

CASE NO.:
Appeal (civil) 5819 of 2002

PETITIONER:
Haryana Urban Development Authority & Anr.

RESPONDENT:
S. P. Gupta

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 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 bearing No. 2095, Sector 17, Jagadhari, Haryana measuring 6 marlas on 16th September, 1987. The Respondent paid all dues including enhanced price but was not offered possession till 10th April, 1995. When the Respondent went to take possession he found that the plot was encroached upon. There was a Khera and temple on the land. The Appellants could not remove the encroachment and did not allot any alternate plot in spite of requests to do so. After the Respondent filed his complaint, possession of an alternate plot was offered on 28th January, 1998.

On these facts, the District Forum has recorded that possession of the alternate plot would be given. It has awarded compensation of Rs. 20,000/- towards costs in escalation of construction, Rs. 5,000/- for mental agony and harassment and Rs. 1,000/- for costs of proceedings. The District Forum has also awarded interest on the compensation amount, which remained with the Appellants from 1987 to 1998, at the rate of 15% p.a. The District Forum has held that some time would be taken for development and has awarded interest

from 5th October, 1990 till 28th January, 1998.

The State Forum confirmed the Award. 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. 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 District Forum has ensured that the possession is given. It has correctly awarded compensation for escalation in costs of construction, mental agony and also correctly awarded costs. 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. However, considering the fact that the allotment was in 1987 and possession given only in 1998, the compensation towards mental agony is very low. We assume that the District Forum has awarded low compensation for mental agony and harassment as it was also granting interest at 15% p.a. In future compensation under these heads must be given adequately. In this case we do not interfere as the amount of interest of 15% per annum makes up for the inadequate compensation granted under the heads of mental agony and harassment. We feel that in this case the Order passed by the District Forum is just and proper and calls for no interference. We, therefore, set aside the Order of the National Commission and restore that of the District Forum.

We clarify that this Order shall not be taken as a precedent in any other matter as it has been passed taking special features of the case into account. 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 accordingly allowed. There will be no order as to costs.