

(2013) 09 NCDRC CK 0080

NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Case No: None

JALANDHAR IMPROVEMENT
TRUST

APPELLANT

Vs

PREM CHAND

RESPONDENT

Date of Decision: Sept. 13, 2013

Citation: 2013 0 NCDRC 646 : 2013 4 CPR 186

Hon'ble Judges: V.B.GUPTA , Rekha Gupta J.

Advocate: KARAN DEWAN , S.C.PATHELA

Judgement

1. REVISION petition no. 2461 of 2013 has been filed under section 21 (b) of the Consumer Protection Act, 1986 against the impugned order dated 25.10.2012 passed by the Punjab State Consumer Disputes Redressal Commission, Chandigarh ("the State Commission ") in First Appeal no. 158 of 2009 and RP no. 2500 of 2013 has also been filed against the impugned order dated 25.10.2012 in First Appeal no. 1173 of 2009. Since FA nos. 158 and 1173 of 2009 were disposed of by a common order dated 25.10.2012, we also propose to pass a common order in RP nos. 2461 and 2500 of 2013.

2. THE facts of the case are being taken from RP no. 2461 of 2013 - Jalandhar Improvement Trust vs Prem Chand. The brief facts of the case as per the respondent/ complainant are that: A residential plot no. 265 measuring 200 square yards was allotted to the respondent/ complainant for a total sum of Rs.3,10,000/- by the petitioner/ opposite party - the Jalandhar Improvement Trust under its 94.5 acre G T Road Bye Pass, Jalandhar scheme vide allotment letter no. 6138 dated 16.06.1998 as per the terms and conditions enumerated in the said allotment letter.

Some of the important terms and conditions are being highlighted as under:

(i) Rs.62,650/- which is $\frac{1}{4}$ of the total sale price of Rs.3,10,000/- is to be deposited within 30 days from the issuance of allotment letter. (ii) Balance sale consideration can be deposited in five instalment of six month interval along with simple interest @ 12% per annum. (iii) In the event of non-deposit of instalment in time, interest rate @ 13% in the first month, 14% in the second month, 15% in the third month 16% in the fourth month, 17% in the fifth month and 18% in the sixth month will be charged and this penal interest will not be remitted. (iv) Agreement to sell is to be executed within 30 days from the issuance of the allotment letter. (v) Possession of the plot can be obtained within 30 days from the issuance of the allotment letter. (vi) Construction can be raised after getting the site plan sanctioned from the trust and in the event of non-construction within the period of 3 years from the issuance of the allotment letter, it will be obligatory to deposit Building Extension Fee as per relevant directions of the Government.

The very first payment towards the earnest money of Rs.15,000/- was sent by the respondent himself from his native place Rohtak on 24.09.1996 before the allotment of plot and thereafter payments were made after the issuance of allotment letter dated 15.07.1998 towards the sale price of the said plot as per the terms and conditions of the allotment of plot along with interest on delayed payment of instalment. In spite of deposit of $\frac{1}{4}$ amount of the total sale consideration the requisite agreement to sell has not been executed so far, which was required to be executed within the period of 30 days from the issuance of allotment letter dated 16.06.1998.

3. THE modus operandi of the officials of the petitioner to receive the payments is such that they used to receive the payment along with forwarding application from the allottee and used to issue proper receipt for the amount received later on and such practice started causing problem to the respondent when the officials of the petitioner started avoiding the issuance of the receipt to the respondent in spite of repeated requests and demands. The petitioner was supposed to issue a site plan and for this purpose a letter dated 30.10.2000 was issued to the respondent and the respondent was asked to deposit Rs.50/- towards the cost of the site plan. The same was deposited vide receipt no. 1427/1 dated 31.10.2000, however, the requisite site plan has also not been issued so far. There is also another unfair practice of the officials of the petitioner that they used to raise demand verbally and never cared to issue any proper letter for the demand of interest and other fees explaining calculations details.

4. AFTER the allotment of plot, stamp paper were purchased and submitted on 09.04.2007 and transfer fee of Rs.15,000/- was also deposited on 23.05.2007 and further Rs.200/- towards the photograph fee vide demand draft no. 007426 dated 01.06.2007 was also deposited for which no receipt was issued. All the payments, fees, costs of documentation and interest on the delayed payments have already been made as per the verbal demands raised by the officials of the petitioner but No Due Certificate has yet not been issued to the respondent in spite of his repeated requests and demands.

