
(1996) 08 DEL CK 0004
In the Delhi High Court
Case No : Suit No. 2654 of 1991

Yogesh Gurdasani

APPELLANT

Vs

Delhi Development Authority and Another

RESPONDENT

Date of Decision : 09-08-1996

Acts Referred:

Citation : (1996) 5 AD 100 : (1996) 64 DLT 33 : (1997) 2 RCR(Civil) 145

Hon'ble Judges : A.D. Singh, J

Bench : Single Bench

Advocate : Ramesh Chandra, Anand Yadav and Geeta Malhotra, for the Appellant;

Judgement

Anil Dev Singh, J.

(1) This is a suit for recovery of Rs. 45,53,610.00 . The plaintiff is a non-resident Indian and is residing at Dubai. First defendant is the Delhi Development Authority and the second defendant is the Union of India. The first defendant advertised and invited applications for the sale/allotment/grant of perpetual leasehold rights in respect of Nursing Home plots of various sizes. In the brochure issued by the first defendant in this regard it was mentioned that the plots were meant for Indians living abroad and the payment was required to be made by them in foreign exchange. The eligibility conditions for allotment of plots for Nursing Home were as follows :

(I) Indian doctor residing abroad or who in the three years preceding the date of application was a resident abroad for a period of not less than two years; and (ii) Payment to be made in foreign exchange.

(2) It was also provided in the aforesaid brochure that after the receipt by the defendant of the total premium and other amounts payable in respect of the plot allotted to the successful applicant, the possession of the same would be handed over to him and lease deed executed in his favour. The condition reads as under :

"After receipt of the total premium and other payments payable in respect of the plot allotted to the successful applicant the possession of the plot will be handed over and lease deed executed. "

(3) Pursuant to the said advertisement the plaintiff made an application for allotment of a Nursing Home plot and initially paid a sum of Rs. 1,80,000.00 in foreign exchange. The first defendant allotted plot No. NH-II measuring 1029.33 sq. meters in Block No. C-1, L.S.C. Janakpuri, New Delhi, in favor of the plaintiff for a total premium of Rs. 6,25,000.00 . Since he had already paid a sum of Rs. 1,80,000.00 , the D.D.A. required the plaintiff to pay the remaining sum of Rs. 4,45,000.00 in foreign exchange. The plaintiff was permitted to deposit the amount within the extended time, viz., January 18, 1982. Pursuant to this the petitioner deposited a sum of Rs. 4,45,000.00 in foreign exchange within the extended time allowed by the Delhi Development Authority. However, by letter dated January 19, 1984 the first defendant asked the plaintiff to deposit Rs. 8,737.50 towards interest on account of belated payment of premium. Responding to the aforesaid letter of the first defendant, the plaintiff deposited the aforesaid sum of Rs. 8,737.50 on July 17, 1984.

(4) It is the case of the plaintiff that even though all the requisite payments had been made by him the first defendant delayed the handing over of possession of the plot. On March 4, 1986 the first defendant informed the plaintiff that the possession of the plot measuring 325.16 square meters would be handed over to him on March 18, 1986. On receipt of the letter, the power of attorney holder of the plaintiff visited the site but the plot had not been demarcated and consequently the possession thereof was not handed over to him. It may be mentioned that the plaintiff protested to the first defendant with regard to the size of the plot allotted to him as the same had been reduced from 1029.33 sq. meters to 325.16 sq. meters. In this regard the plaintiff also wrote a letter to the first defendant dated August 6, 1987 and also asked the Deputy Director (Com) to hand over the plot to him till August 30, 1987 as he happened to be in India till that date. Since the first defendant failed to respond favourably, the plaintiff filed a writ petition being Civil Writ Petition No. 87/89, in this Court. That petition came to be decided by the Division Bench on October 17, 1989 when a direction was issued to the first defendant to hand over vacant physical possession of plot No. NH-II, Block No. C-1, Local Shopping Centre, Janak Puri, New Delhi, measuring 956.59 sq. meters. The vacant possession was required to be handed over to the plaintiff or his attorney within 15 days of the order. While disposing of the petition the Court observed as follows :

"This is yet another case which shows the indifferent and careless attitude of the respondent for reasons which we suspect, but which we would refrain from commenting upon. We hope the authorities concerned would understand it."

