

B.N.VENKATESH MURTHY Vs BANGALORE DEVELOPMENT AUTHORITY

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: July 14, 1994

Citation: 1994 0 NCDRC 79 : 1994 2 CPC 442 : 1994 2 CTJ 770 : 1994 3 CPJ 96 : 1994 3 CPR 36 : 1995 1 CLT 1 : 1998 2 CPJ 8

Hon'ble Judges: B.S.YADAV , Y.KRISHAN J.

Judgement

1. THESE are two cross appeals against the common order of 22nd August, 1992 rendered by the State Commission of Karnataka in Complaint

No. 142/91. Both these cross appeals are being disposed of by this order.

2. THE State Commission came to the finding that the Bangalore Development Authority has been guilty of deficiency in service in allotting sites in

favour of the complainant on which it had no right to make such allotment. However, after examining in detail the various claims of the complainant

in First Appeal No. 547 it allowed the complaint in part. The Bangalore Development Authority was directed to pay a sum of Rs. 34,768/- with

interest thereon at 12% from 12th July, 1990 till the date of payment and Rs. 1,000/- towards costs.

The appellant Shri Murthy in Appeal No. 547 has challenged the order of the State Commission on the ground that the State Commission has

failed to do him justice in disallowing to him the compensation claimed by him on account of the avoidable expenses incurred by him on abortive

construction, avoidable expenditure on fees to architects/structural designers, on stamp duty, registration charges for the plots whose allotment was

eventually cancelled, lawyer's fees in conducting litigation to defend his defective allotment by the respondent BDA and for the mental agony and

harassment caused by the negligence of the Bangalore Development Authority.

3. IT may be useful to recount the undisputed facts as recorded in the order of the State Commission.

4. THE opposite party Bangalore Development Authority had allotted to the complainant in 1987 a site in B.T.M. layout, Tavarakere. The

complainant made the payment of Rs. 85,000/- in January, 1988 towards the value of the said site. Subsequently, it was discovered that the site

was the subject matter of litigation and therefore, the complainant applied for the allotment of an alternative site. Thereupon the opposite party

Bangalore Development Authority allotted another site in B.T.M. Dollar layout in September, 1989.

The complainant commenced construction work in August, 1990. An ad-interim injunction order, however, was passed by the City Civil Court

whereby the complainant was compelled to stop the construction work. According to the appellant complainant, he had incurred an expenditure of

Rs. 39,071/- for constructing a shed for stocking the construction materials at site, on construction on a well and on earth work, on preparation of

house plant by an architect and a structural engineer. The ad-interim injunction order was made absolute in January, 1991. However, the opposite

party Bangalore Development Authority did not take part in the proceedings before the City Civil Court to safeguard the interest of the

complainant even though the plot was allotted by the Development Authority and the appellant complainant had requested it to do so.

5. ON conformation of the injunction against the construction on the plot in Dollar layout, another alternative site was allotted to the complainant by

the opposite party Bangalore Development Authority in Banashankari 3rd Stage layout in April, 1991. Feeling aggrieved, the appellant

complainant sought for the following reliefs before the State Commission :-

(a) to execute a rectification deed at its expense, for the new allotment to the effect that the lease period to operate retrospectively from June,

1988; (b) to pay damages to the extent of the actual investment made on the site originally allotted and amount paid by the petitioner for breach of

contract with his contractor (Rs. 50,000); (c) to pay damages by way of loss of interest on Rs. 84,900/- from the date of deposit till 27.4.1991,

the date of allotment of the alternate site and interest on stamp duty and registration fee, likewise; (d) to reimburse the loss caused to the petitioner

by way of interest paid on the loans raised by him from his institution and private parties; (e) to make up the consultation fee paid to the

architects/structural designers (Rs. 8,000); (f) to pay expenses in respect of stamp duty/registration fee for cancelling earlier allotment; (g) to

reimburse amounts spent towards stamp, registration and miscellaneous charges in respect of the site provisionally allotted; (h) to pay a

compensation of Rs. 10,000/- towards mental agony, worry and anxiety of which the petitioner and members of his family have all been subjected

to by the absolute negligence of the Respondent BDA; (i) Lawyer's fee of Rs. 10,000/- to defend O.S. No. 3887 of 1990;

