(2011) 07 NCDRC CK 0007

In the National Consumer Disputes Redressal Commission

Universal Motors Pvt Ltd — APPELLANT

Vs

Kanpur Development Authority — RESPONDENT

Date of Decision : 15-07-2011

Acts Referred:

Citation : 2011 4 CPJ 64

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

Final Decision : Appeal partly allowed.

Judgement

1.THIS appeal is directed against the order dated 30.4.2004 rendered by the State Commission, Uttar Pradesh, in Execution Case No. Ex. 03/2000. By the impugned order, the State Commission directed the respondent to pay amount of Rs. 1.25 lakh to the appellant along with interest @ 18% p.a. from the date of the deposit till the date of the payment. The respondent was further directed to pay Rs. 10,000 as costs.

2. THE litigation has a chequered career. The period of litigation looms over about 30 years. It is not, however, necessary to go back to the original complaint case of the appellant. It would suffice if some of the relevant facts are mentioned, in order to amplify understanding of the controversy.

3. THE appellant is the original complainant and had filed complaint case No. 166/ SC/1992, before the State Commission, Uttar Pradesh. The appellant''s case, in short, was that an open plot admeasuring 500 sq.mts. within the industrial area of Kanpur Industrial Zone, at Kanpur Bye-pass, behind Indian Explosives Zone Ltd. was allotted to it for consideration of Rs. 1.25 lakh. The appellant alleged that the amount was paid vide a cheque, dated 8.2.1981 which was encashed by the respondent on 31.3.1981. Though the appellant repeatedly demanded possession of the plot and completion of the necessary formalities, yet that was not done. The original plot to be allotted to the appellant was plot No. 9. Since it was not made available, the appellant filed the above mentioned complaint case. By order dated 23.9.1997, the State Commission allowed the complaint and directed the respondent (Kanpur Development Authority) to deliver possession of

alternate plot No. 8 in the Industrial area at Kanpur Bye-pass after completing the necessary formalities, within a month. The State Commission had held that since the plot No. 9 was unavailable, and, that the respondent (KDA) had already taken decision to make allotment of plot No. 8 to the appellant, it was appropriate to mould the relief and, therefore, directed allotment of the said plot No. 8, instead of plot No. 9. Feeling aggrieved, the respondent-KDA preferred FA 160/1998. By order dated 5.9.2003, this Commission held that the order rendered by the State Commission was valid, legal and proper. It was observed ".....What is in dispute is price to be charged for the Plot which KDA and the State Government has not been able to resolve and that is where the matter rests. As per principle laid down in our judgment (supra), we have upheld allotment of alternative plot at the original price. This is precisely what the State Commission has done."

4. WHILE dismissing the appeal along with cost of Rs. 10,000, however, this Commission observed that plot No. 8 also had become unavailable as the KDA had allotted it to someone else, during the pendency of the proceedings and as such, the point regarding the allotment of another plot could be resolved by the State Commission. Thus, the matter remained to be re-examined to give lee way for execution of the order of the State Commission inasmuch as the Appellate order merged into the order of the State Commission because this Commission had dismissed FA No. 160/1998. There was no further challenge made to the judgment of this Commission in FA 160/1998.

5. IN the course of execution of the said order, rendered by the State Commission on 23.9.1997 and the order dated 5.9.2003, rendered by this Commission, the parties re-agitated their contentions before the State Commission. By the impugned order, the State Commission held that since plot No. 8 was also unavailable, the refund of the amount along with interest was the only way out, inasmuch as another plot offered by the KDA was not acceptable to the appellant at the price prevalent at the time that was offered. The State Commission observed that the appellant contributed to a great extent towards "non-executability of the decree". The appellant has preferred appeal against the said order. By interim order, dated 6.11.2009, this Commission directed the respondent to execute registered lease deed in favour of the appellant in respect of plot No. 28 Scheme No. 40, Panki Industrial Area, Kanpur. The interim order rendered by the Division Bench of this Commission shows that possession of the plot No. 28 was handed over to the appellant on 12.8.2009. It appears that on 26 5.2005, this Commission had passed interim order to deliver the said plot in favour of the appellant.