(5) The Division Bench noted that in the brochure issued by the Dda the area of the plot indicated was 1029.33 square meters. It also noted that the stand of the Dda in the reply affidavit was that the actual area of the allotted plot was 325.16

sq. meters while the demand letter issued to the Nri due to some confusion and misunderstanding mentioned the area to be 1029.33 sq. meters; Commenting on the stand taken by the D.D.A. the Division Bench observed that it had no hesitation in coming to the conclusion that the averments of the Dda made in the affidavit were absolutely false and incorrect.

(6) Despite the direction to hand over the possession of the plot within 15 days, the first defendant handed over the same only on August 23, 1990. Since the plaintiff had paid a sum of Rs. 6,25,000.00 in foreign exchange for a plot measuring 1,029.33 sq. meters and was given possession of a plot measuring 963.19 sq. meters only, he is claiming refund on the basis that the defendant over charged him for an area measuring 66.14 sq. meters. According to him, he would be entitled to US \$ 4387.4308 equivalent to Rs. 75,972.80 as on the date of the filing of the suit. Besides the plaintiff claims interest @ 18% per annum from January 19, 1982 in respect of the amount over charged by the first defendant. He also claims interest @ 18% per annum on the cost of the plot paid to the Dda in foreign exchange on account of delay in delivery of possession, from January 19, 1982, by which date premium in respect of the plot had been paid, to August 23, 1990, i.e., the date on which possession of the plot was given to him; refund of interest charged by the DDA; and damages on account of escalation in cost of construction. On these counts the plaintiff claims a total sum of Rs. 45,53,610.00 .

(7) On February 18, 1993, Ms. Mukta Sharma, proxy Counsel, appeared in the matter for Counsel for the Dda and took time to file the written statement. However, on the next date, i.e. May 20, 1993, a request was again made for grant of further time to file the written statement. The request was declined and the plaintiff was directed to adduce evidence by way of affidavits. The matter came up on April 12, 1994, November 7, 1994, March 13, 1994, November 12, 1995, July 22, 1996 and July 23, 1996, but the defendant did not appear on any of these dates.

(8) I have heard learned Counsel for the plaintiff. During the course of hearing on July 23, 1996, he handed over details of the claims; as culled out from the plaint. These details are as follows :

S.No.	Particulars	Amount
1.	Over charged for 66.14 sq. metres (Rs. 40,159.55) paid in foreign currency US\$ 4385.4308 equivalent as on the date of the suit.	75,972.80
2.	Interest @ 18% on Rs. 40,159.55 from 19.1.1982 to date of suit.	1,30,482.00
3.	Interest on cost of plot paid to Dda in foreign exchange on account of delayed possession from 19.1.82 to 23.8.1990 (the date on which possession was given) @ 18% p.a.	9,65,250.00
4.	Refund of interest illegally charged by Dda although over payment had already been made.	8,737.50
5.	Damages on account of escalation in cost of construction - Estimated cost of construction on 19.1.82 @ Rs. 217.00 per sq.ft.	26,42,517
	Estimated cost of construction on 23.8.1990 @ Rs. 494.00 per sq.ft.	60,16,635
	Difference:	33,73,168
	Total:	45,53,610.00
6.	Interest pendente lite and till	

date of payment plus cost of the suit.

(9) The first point raised by the learned Counsel for the plaintiff is that the plaintiff was made to pay for a plot measuring 1029.33 sq. meters while actually he was given possession of plot measuring 963.19 sq. meters. On this count learned Counsel for the plaintiff submits that a sum of Rs. 75,972.80 is due and payable by the first defendant. The evidence which has come on record supports the contention of the learned Counsel that an area of 66.14 sq. meters was short delivered by the first defendant to the plaintiff. The plaintiff in the affidavit filed by way of evidence has clearly stated that initially he was allotted an area of 1029.33 sq. meters and he was required to pay a sum of Rs. 6,02,500.00 which he paid by January 19,1982. The plaintiff has also placed on record a certified copy of the judgment of Division Bench in Civil WRIT87/89, Dr. Yogesh Gurdasani v. The Delhi Development Authority, decided on October 17,1989 Ex.P5 in which the D.B. held that the petitioner therein (plaintiff in the suit) was entitled to an area 1029.33 sq. meters for which he had paid "good money". From the evidence on record, I have no hesitation to hold that the plaintiff had paid for a plot measuring 1029.33 sq. meters while possession of a plot measuring 963.19 sq. meters was handed over to him.

