

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION[C] 29852 OF 2009 [CC NO.11768]

Urban Improvement Trust, Bikaner Petitioner

Vs.

Mohan LalRespondent

O R D E R

R. V. Raveendran J.

The petitioner before us is the Bikaner Urban Improvement Trust. It allotted a Plot (A-303) measuring 450 sq.ft. under its Karni Nagar Scheme to the respondent in the year 1991. Respondent paid the allotment price (lease premium) of Rs.3,443/- in 1992 and took possession in 1997. In the year 1998, the petitioner-Trust allotted to respondents and delivered possession of the adjacent strip measuring 150 ft.

2. Thereafter, the Trust without notice to the respondent and without resorting to any acquisition proceedings, laid a road in the said plot. The layout map prepared and made available by the Trust in the year 2002 did not show

the existence of Plot A-303 or its adjoining strip. Feeling aggrieved, the respondent met the officers of the Trust and complained to them. He also gave a written complaint seeking restoration of the plot. As there was no response, he approached the District Consumer Forum in 2005, praying for restoration of the plot or for allotment of an alternative site and award of damages of Rs.200,000/-. The District Forum disposed of the complaint directing refund of the allotment price paid with interest at 9% per annum. The State Commission allowed the appeal filed by the respondent and directed allotment of an alternative plot and also awarded Rs.5,000/- as compensation. The National Commission dismissed the revision petition filed by the petitioner Trust. Special leave is sought to challenge the said order of the National Commission.

3. The Trust does not dispute any of the facts. It has no explanation to offer for its negligence or highhanded action of taking over the allotted plot without notice, acquisition, or consent. Nevertheless, the Trust challenges the relief granted, on three technical grounds:

(i) As the respondent was negligent in protecting his possession and did not protest or complain when the Trust laid the road in his plot, he is not entitled to any relief.

(ii) The action of the Trust, even if it was an illegal encroachment, did not amount to 'deficiency in service' and therefore the respondent could not invoke the jurisdiction of the forum under the Consumer Protection Act, 1986.

(iii) The complaint was barred by limitation as it was filed beyond two years from the occurrence of the cause of action, and the respondent did not show sufficient cause for condonation of delay.

These contentions have been rejected. The decision of the State Commission rejecting the above contentions is just and reasonable. The National Commission was justified in not interfering with the said decision. We are satisfied that no case is made out to grant special leave under Article 136 of the Constitution.

4. It is a matter of concern that such frivolous and unjust litigation by governments and statutory authorities are on the increase. Statutory Authorities exist to discharge statutory functions in public interest. They should be responsible litigants. They cannot raise frivolous and unjust objections, nor act in a callous and highhanded manner. They can not behave like some private litigants with profiteering motives. Nor can they resort to unjust enrichment. They are expected to show remorse or regret when their officers act negligently or in an overbearing manner. When glaring wrong acts by their officers is brought to their notice,

for which there is no explanation or excuse, the least that is expected is restitution/restoration to the extent possible with appropriate compensation. Their harsh attitude in regard to genuine grievances of the public and their indulgence in unwarranted litigation requires to be corrected.

5. This Court has repeatedly expressed the view that the governments and statutory authorities should be model or ideal litigants and should not put forth false, frivolous, vexatious, technical (but unjust) contentions to obstruct the path of justice. We may refer to some of the decisions in this behalf.

