
(2008) 02 OHC CK 0066
In the Orissa High Court

Sri Naili Kanta Muduli

APPELLANT

Vs

Bhubaneswar Development Authority and Another

RESPONDENT

Date of Decision : 27-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2008) 105 CLT 701 : (2008) 2 OLR 18 : (2008) 2 OLR 118

Hon'ble Judges : M.M. Das, J;B.P. Das, J

Bench : Division Bench

Final Decision : Allowed

Judgement

M.M. Das, J.—The dispute raised in the present writ application lies within a narrow compass. For appreciating the respective contention of the parties, it is necessary to state the facts in brief:

The Opp. Party No. 1 being the Bhubaneswar Development Authority (for short, "the B.D.A.") introduced a commercial scheme at Chandrasekharapur , Bhubaneswar known as "District Centre" covering an area Ac. 35.52 decimals of raw land consisting of (A) approximately 144 Nos. of constructed shop-cum-residences in the ground-floor, 72 residential units in the 1st floor and 72 units in the second floor (B) Pindi 96 Nos. in 8 blocks having 12 pindies in each block (C) commercial plots as per Annexure-I of the Brochure consisting of 290 plots of different sizes for being utilized for construction of commercial units cost of which was worked out in Annexure-I of the Brochure and (D) other plots and bigger plots for various other purposes like Clinic, Petrol Pump Restaurant, Cinema Hall etc. as listed under Annexure-II of the Brochure. In the said scheme, applications were invited from interested persons and the last date for making such application was fixed as 16.1.1993.

2. The Petitioner's case is that in the year 1998, he came to know that a plot of land for construction of Cinema Hall under the aforesaid scheme introduced by the B.D.A. was still lying vacant as there was no response for the same. The

Petitioner made an application to the Vice Chairman, B.D.A. for allotment of the said plot of land for construction of the Cinema Hall under the Self Financing Commercial Scheme expressing his willingness to pay the entire cost of land as fixed by the B.D.A. within a maximum period of three months. The B.D.A. through its Allotment Officer in its letter dated 24.8.1998 intimated the Petitioner that his application for allotment of the said plot has been allowed and the Petitioner has been provisionally allotted the plot bearing No. 306 measuring 24,152 sqr. Ft. and the cost of the said plot is Rs. 10,43,482/- and it being a corner plot, the Petitioner is required to deposit a further amount of Rs. 5000/-, thus, totalling to a sum of Rs. 10,48,482/- towards the cost of the plot of land within three months from the date of issue of the said letter. It was stipulated that failing such payment, the Petitioner would be liable to pay interest @ 16.5% per annum. It was also mentioned in the said letter that the Petitioner would also be liable to pay interest as late comer to the above scheme, which will be intimated later on. The Petitioner deposited the entire amount of Rs. 10,48,482/- in three instalments and intimated the B.D.A. that he has paid the entire amount towards the cost of the plot making a request to hand over possession of the same to him in the letter dated 11.11.1998 under Annexure-2. Thereafter, the B.D.A. in its letter 4.1.1999 intimated the Petitioner that he is required to pay a further sum of Rs. 3,90,103/- towards interest as late comer to the scheme. The Petitioner made a representation to the Secretary B.D.A. stating that levy of interest on the Petitioner as late comer is wholly unjust, improper and illegal specially when the Petitioner has deposited the entire cost of the land as stipulated in the provisional allotment letter. However, the B.D.A. without acceding to the request of the Petitioner in its letter dated 9.8.1999 intimated him that he is to pay interest to the tune of Rs. 4,23,628/- failing which more interest will be charged. The Petitioner again represented before the B.D.A. But the B.D.A. increased the demand of interest in letter dated 7.7.2000 to an amount of Rs. 4,80,233/-. It appears that the Petitioner continued to resist such claim of the B.D.A. resulting in another letter from the B.D.A. dated 16.9.2002 wherein the interest demanded was Rs. 6,18,888/- and it was stated that failing to pay such interest, the allotment of the plot of land made in favour of the Petitioner would be cancelled. The said letter has been annexed as Annexure-13 to the Writ Petition. The Petitioner being aggrieved by such demand has approached this Court under Article 226 of the Constitution of India, inter alia, making a prayer that the levy of interest as stipulated in the Brochure for late comers be declared as illegal and unjust and the levy of compound interest as has been demanded under Annexure-13 when no principal amount was due to be paid is also equally illegal and unjust. The Petitioner on the above ground has sought for quashing the demand raised in the letter under Annexure-13.