6. AT this juncture, it may be said that the order dated 26.5.2005 was not challenged by the respondent. That interim order of this Commission reads as under: "Order Seeing the order passed by this Commission in RP Nos. 547 and 548 of 1997, dated 31.8.2001, HUDA v. R.P. Chawla, the Kanpur Development Authority cannot ignore this part of the order of this Commission in the main

matter and nor it could demand any price other than the original price. It may be mentioned that the view taken by this Commission in HUDA v. R. P. Chawla case is said to have been confirmed by the Supreme Court. No appeal or SLP was filed against the order of this Commission and as such it had attained finality even otherwise. Accordingly, we direct Kanpur Development Authority to deliver alternative plot at the original price along with interest @ 18% p.a. on the deposited amount by delivering demand letter if any amount is due after adjustment of amount, 18% interest as aforesaid and giving an intimation accordingly within a period of two weeks and handing over possession within four weeks on receipt of further payment in case of need in terms of the aforesaid order. In case this order is not complied with, the Vice-Chairman of Kanpur Development Authority shall remain present in person on the next date to explain non-compliance of the order passed by this Commission in the main matter decided by this Commission, earlier. list on 26.8.2005. Copy of this order be given Dasti."

7. THE question involved in this appeal is whether the State Commission could have gone behind its own decree and instead of ensuring allotment of alternative plot at a reasonable price, in favour of the appellant, could have changed the nature of relief itself by directing the re-payment of price along with interest.

8. WHAT was observed by this Commission while dismissing the First Appeal No. 160/1998 is explicit from the specific direction appearing in the last but one paragraph of the order, dated 5.9.2003. For ready reference, the relevant observation is reproduced, as below: "......It has also been prayed before us that plot No. 8 directed to be allotted by the State Commission is not available as it has been allotted to someone else. No numbers/details of alternative plots available have been given to us, in the absence of which we are not in a position to pass order on the point. This point could be settled with the complainant through discussions or a prayer could be made before the State Commission to resolve this issue/"

(Emphasis supplied)

9. NOWHERE, this Commission directed the State Commission to order refund of the amount along with interest, during the course of the execution of the final order of the State Commission in complaint case No. 166/SC/92 but observed that because the details of the alternate plots were not provided by the KDA, it was difficult to pass order regarding allotment of such alternate plot. Obviously, the State Commission was expected to ascertain whether any alternative plot was available which could be allotted in favour of the appellant, instead of plot No. 8. The State Commission appears to have exceeded its jurisdiction by widening the scope of the executable order. In Vedic Girls Senior Secondary School v. Rajwanti (Smt.), (2007) 5 SCC 97, the Apex Court held that the Execution Court was required to execute the decree as made, and had no jurisdiction to widen its Court order to add, unless a specific question was raised relating to discharge or satisfaction of the decree as envisaged in Section 47 of

the Code of Civil Procedure. True, the provisions of the CPC are not applicable ''stricto sensu'' to the proceedings under the Consumer Protection Act, 1986. At the same time, it cannot be over-looked that the main task of the State Commission was to examine the availability of the alternate plot and to execute the order by examining the relevant aspects. One cannot be oblivious of the fact that the appellant expected the allotment of plot No. 9, in 1981. The appellant had deposited Rs. 1.25 lakh in pursuance to his application for the allotment and amount was received by the respondent on 31.3.1981. The plot No. 9 was not allotted to him and when alternative plot No. 8 was to be given then also it was said to be unavailable because its allotment was made in favour of someone else. Order of this Commission, dated 5.9.2003, shows that details of alternative plots which were available had not been furnished and, therefore, it was difficult to pass any order regarding allotment of such a plot, instead of plot No. 8. But it is only after the interim order, dated 26.5.2005, of this Commission that plot No. 28 was offered by the respondent and the same is delivered in possession of the appellant.