(10) Thus, an area of 66.14 sq. meters was short delivered to the plaintiff. Therefore, the plaintiff has been over charged by a sum of Rs. 40,159.55 (Since cost of 1029.33 sq. meters is Rs. 6,25,000; cost of 66.14 sq. meters would be Rs. 6,25,000/1029.33x66.14]. The claim of the plaintiff that he should be paid Rs. 75,972.80 is based on the following calculations put forth by him :

(11) The plaintiff, as on January 19,1982 (by which date entire payment of plot was received by the defendant), was entitled to receive from the defendants Rs. 40,159.55 which amounted to Us dollars 4387.4308 and as on August 23,1990, when the plot was handed over to the plaintiff, Us dollars 4387.4308 would work out to be Rs. 75,972.80 paise on the basis of the exchange rate prevalent on that date.

(12) The claim of the plaintiff which is virtually an action to receive the amount in Us Dollars or its equivalent in Indian money is not well founded. He can only be entitled to a sum of Rs. 40,159.55 as that was the extra money which was paid by him to the D.D.A.

12.The plaintiff has not proved on record any express agreement with the first defendant stipulating that any excess amount charged by the latter or any amount due from it to the former will be returned in dollars or its equivalent in Indian currency calculated at the exchange rate prevailing on the date when the money was required to be paid. Since there is nothing to show that the parties had agreed that the money, if any, owed by the first defendant was required to be paid back to the plaintiff in Us dollars, the question of converting the same in dollars does not arise. Thus it cannot be said that as on January 19,1982 Dda owed money to the plaintiff in dollars. Therefore, Rs. 40,159.55 was not liable to

be converted into Us dollars in accordance with exchange rate prevalent as on January 19,1982 for the purpose of determining the final liability of the Dda on the date of the handing over of the plot to the plaintiff or on the date of the filing of the suit.

(13) Accordingly, I hold that the plaintiff is entitled to receive from the defendants a sum of Rs. 40,159.55 and not Rs. 75,972.82 as claimed by him with interest at the rate of 6% from January 19, 1982 to August 8, 1991.

(14) The next question to be considered is whether the plaintiff is entitled to interest by way of damages on Rs. 6,25,000.00 , i.e., cost of the plot which was paid by the plaintiff to the defendant by January 19,1982. In support of the claim, learned Counsel for the plaintiff invited my attention to the affidavit of the plaintiff Dr. Yogesh Gurdasani and that of Shanti P. Garg, Architect. In the affidavit of the plaintiff, which is a repetition and reiteration of the averments made in the plaint, it is highlighted that the entire payment of Rs. 6,25,000 was made by the plaintiff to the defendants by January 19,1982 within the extended time allowed and permitted by the D.D.A. It is also pointed out that in spite of having complied with all the requirements he was not handed over possession of the allotted plot. The affidavit further points out: The Deputy Director (C) of the first defendant by his letter dated April 30,1985 asked the plaintiff to deposit Rs. 8,737.50 (on account of delayed payment of premium) as the same had not been deposited. In response, the plaintiff apprised the Dda that the said sum was paid on July 17, 1984. Again, the Deputy Director (CL) by his letter dated June 17,1985 called upon the plaintiff to furnish a copy of the challan under which the aforesaid sum was paid. Thereupon, the representative of the plaintiff visited the office of the Dda and showed the challan, but still the Deputy Director by his letter dated October 4,1985 alleged that the sum of Rs. 8,737.50 had not been paid. The plaintiff was also called upon to produce the power of attorney executed in favor of his Representative Shri V.S. Asnani. The representative of the plaintiff again visited the office of the Dda on November 5,1985 and delivered a copy of the plaintiff's letter dated October 15,1984 informing the D.D.A. that the said sum had already been paid. It was only on December 16, 1985 that the Deputy Director (CL) acknowledged the payment of Rs. 8,737.50 in his letter but still wanted a copy of the power of attorney in favor of Shri V.S. Asnani. A copy of the power of attorney executed by the plaintiff in favor of Shri V.S. Asnani was furnished to the first defendant Along with letter dated January 23,1986. The first defendant by his letter dated March 4,1986 informed the plaintiff to take possession of the plot measuring 325.16 sq. meters instead of 1029.33 sq. meters as mentioned in the allotment letter dated October 30, 1981. The representative of the plaintiff visited the office of the Dda and also the site. It was, however, found that demarcation of the plot at the site had not been made and as a result thereof the possession of the plot was not handed over to the representative. The plaintiff visited India in August 1987 and protested against the illegal reduction of the size of the plot allotted to him. He requested the Deputy Director, Dda, to hand over the plot to him while he was still in India.

