 1991 2 CPJ 82

Hon'ble Judges : R.G.Desai , K.R.Ramaswamy Iyengar , Sudha V.Reddy J.

Final Decision : Complaint dismissed

Judgement

1. THE facts giving raise to this complaint may be briefly stated as follows:-

2. THE Bangalore Development Authority (for short the BDA), the Respondent herein formed a layout of residential sites in the scheme called "West of Chord Road II Stage". THE plan of the Layout showing therein the formation of sites including the Site No. 669 allotted to the complainant is at Annexure-A produced along with the complaint. Site No. 669 measuring 80" x 120" was allotted to the complainant on 12.8.1970. Due to curvature at the time of handing over possession, the site measuring 80 ft. East to West end 126"9"+ 118"6"/2 North to South was delivered to the complainant on 3.4.1973 excluding the triangular bit of land lying on the western side of Site No. 669 in between the said site and Site No. 670. According to the complainant that was a mistake committed due to the inadvertence of the officials of the B.D.A. THE complainant on 4.1.1979 filed a complaint about it to the Respondent and he received an endorsement that the measurements of his site would be rectified as per its letter dated 31.7.1989, a copy of which is enclosed to the complaint as Annexure-B. But the BDA failed to rectify the measurements of Site No. 669. On the other hand, the BDA treated the triangular bit of land as a marginal land and distributed it to the allottees of Site Nos. 669, 670 and 671. THE complainant came to know about it on 4.5.1983, when he personally went to the BDA and collected the endorsement regarding the allotment of that marginal land and complained about it to the then Commissioner of the BDA on 6th and 7th of May 1973 and the Commissioner ordered on his complaint that measurement of 118"6" being

committed by the BDA should be given to Site No. 669 on the Western side. When the purchasers of Site Nos. 670 and 671 started construction and when the BDA officials did not stop the unlawful construction by them, the complainant filed O.S. No. 1120/1987 against the purchaser of Site No. 671 and the said suit was dismissed on the ground that the complainant had not given prior notice to the BDA. THE complainant spent Rs. 10,000/- for that suit. THEN the complainant gave a petition to the Commissioner of the BDA to rectify the measurements of his site on the lines indicated in the judgment rendered by the Karnataka High Court in W.P. No. 10792/1980, the xerox copy of which is produced as Annexure-E to the complaint. But no rectification was done and the BDA Engineers have started their mischievous tactics of putting up unfounded and baseless adverse notes on his application. Hence the complainant has filed this complaint complaining about the deficiency in service and the delay in rectification by the BDA. He has prayed for the following reliefs in his complaint:- (a) that the Chairman, BDA may be ordered to give a measurement of 118"6" on the Western side of Site No. 669 including the piece of land measuring 0+26/2 X 117"+118"6"/2. (b) that the Chairman, BDA may be ordered to take necessary action to remove the encroachment of land measuring 0+26/2 x 126"9"/2 by the owner of Site No. 668 and to include it in Site No. 669. (c) the Chairman, BDA may be ordered to pay a compensation of Rs. 10 lakhs to the complainant (Rs. 50,000/- per year for 20 years for the damages suffered by him) on account of intense mental and physical agony due to the high handed action of the officers of the BDA and the expenses incurred by him for the innumerable trips made by him to the BDA.

The complaint is registered by the Respondent by contending inter alia that the complainant is not entitled to more area than 9600 Sq.ft. which was allotted to him as per the allotment order dated 12.8.1970; that the complainant was given possession of an area measuring 9810 Sq.ft. as per the Possession Certificate; that including the marginal land allotted to the complainant, the complainant was given possession of an area measuring 10639.50 Sq.ft. as per the revised Possession Certificate; that the complainant is in actual possession of an area measuring 10899.65 Sq.ft.; that the marginal land was distributed amongst the owners of Site bearing Nos. 669,670 and 671 after taking into consideration all circumstances and the situation of the three sites; that the complaint is barred by res- judicata; that the complaint is liable to be rejected on the ground of delay and laches on the part of the complainant and that the complainant is not entitled to any relief.

The first point that arises for determination in this case is whether any mistake has been committed by the BDA in issuing the Possession Certificate in respect of the site allotted to the complainant in the matter of recording measurements and in the matter of allotting the marginal land to him and to the purchasers of Site No. 670 and 671. The first ground on which the complainant seeks more area than what is allotted to him is that the price quoted in his allotment order (enclosure" A" to his written arguments) was Rs. 21/- per Sq. yd. and the

amount collected from him for the site measuring 80"x120" is Rs. 25,480/- and so he must get an area of 10920 Sq.ft. instead of 9600 Sq. ft. In the copy of the allotment order (enclosure "A" produced by the complainant), it is no doubt stated that the value of the site was Rs. 21/- per Sq. yd. But it has also been stated in it that the value was Rs. 25,600/- and the break-up is given in the tabular form. From that it is clear that the said amount had been arrived at on the basis that the value of the site was Rs. 24/- per sq. yd. and not Rs. 21/- per sq. yd. Hence it was an obvious mistake in the copying. Therefore, I see no substance in the said contention of Dr. Shivaiah.

