

CASE NO.:
Appeal (civil) 3407 of 2003

PETITIONER:
Haryana Urban Development Authority

RESPONDENT:
K. C. Kad

DATE OF JUDGMENT: 10/08/2004

BENCH:
S. N. VARIAVA & ARIJIT PASAYAT

JUDGMENT:
J U D G M E N T
S. N. VARIAVA, J.

Before this Court a large number of Appeals have been filed by the Haryana Urban Development Authority and/or the Ghaziabad Development Authority challenging Orders of the National Consumer Disputes Redressal Commission, granting to Complainants, interest at the rate of 18% per annum irrespective of the fact of each case. This Court has, in the case of Ghaziabad Development Authority vs. Balbir Singh reported in (2004) 5 SCC 65, deprecated this practice. This Court has held that interest at the rate of 18% cannot be granted in all cases irrespective of the facts of the case. This Court has held that the Consumer Forums could grant damages/compensation for mental agony/harassment where it finds misfeasance in public office. This Court has held that such compensation is a recompense for the loss or injury and it necessarily has to be based on a finding of loss or injury and must co-relate with the amount of loss or injury. This Court has held that the Forum or the Commission thus had to determine that there was deficiency in service and/or misfeasance in public office and that it has resulted in loss or injury. This Court has also laid down certain other guidelines which the Forum or the Commission has to follow in future cases.

This Court is now taking up the cases before it for disposal as per principles set out in earlier judgment. On taking the cases we find that the copies of the Claim/Petitions made by the Respondent/Complainant and the evidence, if any, led before the District Forum are not in the paper book. This Court has before it the Order of the District Forum. The facts are thus taken from that Order.

In this case the Respondent was allotted a plot No. 871, Sector 31, Faridabad, vide letter dated 15th July, 1983. The Respondent paid all dues but was not offered possession. On these facts, the District Forum directed to deliver physical possession of allotted plot, otherwise to allot alternate plot in adjoining sectors. The District Forum also awarded compound interest @ 18% p.a. w.e.f. 1st of January, 1987 till delivery of possession and compensation for escalation in cost of construction as per rates of CPWD, and Rs. 2,000/- towards litigation cost.

The State Forum reduced the rate of interest from 18% to 12%. The Respondent did not go in Revision before the National Commission. The Appellants went in Revision before the National Commission. The National Commission has increased the rate of interest to 18% p.a.

For reasons set out in the Judgment in the case of Ghaziabad Development Authority vs. Balbir Singh (supra), the order of the National Commission cannot be sustained and is hereby set aside. As

stated above, the relevant papers regarding the claim made, the affidavits filed, the evidence submitted before the District Forum are not produced before this Court. In this case, the Appellant have paid interest @ 10% till a particular date and have delivered possession of an alternate plot No. 652, Sector 31, Faridabad on 16th March, 2001. The District Forum has not awarded compensation for mental agony and harassment. Where possession is given at old rate, the party has got benefit of escalation in price of land. Thus there cannot and should not also be award of interest on the money. But considering the fact that the allotment was in 1983 and possession given only in 2001 the Respondent has suffered mental agony and harassment. The cost of construction has also gone up. He should have been compensated for these under these heads. In this case, the District Forum has awarded escalation in the price of construction. The District Forum will now work out what that increase would be and Appellants will then pay that increase to the Respondent. On an ad-hoc basis, we feel that a simple interest @ 12 % from the date of deposit till payment will suffice as compensation for mental agony and harassment. Rest of the Order of the District Forum shall stand revived.

We are informed that in spite of there being no stay and in spite of clarification given by this Court's Order [reported in (2004) 5 SCC 65], the entire interest amounts have still not been paid. We feel that for the lapse Appellants must pay interest at the rate of 15% from 17th March, 2004 till payment. Appellants shall also pay costs fixed at Rs.500/- to the Legal Aid Society of the Supreme Court. This cost shall be in addition to costs awarded by the District Forum. The Appellants must recover the amount paid towards costs to Legal Aid Society personally from the officer/s, who were responsible for not paying even after clarification by this Court.

We clarify that this Order shall not be taken as a precedent in any other matter as the order is being passed taking into account special features of the case. The Forum/Commission will follow the principles laid down by this Court in the case of Ghaziabad Development Authority vs. Balbir Singh (supra) in future cases.

This Appeal is disposed of accordingly.