

Ghaison Expotech, Ludhiana Vs Punjab Small Industries And Export Corpn Ltd

Court: NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION

Date of Decision: May 26, 2010

Citation: 2010 3 CPJ 248

Hon'ble Judges: K.S.Gupta , R.K.Batta J.

Advocate: Kasturi Lal , N.S.Bobrai

Judgement

1. THE complainant was allotted an industrial plot No. C-236 measuring 3750 sq. yards at Industrial Focal Point, Ludhiana, Phase VIII for the

manufacture of ""Bicycle Parts"" on 99 years lease hold basis subject to the terms and conditions contained in the said allotment letter. In terms of

the allotment letter, the complainant deposited with the OP additional sum of Rs. 4,59,375 towards 30% of the price vide demand draft dated

5.7.1995 which was acknowledged by the OP on 17.7.1995 in addition to deposit of Rs. 2,62,500 being 20% earnest money along with

application. The complainant further states that in terms of the conditions contained in the allotment letter, the OP was liable to handover the

possession of the plot on receipt of 30% tentative price. It is further contended that the complainant had paid the balance 50% of the price

amounting to Rs. 6,50,100 of the plot vide DD dated 1.8.1995 being the full and final payment. The said payment was acknowledged by the OP

on 2.8.1995. In spite of the said payments, the OP failed to deliver the possession and after the complainant made a report for delay in delivery of

possession, the Estate Officer of the OP vide letter dated 6.9.1996 directed Sub-Divisional Engineer-IV to handover the possession of the plot to

the complainant. The possession of the plot was ultimately delivered to the complainant on 19.4.1996. According to the complainant, basic

essential minimum facilities like roads, sewerage and water supply were not available at the site and in spite of repeated assurances, the OP failed

to provide the same. In the absence of approach road, sewerage, water pipeline to the site, the construction of the factory building could not be

undertaken. The OP by letter dated 16.12.1996, had asked the complainant to pay further cost of the plot on account of the excess area of the

plot. The complainant had been allotted an area of 3750 sq. yards, but on actual measurement it was found to be 4484.66 sq. yards. The

complainant paid a sum of Rs. 3,27,000 vide demand draft dated 8.1.1997 which was acknowledged by the OP on 27.1.1997. The complainant

alleges that it suffered huge losses due to heavy investments of the funds for the project on account of the fact that basic facilities of roads,

sewerage, water supply, etc. had not been provided by the OP.

2. BY letter dated 27.1.1997, the complainant brought to the notice of the OP that HT line of 11 KVA was passing through the whole length of

their plot and that the existence of this line is a great hindrance to any construction and as such, the complainant requested the OP to get the same

removed. In the meantime, by show cause notice dated 18.2.1997, the OP sought to cancel the allotment of the plot. According to the

complainant even before issue of show cause notice, the complainant had already started construction of factory, but the same could not be

continued because HT line of 11 KVA was passing over the whole length of the plot. It was also found that at the time of digging for the purpose

of construction that water supply line was also passing under the plot and a letter was sent to the OP to approach the concerned authorities to lay

the water supply line correctly. In spite of repeated reminders, the electric line was not removed. On 18.11.1998, the Chief Engineer of the OP

wrote to its Superintending Engineer and Executive Engineer IV, Jalandhar to do the needful, but the OP did not take any further steps due to

which, the complainant could not set up the industrial unit. Alleging deficiency of service, the complainant claims compensation of Rs. 91,41,548,

as per details given in paragraph 15 of the complaint. Besides this, the complainant has also sought directions to the OP to remove HT line of 11

KVA to enable the complainant to complete construction and set up industrial unit.

3. THE OP in its reply has submitted that the complaint is time barred inasmuch as the plot in question was allotted to the complainant on 7.6.1995

and the actual physical possession of the same was taken on 19.4.1996. The allotment was made to the complainant under "'off shelf scheme'". It is

further contended that the allottee was required to take physical possession of the plot within 90 days from the date of allotment letter, as per

condition No. VII, but the allottee failed to do so. The complainant had requested vide letter which was received on 28.3.1995 to handover

possession of the plot and pursuant to the said letter, the Sub-Divisional Engineer concerned was directed vide letter dated 6.9.1995 to handover

possession of the plot to the complainant within 10 days. Thereafter, a request letter was received from the complainant requesting therein to allow

21 days extension/time for taking over possession of the plot and the request was forwarded to Sub-Divisional Engineer IV, Ludhiana on 9.4.1996

advising him to handover possession of the plot to the allottee within 15 days. The possession of the plot was taken by the complainant on

19.4.1996. The OP has specifically stated that the basic essential facilities like roads, sewerage and water supply, etc. were available when the

plot was given to the complainant. The OP further stated that due to excess area of the plot, the complainant was asked to deposit Rs. 4,18,707

including interest thereon as calculated upto 15.1.1997. The complainant deposited only Rs. 3,27,000 on 17.1.1997. Besides this, the complainant

did not deposit additional cost of plot, as per directions of High Court of Punjab and Haryana, i.e. a sum of Rs. 16,67,184 as on 17.8.2001,

against which Civil Writ Petition No. 7839/02 was filed before the Hon"ble High Court of Punjab and Haryana on 30.4.2002 for quashing

demand dated 17.9.1999 and 13.8.2001 made by the OP. The said petition is still pending.