5.1) In *Dilbagh Rai Jarry vs. Union of India* [1973 (3) SCC 554] where this Court extracted with approval, the following statement (from an earlier decision of the Kerala High Court):

"The State, under our Constitution, undertakes economic activities in a vast and widening public sector and inevitably gets involved in disputes with private individuals. But it must be remembered that the State is no ordinary party trying to win a case against one of its own citizens by hook or by crook; for the State's interest is to meet honest claims, vindicate a substantial defence and never to score a technical point or overreach a weaker party to avoid a just liability or secure an unfair advantage, simply because legal devices provide such an opportunity. The State is a virtuous litigant and looks with unconcern on immoral forensic successes so that if on the merits the case is weak, government shows a willingness to settle the dispute regardless of

prestige and other lesser motivations which move private parties to fight in court. The lay-out on litigation costs and executive time by the State and its agencies is so staggering these days because of the large amount of litigation in which it is involved that a positive and wholesome policy of cutting back on the volume of law suits by the twin methods of not being tempted into forensic show-downs where a reasonable adjustment is feasible and ever offering to extinguish a pending proceeding on just terms, giving the legal mentors of government some initiative and authority in this behalf. I am not indulging in any judicial homily but only echoing the dynamic national policy on State litigation evolved at a Conference of Law Ministers of India way back in 1957.

5.2 In *Madras Port Trust v. Hymanshu International by its Proprietor v. Venkatadri (Dead) by L.Rs.* [(1979) 4 SCC 176] held:

"2... It is high time that governments and public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens and do what is fair and just to the citizens. Of course, if a government or a public authority takes up a technical plea, the Court has to decide it and if the plea is well founded, it has to be upheld by the court, but what we feel is that such a plea should not ordinarily be taken up by a government or a public authority, unless of course the claim is not well-founded and by reason of delay in filing it, the evidence for the purpose of resisting such a claim has become unavailable..."

5.3) In a three Judge Bench judgment of *Bhag Singh & Ors. v. Union Territory of Chandigarh through LAC, Chandigarh* [(1985) 3 SCC 737]:

"3... The State Government must do what is fair and just to the citizen and should not, as far as possible, except in cases where tax or revenue is received or recovered without protest or where the State Government would otherwise be irretrievably be prejudiced, take up a technical plea to defeat the legitimate and just claim of the citizen."

6. Unwarranted litigation by governments and statutory authorities basically stem from the two general baseless assumptions by their officers. They are:

(i) All claims against the government/statutory authorities should be viewed as illegal and should be resisted and fought up to the highest court of the land.

(ii) If taking a decision on an issue could be avoided, then it is prudent not to decide the issue and let the aggrieved party approach the Court and secures a decision.

The reluctance to take decisions, or tendency to challenge all orders against them, is not the policy of the governments or statutory authorities, but is attributable to some officers who are responsible for taking decisions and/or officers in charge of litigation. Their reluctance arises from an instinctive tendency to protect themselves against any future accusations of wrong decision making, or worse, of improper motives for any decision making. Unless their insecurity and fear is addressed, officers will continue to pass on the responsibility of decision making to courts and

Tribunals. The Central Government is now attempting to deal with this issue by formulating realistic and practical norms for defending cases filed against the government and for filing appeals and revisions against adverse decisions, thereby, eliminating unnecessary litigation. But, it is not sufficient if the Central Government alone undertakes such an exercise. The State Governments and the statutory authorities, who have more litigations than the Central Government, should also make genuine efforts to eliminate unnecessary litigation. Vexatious and unnecessary litigation have been clogging the wheels of justice, for too long making it difficult for courts and Tribunals to provide easy and speedy access to justice to *bona fide* and needy litigants.

7. In this case, what is granted by the State Commission is the minimum relief in the facts and circumstances, that is to direct allotment of an alternative plot with a nominal compensation of Rs.5000/- But instead of remedying the wrong, by complying with the decision of the Consumer fora, the Improvement Trust is trying to brazen out its illegal act by contending that the allottee should have been protested when it illegally laid the road in his plot. It has persisted with its unreasonable and unjust stand by indulging in unnecessary litigation by approaching the National Commission and

then this Court. The Trust should sensitise its officers to serve the public rather than justify their dictatorial acts. It should avoid such an unnecessary litigation.

8. Delay condoned. The special leave petition is dismissed.

J.
(R. V. RAVEENDRAN)

J.
(G. S. SINGHVI)

New Delhi;
October 30, 2009.

