

CASE NO.:
Appeal (civil) 5867 of 2002

PETITIONER:
Haryana Urban Development Authority

RESPONDENT:
Shital Parshad Jain

DATE OF JUDGMENT: 28/07/2004

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 placed 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, one Smt. Bhagwanti was allotted Plot No.158-P in Sector-15A, Panchkula, on 18th October, 1985. As per the allotment order the area of plot was 502 sq. yds. All amounts were paid. By letter dated 17th April 1986 the Estate Officer of the Appellants informed the allottee that the actual area was 647.67 sq. yds. and that extra payment had to be made. These were also paid. Subsequently, the plot has been transferred to other person. In all re-allotment letters the area of the plot is shown as 647.67 sq. yds. Then the plot was transferred to the Respondent. The Respondent wanted to further transfer. Now the Estate Officer, by letter dated 22nd May, 1992, claims that the area of the plot is 576.88 sq. yds. and, therefore, no permission for transfer of 647.67 sq. yds. can be given. Thus the Respondent filed a complaint.

The District Forum has held and, in our view correctly, that there is gross deficiency in service. The District Forum directed refund of extra amount collected with interest at 18% p.a. The District Forum also awarded Rs.20,000/- as compensation for mental agony.

The State Forum in the Appeal filed by the Appellants reduced the rate of interest to 12% and compensation to Rs.5,000/-. The

Respondent did not go in Revision before the National Commission. The Appellants filed a 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 Ghaziabad Development Authority vs. Balbir Singh (supra) the order of the National Commission cannot be sustained. We feel that the State Forum wrongly reduced the amount of compensation awarded for mental agony and harassment. However, as the Respondent did not file any Revision and has not appeared before us, we do not interfere with that Award. In our view, in cases like this where monies are directed to be refunded, interest should be as per the Interest Act. We do not have any material before us to divide as to what the interest rates were at the relevant time. We, therefore, think it appropriate not to interfere with the order of the State Forum.

We clarify that this Order shall not be taken as a precedent in any other matter as it has been 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.

The Appeal is accordingly allowed. The order of the National Commission is set aside and that of the State Forum restored. There will be no order as to costs.