4. REGARDING removal of the HT line, the letter of the complainant was received on 27.1.1997 and the matter was taken up with the Punjab

State Electricity Board for shifting of HT line and a sum of Rs. 7,98,524 was deposited by the OP with the Electricity Board for shifting of the HT

line. The OP had approached the Punjab State Electricity Board and made numerous requests for shifting the HT line. It may be mentioned here at

this stage that HT line was finally shifted in the month of May, 2003. According to the OP, the complainant did not take effective steps to raise

construction over the plot and bring the unit into production and that there is no deficiency on the part of the OP.

5. ON 12.7.2000, the complainant filed an application under Section 24A of the Consumer Protection Act for condonation of delay in filing the

complaint. The delay was sought to be condoned mainly on the ground that infrastructure facilities were not provided by the OP and no action had

been taken for removal of HT line of 11 KVA, which was passing over the plot in question on account of which the construction of the factory

building was not possible. It was also stated that the show cause notice dated 18.2.1997 was withdrawn by the OP. Accordingly, the delay was

sought to be condoned.

6. THE OP vide its reply opposed the condonation application on the ground that the possession of the plot was given to the complainant on

19.4.1996 and that there was no ground for condoning delay.

7. NO rejoinder was filed by the complainant to the reply filed by the OP. On behalf of the complainant, affidavit of the complainant has been filed.

On behalf of the OP, affidavit of Shri R.K. Goyal, Sr. Law Officer has been filed.

8. ADVOCATES for the parties have filed brief written synopsis of arguments and the Counsel for the parties were also orally heard.

9. COUNSEL for the complainant took us through the pleadings and submitted before us that perusal of Clause 2(i) to (ix) and (xxv) of the

allotment letter shows that the time was the essence of the contract of allotment; that in spite of making the requisite payment, the OP delayed the

handing over of symbolic possession for about 9 months and the same was handed over on 19.4.1996; that minimum basic essential infrastructure

facilities like roads, sewerage, water supply, street lights, etc. were not provided/made available in spite of the repeated requests made by the

complainant; that the complainant after getting the plan approved had assigned the job of construction to M/s. Vinod Kumar Bhim Singh

Constructions Pvt. Ltd., who during the process of construction of boundary walls noticed that HT line of 11 KVA was passing over the whole

length of the plot and reported to the complainant that the construction of the building will only be possible if the said HT line had been removed;

(this argument is not supported by any specific pleadings in the complaint) in spite of repeated letters, the OP did not shift the HT line and the

complaint in question was filed on 10.4.2000; that it was during the pendency of the present complaint, the OP vide letter dated 8.6.2004 brought

to the notice of the complainant that the 11 KVA wire had been removed. According to the complainant, the construction was started in

September, 2004 and was completed by June, 2006. According to the learned Counsel for the complainant, the OP is liable to pay the claim

made by the complainant from the year 1998 till 2004.

10. LEARNED Counsel for the OP, on the other hand, submitted that the complainant cannot be considered as consumer since the services were

availed for commercial purpose and in this connection, reliance was placed by him on the judgment of Laxmi Engineering Works v. P.S.G.

Industrial Institute, II (1995) CPJ 1 (SC)=AIR 1995 SC 1428. Learned Counsel for the OP also urged that the complaint was barred by limitation

since the possession was given on 16.4.1996 and the complaint was filed in the year 2000. It was next contended that the complainant is a

defaulter in making the payment to the OP and has not cleared dues of additional area as also enhancement of cost of land to be recovered

pursuant to the judgment of the Hon"ble High Court of Punjab and Haryana and as such, the complainant cannot be allowed to seek indulgence of

the Commission for redressal of his grievances. It was next contended that the allotment letter nowhere provides that a developed plot was to be

given and that the complainant is estopped from taking the plea that the basic facilities have not been provided since the complainant had not raised

any objection when the possession was taken over and, in fact, all the basic amenities like water, electricity, sewerage, etc. were available when

possession was given and that the complainant in order to cover up his own lapses of non-construction and non-production of the unit as envisaged

in terms of allotment has approached this Commission for relief. The complainant had failed to start production within 3 years in terms of the

allotment letter. It was further contended at the time of taking over of the possession of the plot, no objection had been raised in respect of the

electric wires, which were passing over the plot and it was after one year of taking over of possession of the plot, the complainant had approached

the OP for shifting of the electric wires which were ultimately shifted in May, 2003. According to the learned Counsel for the OP, there is no basis

for the claim made by the complainant.

11. IN reply, learned Counsel for the complainant submitted before us that the affidavit evidence of the OP is beyond the pleadings of the OP and

the same cannot be looked into.