The respondent has deposited the entire payment for the said plot but the said pay orders have not yet been presented into bank for the purpose of encashment and in this way the petitioner was bent upon charging the interest on the payments for which the pay order have already been deposited with the petitioner because they have not presented the said pay orders for the purpose of encashment.

5. DESPITE of the entire payment of the plot, the possession of the plot has yet not been transferred to the respondent but the petitioner was bent upon charging non-construction charge for which they are not entitled till the petitioner did not give any opportunity to raise construction by handing over the possession of the plot.

6. NO calculations sheet for the interest, penal interest, other fees and costs have been provided nor the same have been explained to the respondent in any manner but the officials of the petitioner used to collect the payment from the allottee without explaining any calculations. Recently, the details of the payments were demanded by the respondent vide his application dated 13.07.2007 under right to information act but the opposite party remained reluctant to provide the same by giving lame excuses vide letter dated 02.08.2007.

Since the respondent, being a resident of a distant place, was facing great hardships in pursuing the matter of allotment of plot and he was not given possession of plot

within stipulated period of time then the complainant had to appoint his relative Shri Naveen Sikka, local resident as his General Power of Attorney to deal with the above said matter. The said General Power of Attorney was duly verified on 27.06.2006 by the official of the petitioner by personal visiting at the place of the execution of attorney. Since the respondent is old aged and he is unable to pursue the present complaint personally so the same was being filed through his General Power of Attorney holders who is fully conversant with the facts of the present case.

7. HOWEVER , the respondent through his General Power of attorney has subsequently sold out the above said plot to Ms Poonam Khattar vide an agreement to sell dated ____ (not mentioned) and applied to the petitioner for transfer of the plot in the name of purchaser Ms Poonam Khatter but the transfer deed has not yet been executed in her favour. The respondent has therefore, prayed that the petitioner may be ordered to grant the following relief:

(i) To execute the agreement of sale/ sale deed with the respondent for the plot no. 265; (ii) To provide calculations sheet for the payments, interest and all other charges received from the respondent from time to time for the above said plot and to issuance of refund for amount paid in excess; (iii) To issue "no due certificate " to the respondent "; (iv) To refrain from charging any interest on payments for which pay orders have already been deposited by the respondent but the same have not been presented into bank and nor any proper receipt has been issued to the respondent; (v) To waive non-constructions charges and refund the same to the respondent; (vi) To execute transfer and conveyance deed in favour of Poonam Khatter, who has purchased the above said plot from the respondent through his General Power of Attorney Shri Naveen Sikka; (vii) Rs.50,000/- towards compensation and damages for mental tension, torture and physical harassment of the respondent since 1998; (viii) Rs.5,500/- towards the cost of the present litigation.

8. IN their written statement the petitioner/ opposite party in their preliminary objections have stated that Naveen Sikka has held himself out to be hold of General Power of Attorney and has filed the complaint as such. Firstly, he does not have any attorney. Secondly, if he had any, his attorney and its exercise came to end with sale of plot to Poonam Khattar on the basis of attorney of Prem Chand. Thereafter, he is

left with no authority to act and conduct for Prem Chand, Hence the respondent being not consumer, could not file the complaint. The complaint involves the determination of the property in issue. The respondent Prem Chand had asked the petitioner not to transfer the plot as he has not received the full payment of my plot till today. As the dispute relates to the non-receipt of consideration by him on sale of plot either to Naveen Sikka or to Poonam Khattar, it is required to be adjudicated by the Civil Court. The plot in issue was allotted to Prem Chand. Prem Chand is said to have given irrevocable power of attorney to Naveen Sikka who on its basis in turn sold the plot to Poonam Khattar. Hence, the respondent neither represents Prem Chand or Poonam Khattar. The agreement could not be executed because Prem Chand sold the plot by giving irrevocable power of attorney. But the power of attorney was neither legal nor valid. Hence, who was the competent person to enter into agreement could not be ascertained. The petitioner as such was not responsible.

