

**(2011) 07 NCDRC CK 0030**

**In the National Consumer Disputes Redressal Commission**

MANOHAR SINGH

APPELLANT

Vs

CHANDIGARH ADMINISTRATION

RESPONDENT

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**Date of Decision :** 20-07-2011

**Acts Referred:**

**Citation :** 2011 0 NCDRC 425 : 2011 3 CPJ 170 : 2011 3 CPR 170

**Hon'ble Judges :** V.R.Kingaonkar , Vinay Kumar J.

**Final Decision :** Appeal disposed off

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## **Judgement**

1. THIS appeal arises out of judgement and order rendered by State Consumer Disputes redressal Commission, UT Chandigarh (hereinafter referred to as "the State Commission") in complaint case no. 60/2006 dismissing the complaint filed by the appellant.

2. IT is an admitted fact that the respondents issued an advertisement dated 14.04.1981 for allotment of industrial plots of different types. The appellant submitted an application dated 20.05.1981 along with bank draft of Rs.5,000/- being the earnest money. Out of 3375 applicants, 339 were selected for the purpose of allotment of the plots on consideration of the project reports. The scrutiny committee of the respondents found that the appellant was eligible for allotment of two (2) kanal plot. By letter dated 12.11.82 he was allotted two kanal plot @Rs.70/- per sq. yard. He paid Rs.12,500/- on 10.12.1982 as per the demand. IT is further an admitted fact that as a result of draw held on 30.11.1982, he was allotted plot no. 1289, industrial area, Phase " I as confirmed vide letter dated 23.12.1982. He deposited first instalment of Rs.9,225/- on 23.01.1984 by way of bank draft. He and similarly placed allottees were kept on waiting for delivery of possession for a considerable period. They were informed that due to legal impediments, the plots could not be allotted to them and the respondents were making an attempt to make some alternative arrangements. IT appears that the original scheme was abandoned by the respondents because the land was unavailable due to objection raised by the Forest Department. The Forest Department and the Environment Ministry did not

favourably consider the representation of the respondents and as such the plots could not be made available to the allottees, including the appellant. Some of the allottees filed Civil Writ Petition in Punjab and Haryana High Court. The Writ Petition No. 2453 / 1987 was partly allowed and the L.P.A. No. 1631 / 1991 was dismissed. The fall out of the litigation in the High Court was that the respondents made alternative arrangement for the allotment of the plots. As per option made available, the appellant gave consent for allotment of lesser area, i.e., 1.5 kanal plot. They published a public notice (Annex. C-11) dated 21.11.2001. The name of appellant appears at serial no. 26 in that public notice as allottee of alternative plot no. 1289, Phase " II (Ext.). The litigation did not stop at High Court level. A number of Civil Appeals were preferred against common Judgement dated 30.08.2000 rendered by the Division Bench, High Court of Punjab and Haryana. Some of the writ petitions were preferred by the allottees to whom possession was not delivered in respect of alternative plots allotted to them. Some of the writ petitions were filed by the non-allottees. Some of them were filed by those who had not consented for alternative allotment of the plots. The Hon"ble Supreme Court decided all the appeals by Judgement dated 13.04.2004. The appellant was not a party to the litigation before the High Court of Punjab and Haryana as well as in the appeals before the Hon"ble Supreme Court.

The appellant's case before the State Commission is that he had consented for smaller plot of 1.5 kanal and was satisfied with the allotment of alternative plot in Phase II. In fact, 57 persons were given possession of the alternative plots in Phase II scheme floated by the respondents. He was ready and willing to obtain possession after due compliance of the terms and conditions. However, the further process of allotment was stopped by the respondents due to the litigation, which went to the Hon"ble Supreme Court. He expected that since he had never abandoned the allotment of the alternative plot, at least after the Judgement of the Hon"ble Supreme Court in SLP 4725 / 2002, he will be called upon to pay the remaining amount and get the possession. He was, however, informed by the respondents vide a letter dated 14.07.2004 that the allotment was cancelled and the amount deposited by him was being refunded under a cheque. The reason for cancellation was informed to him as being fall out of the Judgement of the Hon"ble Supreme Court in SLP No. 4725 / 2002. The respondents erroneously cancelled the allotment made in his favour by misinterpreting the text of the Judgement of the Hon"ble Supreme Court. He is not bound by the said Judgement as he was not a party before the Hon"ble Supreme Court nor it adversely affects his interest. Hence, he filed a complaint before the State Commission seeking allotment of the alternative plot alongwith compensation on account of mental harassment and sufferings.