Despite the fact that the plot was allotted as far back as October 30, 1981 and the plaintiff had paid the entire amount demanded by the Dda for the plot measuring 1029.33 sq. meters, the possession of the plot was not given to him. Faced with this situation the plaintiff filed a Writ Petition No. 87/89 in which on October 17, 1989 a direction was given to the first defendant to hand over possession of the plot in question measuring 956.59 sq. meters within 15 days. The plaintiff, however, was not given possession within 15 days but was given the possession of the plot on August 23, 1990.

(15) From the evidence on record it is clear that there was no justification for the defendant to have delayed the handing over of the possession of the plot to the plaintiff. A sum of Rs. 6,25,000.00 as demanded by the first defendant was paid by January 19, 1982. Even the interest which was demanded by the first defendant was paid in July 1984. Therefore, there was no reason for the first defendant for not handing over the possession of the plot after receipt of the amounts payable by the plaintiff. The possession of the plot was handed over only on August 23, 1990 and that too due to the directions of this Court in Civil Writ Petition No. 87/89. It is noteworthy that though the possession was directed to be delivered within 15 days of the decision of the writ petition the possession was handed over about eleven months thereafter.

(16) In para 4 of the plaint it is averred that the possession of the plot was to be delivered after the total premium was paid as per the following stipulation contained in the brochure :

"AFTER receipt of the total premium and other amounts payable in respect of the plot allotted to the successful applicant the possession of the plot will be handed over and lease deed executed."

The above position as stated in para 4 of the plaint goes un rebutted.

(17) Thus plaintiff was to be handed over possession after the receipt of the entire payment of Rs. 6,25,000.00 . The last Installment of Rs. 4,25,000.00 was paid by the plaintiff by January 19, 1982 within the time extended by the D.D.A. There was no justification for the first defendant to have waited for several years before handing over possession of the plot to the plaintiff. The first defendant was required to hand over possession of the plot after the receipt of the premium but it did not do so. It is well settled that unlawful keeping back of what belongs to another person is a ground for awarding damages. The same principle will apply to the instant case. In *Dhian Singh Sobha Singh and Another Vs. The Union of India (UOI)*, , the Supreme Court stated the principle thus (para 53) :

"It is well settled that in an action for wrongful detention the plaintiff is entitled besides the re-delivery of the chattel or payment of its value in the alternative, also to damages for such wrongful detention. There is however no definite criterion laid down by the decided cases as to what the measure of such damages should be. As was observed by Denning, L.J. in *Strand Electric & Engineering Co. Ltd. v. Brishford Entertainments*, 1952.2 Qb 246 (X):

"The question in this case is: What is the proper measure of damages for the wrongful detention of goods ? Does it fall within the general rule that the plaintiff only recovers for the loss he has suffered or within some other, and if so what, rule ? It is strange that there is no authority upon this point in English law; but there is plenty on the analogous case of detention of land. The rule there is that a wrong doer, who keeps the owner out of his land, must pay a fair rental value for it, even though the owner would not have been able to use it himself or to let it to anyone else. So also a wrong doer who uses land for his own purpose without the owner's consent, as, for instance, for a fair ground, or as a way-leave, must pay a reasonable hire for it, even though he has done no damage to the land at all: *Whitwham v. Westminster Brymbo Coal Company* (1896) 2 Ch 538 (Y). I see no reason why the same principle should not apply to detention of goods."