No due certificate could be issued only on receipt of all payments due and outstanding against the plot and on the determination of the right to the particular plot. The District Consumer Disputes Redressal Forum, Jalandhar ("the District Forum ") in their order dated 08.12.2008 have observed that:

"Considering the contributory lapse on the part of the respondent and also the petitioner - Jalandhar Improvement Trust, we order for payment of Rs.90,000/- towards the non-construction fee though we do not find any justification for claiming Rs.62,407/- towards sale price because the respondent has already deposited Rs.5,15,610/- which includes the interest and penal interest and further direct the petitioner - Jalandhar Improvement Trust to issue "No Due Certificate " after the deposit of this amount within two months from the receipt of copy of this judgment. Further direction is also issued to the respondent to comply with the necessary formalities of the Trust for execution of the conveyance deed/ sale deed either in his favour or in favour of the prospective vendee after due permission is accorded by the petitioner/ Jalandhar Improvement Trust as required under the rules. In the circumstances of the case, we award Rs.4,000/- as compensation on account of deficiency in its service and Rs.1,000/- as costs of litigation within two months from the receipt of copy of this judgment ".

Aggrieved by the order of the District Forum, the respondent filed Appeal no. 158 of 2009 and the petitioner filed appeal no. 1173 of 2009 before the State Commission. The State Commission after hearing the counsels for the parties and going through the records of the case in their order dated 25.10.2012 have observed as under:

"17. It is strange that the respondent Trust, without handing over the possession, is demanding the non-construction charges, as if the appellant or his Attorney or Special Power of Attorney is to construct the building in the air. The District Forum asked the appellant to deposit Rs.90,000/- as non-construction fee, whereas the respondent demanded Rs.1,92,000/- as non-construction fee, but as stated above,

the appellant or its General Power of Attorney or Special Power of Attorney cannot be made liable to pay the non-construction fee, once the possession has not been delivered. In spite of this, the appellant has deposited the said amount under protest, but nothing has been brought on record that even thereafter the possession has been delivered to the appellant. 18. In view of above discussion, the order of the District Forum, directing the appellant to pay Rs.90,000/- towards the non-construction fee is not sustainable and is liable to be set aside and the respondent Trust is not entitled to recover any non-construction charges and is liable to refund the same, if recovered, to the appellant. For the last 14 years, the appellant and his Attorney including Special Power of Attorney have been running from pillar to post to get the possession and have been paying the amount as demanded, but still the possession was not delivered. The mental tension, physical harassment and financial loss suffered by the appellant cannot be so small that a mere compensation of Rs.4,000/- is sufficient to compensate the same. 19. Accordingly, the appeal filed by the appellant/complainant is accepted and the impugned order dated 08.12.2008 under appeal passed by the District Forum, directing the appellant to pay Rs.90,000/- towards the nonconstruction fee is set aside and the respondent Trust shall refund the same, if recovered, to the appellant. The compensation of Rs.4,000/- is enhanced to Rs.40,000/- (Rupees Forty Thousand) and litigation expenses from Rs.1,000/- to Rs.10,000/- (Rupees ten thousand). With this modification, the remaining part of the impugned order is affirmed and upheld".

First Appeal No.1173 of 2009:-

"21. In view of the reasons and discussion held in First Appeal No.158 of 2009 (Prem Chand Vs Jalandhar Improvement Trust), the First Appeal No.1173 of 2009 (Jalandhar Improvement Trust Vs Prem Chand) being false and frivolous is dismissed with costs of Rs.10,000/- (Rupees Ten Thousand), payable by the appellant-Trust to the respondent/complainant within two months of the receipt of copy of the order".

After accepting the appeal in FA No. 158 of 2009 of the respondent and dismissing the First Appeal no. 1173 of 2009 of the petitioner. The State Commission observed that:

"20. We are so agonized that we feel that an inquiry should be conducted by the Chairman, Improvement Trust, Jalandhar, to find out as to who were the officials who have caused hindrances in the delivery of the possession and have been demanding money from the appellant on one pretext or the other, and to take disciplinary action against the erring officials. The inquiry be completed within three months after the receipt of copy of the order and copy of the report be sent to this Commission".

9. REVISION petition no. 2461 of 2013 has been filed by the petitioner with an application for condonation of delay of 120 days and revision petition no. 2500 of 2013 has been filed with an application for condonation of delay of 147 days. Identical reasons for condonation of delay have been mentioned in each application which reads as under:

It is stated that the certified copy of the impugned order was ready on 09.11.2012 and the same was dispatched by the Registry of the State Commission by post and subsequently received by the petitioner Trust herein on 03.12.2012. Thereafter the petitioner Trust herein being a Government body after studying and consulting the house officials at various levels, finally took the decision in February 2013 to send the papers relating to the case to the retained Advocate at Chandigarh for his opinion regarding the filling of the revision petition before this Hon "ble Commission. After that the present matter with the opinion of the Advocate was sent to the competent authority for obtaining the sanction for filling of present revision petition in the third week of March 2013, sometime was lost in procuring the above said sanction for filling of the present revision petition. Finally sanction was granted regarding the expenditure to be incurred for in pursuing the present case. Thereafter the counsel at Chandigarh was engaged to prepare the draft of the present petition in the month of April who in turn took some time to prepare the draft of the petitioner and sent the draft of the present petition for vetting by the petitioner Trust herein somewhere in the last week of April. Thereafter some time was lost in finalising the draft of the petition by the officials of the petitioner herein as the file has to be processed and cleared by various department. Thereafter the duly signed revision petition along with the affidavits could only be received by the counsel in Delhi in the First week of June 2013.

10. WE have heard the learned counsels for the petitioner and have also gone through the records of the case carefully. The petitioner is supposed to explain the day-to-day delay, but the needful has not been done. The petitioner has failed to provide "sufficient cause " for the delays of 120 and 147 days respectively. This view is further supported by the following authorities. The apex court in the case of In Anshul Aggarwal v. New Okhla Industrial Development Authority, IV (2011) CPJ 63 (SC), it has been held that:

"It is also apposite to observe that while deciding an application filed in such cases for condonation of delay, the Court has to keep in mind that the special period of limitation has been prescribed under the Consumer Protection Act, 1986 for filing appeals and revisions in consumer matters and the object of expeditious adjudication of the consumer disputes will get defeated if this Court was to entertain highly belated petitions filed against the orders of the Consumer Foras ".

In Balwant Singh Vs. Jagdish Singh and Ors., (Civil Appeal no. 1166 of 2006), decided by the Apex Court on 08.07.2010 it was held:

"The party should show that besides acting bonafide, it had taken all possible steps within its power and control and had approached the Court without any unnecessary delay. The test is whether or not a cause is sufficient to see whether it could have been avoided by the party by the exercise of due care and attention. [Advanced Law Lexicon, P. Ramanatha Aiyar, 3rd Edition, 2005] ".

11. IN Ram Lal and Ors. Vs. Rewa Coalfields Ltd., AIR 1962 Supreme Court 361, it has been observed;

"It is, however, necessary to emphasize that even after sufficient cause has been shown a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a discretionary jurisdiction vested in the Court by S.5. If sufficient cause is not proved nothing further has to be done; the application for condonation has to be dismissed on that ground alone. If sufficient cause is shown then the Court has to enquire whether in its discretion it should condone the delay. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage that diligence of the party or its bona fides may fall for consideration; but the scope of the enquiry while exercising the discretionary power after sufficient cause is shown would naturally be limited only to such facts as the Court may regard as relevant. "

Similarly, in Oriental Insurance Co. Ltd. vs. Kailash Devi & Ors. AIR 1994 Punjab and Haryana 45, it has been laid down that;

"There is no denying the fact that the expression sufficient cause should normally be construed liberally so as to advance substantial justice but that would be in a case where no negligence or inaction or want of bona fide is imputable to the applicant. The discretion to condone the delay is to be exercised judicially i.e. one of is not to be swayed by sympathy or benevolence."

12. IN R.B. Ramlingam Vs. R.B. Bhavaneshwari, 2009 (2) Scale 108, it has been observed:

"We hold that in each and every case the Court has to examine whether delay in filing the special appeal leave petitions stands properly explained. This is the basic test which needs to be applied. The true guide is whether the petitioner has acted with reasonable diligence in the prosecution of his appeal/petition."

Recently, Hon "ble Supreme Court in Post Master General and others vs. Living Media India Ltd. and another (2012) 3 Supreme Court Cases 563 has held;