3. THE State Commission dismissed the complaint of the appellant only on the ground that he is covered by observations of the Hon"ble Supreme Court in the Judgement in SLP 4725 / 2002. THE State Commission observed: "It is true that the complainant had never a dispute with the Chandigarh Administration but in

view of the Judgement of the Hon"ble Supreme Court dated 30.04.2001 he is not entitled to any relief from the Chandigarh Administration as he was not a party to the proceedings at any stage before the Hon"ble High Court or before the Hon"ble Supreme Court." This is the only reason as to why the complaint was dismissed. We have heard learned counsel for the parties. We have also perused the Judgement of the Hon"ble Supreme Court in SLP No. 4725 / 2002. It may not be reiterated that the appellant was not at all a party to the Writ Petition before the High Court of Punjab & Haryana or the litigation before the Hon"ble Supreme Court. On careful reading of the Judgement of the Hon"ble Supreme Court, we do not find that it has been made specifically applicable even to the litigants who were not made parties before it. It is well settled that only a Judgement "in rem" will be binding on all but Judgement "in personam" will be binding only on the persons who were before the Court. The Judgement in SLP No. 4725 / 2002 does not appear to be a Judgement "in rem". Needless to say it will not bind the appellant. The Judgement of the Hon"ble Supreme Court could not have been interpreted by the State Commission like provisions of law. Further, we find that the interpretation is not properly done by the State Commission.

4. THE State Commission appears to have quoted certain observations of the Hon"ble Supreme Court from page 33 of that Judgement. In fact, what we have noticed from the text of the Judgement of the Hon"ble Supreme Court is that the Hon"ble Supreme Court partly modified the order of the High Court of Punjab and Haryana in respect of the allottees of one kanal plots. THE Hon"ble Supreme Court observed : "THE relief in the nature of directions made in favour of consentees and non-consentees and allottees of one kanal plots are restricted only to such of them who were parties before the High Court. All claims of remaining consentees or non-consentees or allottees of one kanal plots who were not parties before the High Court stand rejected." The above quoted direction of the Hon"ble Supreme Court is not applicable in case of the appellant. He was not a consentee in respect of one kanal plot or allottee of such a plot. The rejection of the claims of remaining consentees or non-consentees or allottees only in respect of one kanal plot, who were not parties in the cases before the High Court, also cannot be made applicable to the appellant. The State Commission appears to have picked up some sentences from the Judgement of the Hon"ble Supreme Court while rejecting the claim put-forth by the appellant. We may hasten to add that the State Commission did not examine whether the Judgement of the Hon"ble Supreme Court was a Judgement "in rem" or was applicable only to the parties before the High Court or before the Hon"ble Supreme Court. In our opinion, the respondents also misinterpreted the directions of the Hon"ble Supreme Court and issued the letter dated 14.07.2004 informing the appellant that amount deposited by him was being refunded alongwith interest @12% p.a. as the allotment cannot be made in view of the Judgement of the Hon"ble Supreme Court in SLP No. 4725 / 2002. In our opinion, the appellant's case is not covered by that Judgement in SLP No. 4725 / 2002. It follows, therefore, that the respondents committed deficiency in service

by rejecting legal and valid claim of the appellant on mis-interpretation of the observations of the Hon"ble Supreme Court in the Judgement dated 13.04.2004. It follows, therefore, that the complaint deserves to be allowed. In the result, the impugned judgement and order of the State Commission is set aside. The complaint is partly allowed. The respondents shall allot plot no. 1289 in Phase II, industrial area of Chandigarh in favour of the appellant after completing due formalities. The appellant shall make final payment of the amount as may be found due against him. The respondents shall not charge any excess amount and shall make the allotment at the old rates as prevailed when the allotment was made under the public notice dated 21.11.2001. In case, the plot no. 1289 Phase II (Ext.) is allotted to some one else during the intervening period then the respondents, shall allot another alternative plot of the same size to the appellant and such issue, if any, may be sorted out by the State Commission after calling upon the parties to identify such alternative plot available. The appeal stands disposed off in above terms. The statutory amount, if any, be refunded to the appellant alongwith the accruals. The respondents to pay costs of Rs.20,000/- to the appellant.