

CASE NO.:
Appeal (civil) 5824 of 2002

PETITIONER:
Haryana Urban Development Authority

RESPONDENT:
Smt. Suman Bansal

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 the Respondent was allotted a plot bearing No. 77, Sector 21, Panchkula, in the year 1987. The Respondent paid all dues. The plot allotted turned out to be encroached upon. Thus Complainant could not take possession. In spite of several requests and letters the Appellants did not remove the encroachments and/or take any steps to give possession. Thus the Respondent filed a complaint before the District Forum.

The District Forum directed delivery of possession and awarded interest on the compensation amount at the rate of 15% p.a. from 1st August, 1990 till payment. The District Forum also directed payment of Rs.20,000/- on account of mental agony and harassment and costs of Rs.1,000/-. We are told that possession has since been given.

The State Forum confirmed the Award in the Appeal filed by the Appellants. 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. 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 at the old rate. 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 very late, i.e., only in 1998, compensation towards mental agony/harassment is very low. Compensation should have been awarded for escalation in costs of construction. The finding of the District Forum that there was no proof is not correct. It is a fact of which judicial notice should have been taken, that construction costs have gone up. In future compensation must be given under this head. On an ad hoc basis we maintain the Award of interest at 15% instead of increasing compensation for mental agony and harassment and awarding compensation for escalation in costs of construction. We thus see no reason to interfere in this case.

We clarify that this Order shall not be taken as a precedent in any other matter as it has been passed by 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 disposed off in above terms. There will be no order as to costs.