It is also in evidence that the plot in B.T.M. Dollar layout allotted to the appellant complainant in 1989 was a part of the land in Sy. No. 172/2-B

of Bilakahalli village and that the possession of this land in Bilakahalli village was taken by the opposite party Bangalore Development Authority

only on 18th May, 1991. In other words, the opposite party Bangalore Development Authority acquired the power to allot the plots and hand

over possession of those plots including in the plot in the B.T.M. Dollar only from May, 1991 whereas it had actually allotted this plot to the

appellant complainant, delivered possession and executed the Lease-cum-Sale Deed and sanctioned the plan for construction of houses on the

said site in 1989. No wonder that this allotment again had to be cancelled, the facts about which have been cited already.

6. IT would be patent from the facts given above that the opposite party Bangalore Development Authority has been guilty of gross deficiency in

service; repeatedly it allotted to the complainant plots for house construction which were either in litigation or in respect of which it had no right to

make allotment and has thereby caused considerable expenditure and harassment to the appellant complainant. The perusal of the record does not

indicate how the Bangalore Development Authority came to commit such irregularities in the matter of allotment of plots. The deficiency in service

on the part of the opposite party Bangalore Development Authority is further compounded by the fact that it took no interest in contesting the suit

in the Civil Court in regard to the site in B.T.M. Dollar layout. It was the duty of the opposite party Bangalore Development Authority to have

joined the appellant complainant in contesting the suit in the Civil Court.

The State Commission, while accepting that the opposite party Bangalore Development Authority has been guilty of deficiency in service, has been

unduly strict in dealing with the claims for compensation on various counts made by the appellant complainant. At the outset, it may be observed

that it was in August, 1992 that the State Commission passed the order under appeal and it is quite understandable that the appellant complainant

could not produce documentary evidence at that distance in time in support of all his claims.

7. THE appellant complainant had claimed to have spent Rs. 39,000/- on the construction work in B.T.M. Dollar layout plot. The State

Commission has accepted a claim for Rs. 30,500/- only as against Rs. 39,000/- on the ground that this is the amount estimated by the

Commissioner (engineer). But the Commissioner's estimate was prepared on the basis of the PWD schedule of rates with escalation of 10% for

cement. It is a matter of common knowledge that the PWD schedule of rates, both in the States and the Centre are generally very much out of date

and heavy premium has to be allowed thereon so that they more or less conform to the current rates. Besides, the PWD schedule of rates are

generally lower than the rates at which individuals or private parties can get the works done.

8. IT is also unfair to disallow the claim for expenditure on construction of the well merely on the ground that the well had been constructed without

obtaining permission from the opposite party - Bangalore Development Authority, or that there was no provision for it in the plan. Obviously, it

was a temporary well for purposes of providing water for construction. The cost of the well has been estimated by the Commissioner as Rs.

6,000. This should be allowed in full.

The appellant complainant claims to have spent Rs. 8,000/- for consultation with the architects and structural engineers and this has been

disallowed in the absence of material on record to show that he was obliged to make payment for the services of architect and structural engineer.

We feel that this has been disallowed unfairly. It may be reasonably assumed that the appellant complainant had undertaken the construction work

only after getting house plan duly prepared and approved by the architect and structural engineer and the expenditure of Rs. 8,000/- in all for the

services of architect and structural engineer does not appear to be on the high side.

9. THE complainant has also claimed interest on Rs. 84,900/-, the amount deposited by him in January, 1988 till 27th April, 1991. According to

the State Commission, the opposite party Bangalore Development Authority on coming to know that the site in B.T.M. Dollar layout had become

the subject matter of litigation allotted an alternative plot after collecting an additional sum of Rs. 5,000/- from the appellant complainant. The State

Commission has, therefore, disallowed any claim for interest. This again is unfair. As observed above, the amount of Rs. 84,900/- was deposited

in January, 1988 for the allotment of plot in B.T.M. layout Tavarakere. This was found to be under litigation. Then in 1989 another plot in B.T.M.