"After referring various earlier decisions, taking very lenient view in condoning the delay, particularly, on the part of the Government and Government Undertaking, this Court observed as under; "It needs no restatement at our hands that the object for fixing time-limit for litigation is based on public policy fixing a lifespan for legal remedy for the purpose of general welfare. They are meant to see that the parties do not resort to dilatory tactics but avail their legal remedies promptly. Salmond in his Jurisprudence states that the laws come to the assistance of the vigilant and not of the sleepy. Public interest undoubtedly is a paramount consideration in exercising the courts" discretion wherever conferred upon it by the relevant statutes. Pursuing stale claims and multiplicity of proceedings in no manner subserves public interest. Prompt and timely payment of compensation to the land losers facilitating their rehabilitation /resettlement is equally an integral part of public policy. Public interest demands that the State or the beneficiary of acquisition, as the case may be, should not be allowed to indulge in any act to unsettle the settled legal rights accrued in law by resorting to avoidable litigation unless the claimants are guilty of deriving benefit to which they are otherwise not entitled, in any fraudulent manner. One should not forget the basic fact that what is acquired is not the land but the livelihood of the land losers. These public interest parameters ought to be kept in mind by the courts while exercising the discretion dealing with the application filed under Section 5 of the Limitation Act. Dragging the land losers to courts of law years after the termination of legal proceedings would not serve any public interest. Settled rights cannot be lightly interfered with by condoning inordinate delay without there being any proper explanation of such delay on the ground of involvement of public revenue. It serves no public interest. "

The Court further observed;

"It is not in dispute that the person(s) concerned were well aware or conversant with the issues involved including the prescribed period of limitation for taking up the matter by way of filing a special leave petition in this Court. They cannot claim that they have a separate period of limitation when the Department was possessed with

competent persons familiar with court proceedings. In the absence of plausible and acceptable explanation, we are posing a question why the delay is to be condoned mechanically merely because the Government or a wing of the Government is a party before us. Though we are conscious of the fact that in a matter of condonation of delay when there was no gross negligence or deliberate inaction or lack of bonafide, a liberal concession has to be adopted to advance substantial justice, we are of the view that in the facts and circumstances, the Department cannot take advantage of various earlier decisions. The claim on account of impersonal machinery and inherited bureaucratic methodology of making several notes cannot be accepted in view of the modern technologies being used and available. The law of limitation undoubtedly binds everybody including the Government. In our view, it is the right time to inform all the government bodies, their agencies and instrumentalities that unless they have reasonable and acceptable explanation for the delay and there was bonafide effort, there is no need to accept the usual explanation that the file was kept pending for several months/years due to considerable degree of procedural red-tape in the process. The government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few. Considering the fact that there was no proper explanation offered by the Department for the delay except mentioning of various dates, according to us, the Department has miserably failed to give any acceptable and cogent reasons sufficient to condone such a huge delay. In view of our conclusion on Issue (a), there is no need to go into the merits of Issues (b) and (c). The question of law raised is left open to be decided in an appropriate case. In the light of the above discussion, the appeals fail and are dismissed on the ground of delay. No order as to costs".

Observations made by Apex Court in the authoritative pronouncements discussed above are fully attracted to the facts and circumstances of the case. Even, after getting two adverse findings, petitioners have chosen not to settle the claim of the respondent but have dragged him to the highest Fora under the Act. It is not that every order passed by Fora below is to be challenged by a litigant even when the same are based on sound reasoning. It is a well-known fact that Courts across the country are saddled with large number of cases. Public Sector Undertakings indulgences further burden them. Time and again, Courts have been expressing their displeasure at the Government/Public Sector Undertakings compulsive litigation habit but a solution to this alarming trend is a distant dream. The judiciary is now imposing costs upon Government/Public Sector Undertaking not only when it pursue cases which can be avoided but also when it forces the public to do so. Public Sector Undertakings spent more money on contesting cases than the amount they might have to pay to the claimant. In addition thereto, precious time, effort and other resources go down the drain in vain. Public Sector Undertakings are possibly

an apt example of being penny wise, pound-foolish. Rise in frivolous litigation is also due to the fact that Public Sector Undertakings though having large number of legal personnel under their employment, do not examine the cases properly and force poor litigants to approach the Court.

13. THE present case is fully covered under the case laws cited above Supra. Accordingly, we find that there is no "sufficient cause " to condone the delays of 120 and 147 days in filing the present revision petitions. The applications for condonation of delay are without any merit as well as having no legal basis and are not maintainable. Consequently, the present revision petitions being time barred by limitation and are dismissed with cost of Rs.10,000/- (Rupees ten thousand only) in each case.

14. PETITIONER is directed to deposit the cost by way of demand draft in the name of "Consumer Legal Aid Account of this Commission " within four weeks from today. In case the petitioner fails to deposit the said cost within the prescribed period, then it shall be liable to pay interest @ 9% per annum till realisation. With regard to the above impugned order of the State Commission the petitioner should submit an affidavit regarding the status of the enquiry and disciplinary action taken against the erring officials. The report may be submitted within four weeks. List on 25th October 2013 for compliance.