10. IT appears that the appellant preferred Civil Appeal Nos. 8106 of 2010. The Apex Court was pleased to allow the appeal and the order dated 6.11.2009 regarding direction to execution of the sale deed in favour of the present appeal was set aside. The Apex Court directed disposal of the present appeal as early as possible and in the meanwhile, continued stay to the interim order dated 4.1.2010, of this Commission.

11. NOW, the factual position which boils down is that the Plot No. 28 is delivered to the appellant and is in the actual possession of the appellant in pursuance of the previous order of this Commission which was rendered on 26.5.2005. The only formality which remains to be completed is in respect of execution of the registered sale deed by the respondent.

12. WE have enquired with learned Counsel for the parties, as regards juxta position of the price of plot No. 28 which prevailed on 25.5.2005. The price of the plot No. 28, as prevailing on above date is of relevance. The respondent is ready and willing to execute the lease deed for 90 years, in respect of the said plot. The contention of the learned Counsel for the respondent is that the market price of the said plot is over and above Rs. 70.00 lakh. An affidavit of Mr. R.N. Bajpai, Joint Secretary, Zone-III, Kanpur Development Authority is placed on record. It is stated that the current price of the plot No. 2 situated in the relevant Industrial Area is approximately Rs. 2,01,13,000. It is stated that price for plot No. 28 was Rs. 64.38 lakh in the year 2001 when it had become vacant due to cancellation of the allotment made in favour of the original allottee.

13. WE asked the learned Counsel to calculate the interest over the amount of Rs. 1.25 lakh @ 18% p.a. and to submit as to what could be the tentative amount that the respondent was required to pay, in terms of the impugned order. That has not been done appropriately though it is vaguely stated that the interest amount would be Rs. 6.39 lakh. The appellant, however, gave

exaggerated figure of the interest amount by calculating compound interest at quarterly rest. According to the appellant, the amount of Rs. 1.25 lakh paid in 1981 could be worth Rs. 2,53,32,192 if the compound interest @ 18% p.a. is charged from the date of payment till 3.7.2011. Neither of the calculation is proper and legal.

14. THE appellant cannot be allowed to derive excessive benefit of the lapses committed by the respondent. The investment of the appellant was only Rs. 1.25 lakh. We cannot ignore the nature of the proceedings before the Consumer Commission. The Consumer Disputes Redressal being its main objective, it is necessary to adjust the equities between the parties and to protect the interest of the consumer. In our opinion, the price of the plot No. 28 could be approximately Rs. 60.00 lakh when the interim order, dated 25.5.2005 was passed by this Commission. The appellant could have received the amount along with interest, approximately to the tune of Rs. 35.00 lakh. It goes without saying that if the appellant is to be allotted the Plot No. 28 by completing the remaining formalities, the appellant ought to be called upon to deposit the remaining amount of the price, being the difference, along with the required stamp duty for the purpose of registration of the sale deed. If the appellant is not interested in securing the alternative plot, the impugned order will have to be maintained as it is, because it is proper to refund the amount when the appellant himself is unwilling to purchase the plot made available to him.

15. FOR the reasons stated above, we partly allow the appeal. The impugned order is set aside subject to the condition that the alternative plot No. 28 made available to the appellant be confirmed in its favour and registered sale deed be executed in favour of the appellant by the respondent (KDA) on the appellant''s making payment of Rs. 25.00 lakh to the respondent within a period of six months from the date of this order and completing the necessary formalities of payment of the stamp duty. The appellant shall enjoy the actual possession of the plot No. 28 for six months and continue to enjoy the same if the sale deed is executed in its favour as a result of the due compliance of the above order. In case of non-compliance of the above directions, the appeal be deemed as dismissed. The parties shall bear their own costs through-out. Appeal partly allowed.