
(2006) 02 NCDRC CK 0020

In the National Consumer Disputes Redressal Commission

URBAN ESTATE PUNJAB URBAN PLANNING AND
DEVELOPMENT AUTHORITY (ESTATE OFFICER)

APPELLANT

Vs

MOHINDER SINGH BAINS

RESPONDENT

Date of Decision : 24-02-2006

Acts Referred:

Citation : 2006 0 NCDRC 67

Hon'ble Judges : B.K.TAIMNI , P.D.SHENOY J.

Advocate : RACHANA JOSHI ISSAR , MUKUND GUPTA , RAJIV KAPUR

Judgement

1. THIS is a case which typifies abnormal delay in considering the allotment of plot to an NRI applicant running to nearly two decades. Facts of the case:

2. THE complainant Shri Mohinder Singh Bains had applied for an allotment of 10 marla residential plot at Mohali under a special scheme floated for NRIs against deposit of foreign currency amounting to Rs. 15,300 in the form of bank draft dated 15.1.1980 for 2282.76 Canadian Dollars. This is not in dispute that bank draft was sent for encashment by Punjab Urban Planning and Development Authority (hereinafter referred as PUDA) to the State Bank of India, Jalandhar, (hereinafter referred as SBI) through letter bearing dispatch No. 4550 dated 18.4.1980 and 30.6.1980. This communication was followed by reminders from PUDA to the bank on several occasions from 1980 to 1996. The SBI in its communication dated 14.5.1992 referred to the communication of PUDA dated 21.4.1992 requesting for the detailed particulars of the bank draft in question. The SBI came out with a belated defence that the bank draft in question was never received by them.

3. THERE is a reference dated 25.2.1982 from the Director, House Building and Urban Development, Punjab, Chandigarh asking for an urgent reply (on a representation of Shri Mohinder Singh Bains of Canada) from Estate Officer, Chandigarh and at the top of the document there is a hand-written note about registration number in question as "F-808". There is a further reference dated 2.2.1987 wherein the petitioner (through his attorney Shri Sucha Singh Bains

has asked to give option for allotment of 500 sq. yards plot (instead of the original request for 250 sq. yards or 10 marla plot) as per the existing policy of the opposite party. Significantly this has a reference mentioning the registration number as "F-808". On 7.4.1992 Shri Sucha Singh Bains threatened legal action in case allotment pending PUDA since 1980 is not expedited. In an additional affidavit on 18.1.1999 the PUDA mentioned as follows: "That the applicant deposited the amount in Foreign Currency on 14.8.1996 whereas draw of lots was held on 1.8.1995 regarding NRI quota. Since 1.8.1995 onwards no draw of lots has been held against NRI quota. As such the name of applicant has not been considered. That the name of the applicant will be considered as and when draw of lots will be held against NRI quota as per prevalent policy."

4. THE District Consumer Disputes. Redressal Forum, Ropar drawing inspiration from the celebrated judgment of the Apex Court in Lucknow Development Authority v. M K Gupta, III (1993) CPJ 7 SC, passed an order on 15.9.1999 holding that PUDA is deficient in service as it has not taken a decision even after 19 years of initial payment. Accordingly, it issued following directions: (i) The O P PUDA is directed to allot a 10 marla or 250 square yards residential plot in favour of the petitioner-complainant in a fully developed sector at Mohali like Sector 70 or 71. Any allotment in Sector 69 should take place as a last resort, (ii) The petitioner should be charged price for the said allotment at the rate envisaged in the scheme for NRIs in the year 1980. (iii) The OP PUDA is also held liable to pay an amount of Rs. 3.00 lakh as compensation to the petitioner by way of harassment and mental agony plus escalation in the cost of construction. (iv) The excess deposits received from the petitioner be refunded with interest at the rate of 18% per annum, from the date of deposit till actual payment, (v) The Chief Administrator, PUDA should appoint a responsible officer to look into this allotment case with a view to pin-point laxity or delinquency on the part of official/officials of the department who be made liable to reimburse the said compensation of Rs. 3.00 lakh through suitable monthly deductions from salary. The enquiry officer may also explore ways and means to streamline the functioning of the office of OP PUDA also taking into consideration the various similar x x instances brought out in our previous adjudications over the last three years. (vi) The necessary action taken report regarding directions (v) above plus that contained at para 5 be submitted in our office within four months, along with compliance report about directions (i) to (iv) above mentioned.

Aggrieved by the order of the District Forum, PUDA went in appeal to the State Commission. The State Commission after hearing the parties and condoning the delay in filing the appeal by PUDA confirmed the order of the District Forum.

5. DISSATISFIED with the order of the State Commission the PUDA has come tip in revision before us.

6. THE case has been analysed in great detail by the State Commission which concluded as follows: What has been stated above, leaves no manner of doubt that the opposite party No. 1 rendered deficient service in not including the name

of the complainant in the draw of lots for allotment of plots. For all these years, it was the complainant who was forced to move from pillar to post to seek justice. His legitimate claim was denied due to negligent act of the opposite party No. 1. The dispute was between the opposite party No. 1 and opposite party No. 2. Once the opposite party No. 1 received the bank draft from the complainant it was for the opposite party to ensure its encashment at earliest, more so when the draft was genuine and was accepted by the opposite party. The complainant should not be made to suffer due to negligent act of the opposite party No. 1. The fact cannot be lost sight of that there has been rise in the cost of construction and cost of material. Most unfortunately with the case in hand, more than 20 years have passed, but the opposite party No. 1 neither issued allotment letter to the complainant nor the draft sent by him could be traced and the complainant had to deposit Foreign Currency afresh. Findings: This case was admitted by this Commission to decide the limited issue of award of Rs. 3.00 lakh as compensation. In this context Clauses (iii) and (v) of the operative portion of the order of the District Forum are relevant: The OP PUDA is also held liable to pay an amount of Rs. 3.00 lakh as compensation to the petitioner by way of harassment and mental agony plus escalation in the cost of construction. The Chief Administrator, PUDA should appoint a responsible officer to look into this allotment case with a view to pin-point laxity or delinquency on the part of official/officials of the department who be made liable to reimburse the said compensation of Rs. 3.00 lakh through suitable monthly deductions from salary. The inquiry officer may also explore ways and means to streamline the functioning of the office of OP PUDA also taking into consideration the various similar x x instances brought out in our previous adjudications over the last three years.

7. THIS shows that the District Forum has liberally compensated the consumer for the excess deposit received from him by PUDA. No evidence has been led before the District Forum regarding escalation in the cost of construction by the complainant. Hence, the award of compensation of Rs. 3.00 lakh for the same does not appear to be justified. In this case the District Forum has ordered that the PUDA is liable to pay Rs. 3.00 lakh as compensation to the petitioner by way of harassing and mental agony plus escalation in the cost of construction. Escalation in housing construction cost has not been based on any proof of calculation. The Apex Court in III (2004) CPJ 25 (SC)=(2005) 9 Supreme Court Cases 454, Haryana Urban Development Authority v. Priti Chawla (Smt), has held as follows: We agree that there should be an award for escalation in the costs of construction. However, it appears to us that the basis for such award should be as per CPWD rates. We thus set aside the award of Rs. 2.00 lakh and direct the District Forum to work out and award to the respondent escalation as per CPWD rate. Save as above, order of the State Forum is confirmed.

8. ACCORDINGLY , we set aside the operating portion of order of the District Forum pertaining to Clause (iii) and (v) and remand the case back to the District Forum in accordance with law keeping in mind the aforesaid judgment of the

Apex Court. We do not interfere with the rest of the order of the District Forum as confirmed by the State Commission. There shall be no order as to costs.