

CASE NO.:
Appeal (civil) 6548 of 2002

PETITIONER:
Ghaziabad Development Authority

RESPONDENT:
Subhash 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 of 90 Sq. Mtr. under Karpuripuram Scheme in the year 1991. The Respondent paid all dues. Yet possession was not offered. The Respondent thus filed a complaint.

The District Forum has directed delivery of possession and awarded interest on the deposited amount at the rate of 18% p.a. from 1st July, 1994 till date possession is given. The District Forum has also directed payment of Rs. 2,000/- as compensation for mental agony.

The Appellants appealed to the State Forum. We are informed that pending Appeal the Appellants deposited not just the amounts awarded but also the amounts paid by the Respondent to them.

The State Forum confirmed the Award in the Appeal filed by the Appellants.

The Respondent did not go in Revision before the National

Commission. The Appellants filed a Revision before the National Commission. For the first time they now claimed that the Karpuripuram Scheme was cancelled. The National Commission has not dealt with the aspect of cancellation of Scheme but 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 in that Order in cases where the Scheme is cancelled interest must be paid at the rate of 18%. The Respondent is thus entitled to get back his money with interest at the rate of 18% p.a. In this case the Appellants have deposited the amount in the District Forum on 12th February, 1994. The Respondent has not withdrawn the amount as, according to him, the Order of the District Forum was to give possession and pay interest. He correctly submits that the Appellants could not have, contrary to the Order of the District Forum, chosen to not give possession and seek to return amounts paid by depositing the same in the District Forum. We find that the Appellants, on their own, deposited all amounts, without any Order of any Forum. They did not even point out, in the pending Appeal before the State Forum, that the Scheme was cancelled. The State Forum in its Order also directs delivery of possession. Thus by deposit, contrary to Orders of the District and State Forums, the Appellants cannot get any benefit. We have by our earlier Order permitted cancellation of Scheme on payment of interest at 18%. The Respondent must thus get interest till he receives his monies. We therefore permit Respondent to withdraw the monies deposited. He must do so within one week from date of this Order. If the District Forum has invested the amounts then Respondent will be entitled to the accrued interest also. If the amounts are lying uninvested, then Appellants will pay to the Respondent interest at the rate of 12% from 12th February, 1999 till date the monies are withdrawn by the Respondent.

We clarify that this Order shall not be taken as a precedent in any other matter having been passed on account of the 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.

If amounts deposited with the District/State Forum are lying uninvested, they must automatically invest these amounts in nationalized banks and keep them invested till they have to be returned / paid out.

This Appeal is disposed off in above terms. The Appellants will pay to the Respondent costs of this Appeal fixed at Rs. 5,000/-.