Dollar layout was allotted which was also the subject matter of litigation. There is, therefore, every justification for allowing interest on the deposit

made by the appellant complainant. He is, therefore, entitled to interest at the rate of 18% p.a. on the deposit of Rs. 84,900/- made by him in

January, 1988 till 27th April, 1991. In this connection, it may be noted that the appellant complainant has stated that he had to pay interest on the

loans raised by him. It is also to be appreciated that as a result of the lapses on the part of the opposite party Bangalore Development Authority

there has been enormous delay in the construction of the house by the appellant complainant and in the meanwhile the cost of construction has

gone up considerably.

10. THE State Commission has disallowed the claim of Rs. 10,000/- towards lawyer's fees paid by the appellant complainant on the ground that

he has not produced any receipts nor examined the counsel. In our opinion, the claim for Rs. 10,000/- in such litigation is not unreasonable. We

know fully well that often fees have to be paid without obtaining receipts or the receipts are for smaller amounts. Knowing that litigation these days

is extremely expensive, the amount claimed does not appear excessive.

The appellant complainant has also claimed Rs. 10,000/- as compensation for mental agony and anxiety etc. This has been disallowed by the State

Commission on the ground that the opposite party - Bangalore Development Authority had promptly allotted an alternative site to the complainant.

11. WE are of the view that the State Commission has ignored the amount of suffering and harassment which the appellant complainant has

suffered due to frequent lapses on the part of the opposite party BDA and for which we see no justification whatsoever. In our opinion, the amount

of compensation claimed for mental agony, harassment etc., viz. Rs. 10,000/- is quite modest.

12. WE , therefore, allow the following reliefs to the complainant :

(i) Interest at the rate of 18% p.a. from January, 1988 to 27th April, 1991 on the deposit of Rs. 84,900/- made in January, 1988. (ii) Rs. 39,000

by way of expenditure unnecessarily incurred by the appellant complainant on the aborted construction work at B.T.M. Dollar layout. (iii) A sum

of Rs. 8,000/- paid by way of fees to the architect and structural engineer for the B.T.M. dollar lay out construction. (iv) Rs. 10,000/- paid by way

of fees to the lawyer in the litigation for the B.T.M. dollar layout plot whose allotment had eventually to be cancelled by the Development

Authority. (v) A sum of Rs. 10,000/- as compensation and Rs. 10,000/- by way of costs.

In addition the respondent BDA should pay the registration fee of the plot in the BTM Dollar layout which had to be cancelled.

13. WE also direct that in this case, the avoidable expenditure that has resulted to the respondent Bangalore Development Authority should be

recovered from the officers of the Authority who are found responsible for the various lapses noticed in this order in the light of the judgment of the

Hon"ble Supreme Court of India in Lucknow Development Authority v. M. K. Gupta (C.A. No. 6237 of 1990 SLP (C) Nos. 659/91, 16842/92;

C.A. Nos. 3963/89, 5534/90, 6236/90, 5257/90, 2954-59/92) reported at (1993)1 CTJ 929 (CP). An enquiry will be conducted by the B.D.A.

for ascertaining who amongst the members of its staff were responsible for the lapses and in what proportion the liability should be saddled on the

action. A report about the action taken in the matter pursuant to the directions given above shall be submitted to this Commission by the Chairman,

Bangalore Development Authority within 4 months from the date of receipt of this order. The Registrar will forthwith forward an attested copy of

this order to the Chairman, Bangalore Development Authority for early compliance with the aforesaid directions. First Appeal No. 567 of 1992 :

14. THIS has been filed after a delay of 33 days. Even though an application for condonation of delay has been submitted, we find no adequate

reasons justifying the delay. The request for condonation of delay is rejected and this appeal is dismissed as time barred.