3. A counter affidavit has been filed on behalf of the Opp. Parties, inter alia, stating that as per Brochure published and annexed to the counter affidavit as Annexure-A, there was a provision in Clause - 8 of the same for payment of interest under which it has been stipulated that late comer to the scheme will

have to pay interest @ Rs. 16.5% from the original date of payment of first EMD applicable to the original allottee (a late comer is he who applies and gets allotment after the deposit of first EMD applicable to the original allottees). The B.D.A. has pleaded that payment of interest for late comer to the scheme being a condition of the Brochure, the Petitioner is liable to pay such interest and he cannot object to the same. The B.D.A. has tried to explain the basis on which such interest has been imposed. It appears that the B.D.A. after calculating the interest to be Rs. 3,90,103/- in Annexure-4 and demanding payment of the same, the same having not been paid by the Petitioner has taken the said amount to be a part of the consideration money for the value of the land and treated it to be a part of principal and has further calculated the interest on the said amount thereby ultimately raising it to the tune of Rs. 6,18,888/- under Annexure-13 to the Writ Petition.

4. After considering the submissions made by the Learned Counsel for the parties, it would appear that the Brochure introduced by the B.D.A. under Annexure-A to the counter affidavit inviting applications for allotment of shop rooms, pindies, commercial plots etc. as already stated above, was in force till 16.1.1993. Since, there was no application by any intending purchaser for the plot of land in question, it has been allotted to the Petitioner. Since the last date of receipt of application was fixed as 16.1.1993, it cannot be said that the Brochure remained open after 16.1.1993. The Petitioner admittedly, upon coming to know that the plot of land is lying vacant and there was no applicant for the same, made an application for the same as late as in the year 1998. Prima facie, we are of the view that the terms enumerated in the Brochure did not remain open after the last date fixed and will not be applicable in the case of the Petitioner. Even assuming that the same can be applied for a land which was available to be allotted under the Brochure, it would be seen that Clause - 8 of the said Brochure prescribes the terms with regard to payment of interest as follows:

8. Payment of Interest:

(a) The late-comer to the scheme will have to pay interest @ Rs. 16.5% from the original date of payment of 1st EMD applicable to the original allottee (A late-comer is he who applies and gets allotment after the deposit of 1st E.M.D. applicable to the original allottees).

(b) Extension of time beyond the due dates of payment may be allowed at the discretion of the authority to a maximum period of three months on payment of interest @ 16.5%.

(c) If an allottee fails to take possession of the asset within a period of two months from the date of execution of deed/ agreement, watch and ward charges @ Rs. 250/- per month shall be levied. Failure to take over possession of the house within a period of six months from the date of execution of sale deed the allotment is liable for cancellation.

5. A bare reading of the aforesaid clause would go to show that neither a "late comer" has been defined under the Brochure nor the original date of payment of the first E.M.D. has been mentioned therein. Even it has not been mentioned that what would be the period for which interest at the rate of 16.5% will be charged (whether annually/monthly/bi-monthly etc.) Stipulation has been made that at the discretion of the authority, extension of time beyond the due date of payment may be allowed for a maximum period of three months of payment of interest at 16.5%. In this clause also, it is not stipulated whether the interest payable is per annum or for any other specific period.

6. Learned Counsel for the Petitioner has rightly contended that Clause-8 of the Brochure is vague and unspecific.

7. "Interest" in Black's Law Dictionary, means the compensation allowed by law or fixed on by the parties for the use or forbearance for borrowed money. In common parlance, it is naive to mention that a creditor when allows a debtor to use his money for a period exceeding the date until which, such credit was given, takes an extra amount at a specific rate for specific period and that extra amount is known as interest. In the instant case, even assuming that the Brochure was open, when the Petitioner made the application for allotment of the land, i.e., in the year 1998, the B.D.A. having provisionally allotted the said land in its letter under Annexure -1 to the Writ Petition, fixing the cost of the plot of land at Rs. 10,43,482/- and an extra amount of Rs. 5000/- on account of the same being a corner plot and stipulating that the said amount is payable within three months from the date of issuance of the said letter, the Petitioner having complied with the said terms and having paid the cost of the land within the stipulated period, no interest whatsoever can be charged on the Petitioner towards the cost of the allotted plot. The sentence in Annexure- 1 "you are also liable to pay interest as late comer applicant to the above scheme which will be intimated to you later on" cannot be construed to mean that the Petitioner will be liable to pay interest over the cost of the land as per Clause-8 of the Brochure, which we have already held to be vague and unspecific.

8. Even assuming that the Petitioner comes within the definition of "late comer" as meant by the B.D.A., the Petitioner cannot be held liable to pay interest from the date when any other allottee has paid the first E.M.D. till the Petitioner paid the price of the land. The Petitioner was not in the picture till he made the application in the year 1998 and the allotment was made on the basis of such application under Annexure-1 dated 24.8.1998.

9. We have, therefore, no hesitation in holding that the claim of the B.D.A. as made under Annexure-13 with regard to interest payable by the Petitioner amounting to Rs. 6,18,888/- is wholly illegal, arbitrary and unsustainable. Accordingly, we quash the letter dated 16.9.2002 under Annexure-13 to the Writ Petition and direct the B.D.A. to hand over possession of the plot in question, if not already handed over, and execute necessary conveyance in respect of the same in favour of the Petitioner within a period of two months from the date of

communication of this order.

10. The Writ Petition is accordingly allowed, but in the circumstances without any cost.

B.P. Das, J.

11. I agree.