(18) It is note worthy that the defendant as per the evidence which has come on record charged Rs. 8,737.50 as interest on delayed payment from the plaintiff. On the same token the defendant should also be liable to pay interest by way of compensation for not handing over the plot to the plaintiff within reasonable time after the receipt of the entire payment due to it as during all this period the money remained at the disposal of the first defendant for being utilised by it. For the aforesaid reasons, I hold that the plaintiff is entitled to interest by way of compensation on account of the first respondent not handing over possession for a period of eight years from January 19,1982, by which date premium stood paid and about six years from July 17,1984, when the plaintiff paid even the interest on the delayed payment of premium. But there is another aspect of the matter of which judicial notice must be taken. It cannot be denied that in Delhi there has been a phenomenal rise in the price of land over the past one decade. This also must be kept in view while awarding damages in favor of the plaintiff on account of delay in handing over possession of the plot to him by the defendant.

(19) Therefore, in the facts and circumstances of the case, the plaintiff is held entitled to receive interest by way of damages from the defendants which are quantified at Rs. 20,000.00 .

(20) The next question to be determined is whether the first defendant is liable to refund the interest charged by it for the alleged delayed payment of the premium by the plaintiff. The plaintiff in para 8 of the plaint has averred as follows :

"That since the time allowed for depositing the amount, required to be deposited vide letter dated 30th October, 1981, was very short, a request was made on behalf of the plaintiff to the Delhi Development Authority to extend the time for payment of amount. The Delhi Development Authority, by letter dated 20th January, 1982 permitted the plaintiff to deposit the balance premium for the said Nursing Home plot up to 18th January, 1982 subject to payment of interest charges @ 18% per annum from the due date of payment i.e. 29th November, 1981."

(21) From the aforesaid it is clear that the Dda by letter dated January 20, 1982 permitted the plaintiff to deposit the balance premium up to the extended date subject to payment of interest @ 18% per annum from the due date of payment i.e. November 29, 1981. Since the plaintiff deposited the money pursuant to the aforesaid letter and the payment was subject to levy of interest, the plaintiff cannot seek refund of the said amount. It is not the case of the plaintiff that the balance premium was paid by him on or before the original stipulated date. Since the payment was made after the stipulated date, he was liable to pay interest. Therefore, the claim on this score is disallowed.

(22) As regards the claim of the plaintiff for damages on account of escalation of cost of construction is concerned, the same is untenable. It has not been shown that the plaintiff has suffered actual damage on account of escalation in cost of construction. It is neither pleaded nor argued that the plaintiff has raised construction after the plot was handed over to him on August 23, 1990. There is nothing to show that the plaintiff had even applied for the sanction of the building plan for the Nursing Home. When the plaintiff has not even constructed the building, how can he ask for damages on account of escalation in cost of construction. In case of breach of contract, the aggrieved party is only entitled to recover from the defaulting party such part of the loss actually resulting there from as was at the time of contract reasonably foreseeable. The plaintiff has not shown any actual loss on account of escalation in cost of construction. From the inaction of the plaintiff to raise the construction since 1990, when possession of the plot was handed over to him, it appears that he had no intention to raise construction on the plot even if he had got the possession in 1982. This shows that he has not been hit by the escalation in cost of construction. The plaintiff has also not placed on record any evidence to show that in 1982 or at any point of time thereafter he had the financial capacity to raise construction on the plot in question. As already pointed out, the cost of land in Delhi has gone up tremendously, Therefore, what the plaintiff may have lost due to escalation in the cost of construction, he would have gained many times over in terms of price of land. Accordingly the claim of the plaintiff for damages on account of escalation in cost of construction is rejected. Relief: For the aforesaid reasons, the plaintiff is held entitled to the following reliefs:

1. The plaintiff is entitled to receive from the defendants a sum of Rs. 40,159.55 with interest @ 6% per annum from January 19, 1982 when the excess payment was received, to the date of filing of the suit, viz., August 8, 1991; and
2. The plaintiff is entitled to receive a sum of Rs. 20,000.00 from the defendants as damages on account of delay in getting possession of the plot in question.
3. Costs of the suit which are quantified at Rs. 10,000.00. Accordingly, a decree is passed in favor of the plaintiff in the aforesaid terms. The plaintiff will be entitled to interest @ 12% per annum from the date of the decree till recovery of the decretal amount.