3. FROM the allotment order, it is clear that he was allotted site measuring 80"x 120". Due to the curvature, the complainant could not be given the site with the said measurements. Hence he was given possession of an area measuring 80"x126"9" + 118"6"/2 equal to 9810 sq. ft. (See Annexure- A produced by the complainant along with his letter dated 25.5.1990). That is also clear from the statement filed by the advocate for the respondent. That fact also is not disputed by the complainant. It is for that area of 9810 sq.ft. that the complainant executed Lease-cum-Sale Agreement, copy of which has been produced by the Learned Advocate for the Respondent. The said agreement was executed on 25.11.1972 and it was registered on 8.2.1973. FROM this, it is clear that the complainant agreed to take 9810 sq.ft. in respect of the site allotted to him. No doubt, there was a triangular bit of land remaining after giving possession of Site Nos. 669,670 and 671 in between Site Nos. 669 and 670. That was treated as marginal land by the BDA and after taking into consideration of all circumstances and the claims made by the owners of Site Nos. 669,670 and 671, the BDA allotted the said land to all the three of them as follows:- Site No. 669 : 0"+14"x 118"x6" Site No. 670 : 0"+13"x118"-0" Site No. 671 : 0"+13"x118"

4. FROM the minutes of the BDA meeting dated 23.3.82 regarding the allotment of the said marginal land, a copy of which has been produced by the learned Counsel for the respondent, it is clear that Site Nos. 670 and 671 were measuring 9460 sq.ft. and 9440 sq.ft. respectively as per the original allotment. Hence their claim for the marginal land was also justified. The contention of the complainant is that the whole of the triangular bit was included in his Site No. 669 as per the original plan and so he must have been given the whole of it. In the copy of the plan produced as Annexure-A to the complaint, the exact measurements of the sites have not been given and so it is not possible to state that the whole of the triangular bit was included in Site No. 669. In the order of Allotment of the marginal land, it is nowhere stated that the Western side of the site allotted to the complainant including the marginal land should measure 118"6". FROM the sketch, it is clear that one side of the triangle formed after including the piece of triangular area allotted to the complainant measures 118"6". In the allotment order, it is clearly stated that the base of the triangle measures 14" and so the complainant is not entitled to anything more than that. Hence we see no force in the contention of the complainant that whole of the triangular bit must be allotted to him. It cannot be said from the material on

record, that the discretion to allot the said triangular bit of land to the three site owners has been exercised improperly. The complainant has produced the xerox copy of the Judgment of the High Court of Karnataka in W.P. No. 10792/1980 decided on 24.10.1980, in support of his contention that the BDA is in duty bound to faithfully implement its scheme and it must correct the measurements if there was a mistake in the allotment. In that case, all the sites in the layout formed by the BDA were of the same dimension each measuring 40" North to South and 60" East to West, the width of 40" facing the road. The certificate of grant issued in favour of the Petitioner allotting Site No. 1452 showed the correct measurement but in the Possession Certificate issued by the BDA, to Respondent No. 2 who was allotted Site No. 1451, a mistake had crept in, in that instead of mentioning the dimensions 40" North to South and 60" East to West, it was shown therein that Site measured 60" North to South and 40" East to West. Taking advantage of the alleged mistake, Respondent No. 2 was creating trouble and preventing the petitioner from proceeding with her construction. The BDA owned the mistake. It was held that it was the duty of the BDA to faithfully implement the scheme prepared by it and if a mistake had crept in the matter of allotment of a site to an allottee, it had power to rectify the mistake especially when the mistake adversely affected the interests of the Petitioner and was contrary to the scheme prepared by the BDA. The said decision is not applicable to the facts of the present case as no such mistake has crept in the Possession Certificate in this case. The next question that arises for determination in this case is whether the complaint has been filed in time. The resolution to allot the marginal land was passed on 23.3.1982 by the BDA, the complainant states that he came to know about it on 4.5.1983 when he personally went to the office of the BDA and collected the endorsement regarding the allotment of marginal land to him. Hence it is clear that he came to know about it on 4.5.1983. So the right to sue accrued to the complainant on that day i.e., 4.5.1983 and he ought to have challenged it within three years from that day as per Art. 113 of the Limitation Act. But the complaint has been filed on 19.3.1990. No doubt, the Consumer Protection Act, 1986 is conspicuously silent with regard to the limitation. Section 3 of the said Act says that the provisions of the said act are in addition and not in derogation of the provisions of any other law for the time being in force. The question is whether the complaint of the complainant can be entertained, if it had become time barred under the Law of Limitation long prior to the coming into force of the Consumer Protection Act, 1986.

5. A somewhat similar question arose before the National Commission, New Delhi in 1989-90 between M/s Oswal Fine Arts v. M/s H.M.T. Madras I (1991) CPJ 330 (NC) (Complaint Petition No. 1/1988)-I (1991) CPJ 330 (NC). It was ruled in that case that if the claim for damages and compensation had become time barred under the law of Limitation long prior to the coming into force of the Consumer Protection Act, 1986, the National Commission will not entertain such a stale claim. The complaint filed by the complainant is a highly belated one inasmuch as the allotment of marginal land was made in 1982. The claim of the

complainant for setting aside that allotment and re-allotment to him had become time barred under the Limitation Act, 1963 long before the coming into force of the Consumer Protection Act, 1986. On this score also, we decline to entertain the complaint of the complainant. That apart, as the complainant has got more area than was allotted to him, his claim for additional area is not justified. If that is so, the complainant is not entitled to any compensation as claimed by him. He has also not shown how he has suffered loss of Rs. 10 lakhs. Hence he is not entitled to any of the reliefs claimed by him. In the result, the complaint is dismissed. Under the circumstances of the case, we make no order as to costs. Complaint dismissed.