12. WE have gone through the record.

13. TO start with, we shall deal with the contention raised by the learned Counsel for the OP that the complainant cannot be considered to be a

consumer since he had availed the services for commercial purpose, in this respect, we would like to point out that it is not a case of purchase of

goods inasmuch as allotment of plot being an immovable property does not fall within the definition of "goods" in Section 2(1)(i) of the C.P. Act

where the terms "goods" has been assigned the meaning as contained in the Sale of Goods Act, 1930. As per Section 2(7) of the Sale of Goods

Act, immovable property; namely, plot would not fall within the definition of goods, which reads as under:

Goods-"Goods" means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops,

grass, and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale. Coming to the

contention of learned Counsel for the OP that the complainant had availed the services of the OP for commercial purposes, we would like to point

out that availing of services for commercial purpose was included in Section 2(d)(ii) of C.P. Act only w.e.f. 15.3.2003 and prior to that services

availed for commercial purpose had not been excluded. The allotment of the plot in question for industrial purpose was in the year 1995.

Accordingly, we do not find any merit in this submission of Counsel for the OP. Reliance placed by the learned Counsel for the OP in the judgment

of the Apex Court in Laxmi Engineering Works v. P.S.G. Industrial Institute (supra), is misplaced since it deals with the explanation added to

Section 2(d)(1) by Amendment Act 50/93 which related to goods under Section 2(d)(1) of CP Act.

14. THE next objection raised by the Counsel for the OP is that the complaint is barred by limitation inasmuch as the possession of the plot was

given to the complainant on 19.4.1996 and the complaint was filed only in the year 2000. The complainant had in fact filed an application under

Section 24A of the CP Act for condonation of delay in filing the complaint. The delay was sought to be condoned on the ground that the

infrastructure facilities were not provided by the OP and no action had been taken for removal of HT line of 11 KVA, which was passing over the

plot in question on account of which the construction of the factory building was not possible. It is also stated in the said application that the show

cause notice dated 18.2.1997 was withdrawn by the OP. Admittedly, the complainant had reported to the OP vide letter dated 27.1.1997 that

HT line of 11 KVA was passing through the whole length of the plot in question on account of which, there was hindrance to construction to be

made thereon and had requested to get the same removed. The OP has stated that on receipt of letter dated 27.1.1997, the matter was taken up

with the Punjab State Electricity Board for shifting of HT line of 11 KVA and a sum of Rs. 7,98,524 was deposited by the OP with the Electricity

Board for shifting of HT line. The HT line was finally shifted in the month of May, 2003. The complaint was filed in the year 2000. Thus, till the

filing of the complaint, the deficiency regarding non-removal of HT line passing over the plot in question had continued and as such, it cannot be

said that the complaint was barred by limitation in relation to deficiency in service.

15. COMING to the merits of the case, admittedly, the complainant took possession of the plot in question on 19.4.1996. At the time of taking

over of the plot, the complainant did not raise any issue of lack of basic essential minimum facilities, lack of roads, sewerage and water supply

being not available at the site. The allotment letter dated 7.6.1995 does not specify regarding availability of provision of essential minimum facilities,

lack of roads, sewerage and water supply at the site by the OP. The allotment letter in paragraph (ix) states that the complainant shall start

construction of factory building and place firm orders for the purchase of plant and machinery and have loan application appraised from the

financial institution, make arrangements for power connection within one year of the issue of the said letter. It also provides that the complainant

shall complete factory building and start commercial production within an overall period of three years from the date of the said letter. Clause (xvi)

of the allotment letter further provides that water for the factory and other areas of the plot may be taken from the Government/Corporation water

supply scheme. In the note appended to the allotment letter it was stated that the Corporation shall not be responsible for leveling the uneven sites.

Thus, the contention of the complainant that the construction of the building could not be completed on account of non-availability of basic essential

minimum facilities, lack of roads, sewerage and water supply at the site is without any merit. However, admittedly, HT line was passing over the

plot in question, but the complainant did not raise any objection at the time of taking possession and it was only on 27.1.1997 that he started

agitating the said matter with the OP for removal of the same. A map showing 11 KVA HT line, which was passing over the plot, is at page 191 of

the record, which shows the exact location thereof. As per affidavit of Shri R.K. Goyal, Sr. Law Officer of the OP, as per inspection report, 11

KVA electric lines were passing at 60 ft. distance from the gate side and on other side they were passing about 50 ft. from the back side boundary

wall and visibly the large area on the corner side was left unaffected and construction was possible. The map at page 191 shows that at least on

2/3rd of the plot in question construction could be commenced. However, it appears that the construction was started by the complainant only in

September, 2004 and was completed in June, 2006. This position was clarified by learned Advocate for the complainant during course of

arguments. The complainant had claimed compensation for delay in commencement of construction from 1998 till 2004 and consequent loss

suffered. The existence of the HT line, no doubt partly affected the construction which was got removed by OP in May, 2003. There is, thus,

deficiency on the part of the OP on this score and for this deficiency the complainant is required to be compensated which need not necessarily be

to the extent of loss claimed by the complainant. The complainant is also partly responsible for not starting the construction in the part of the plot,

which was free and also non-payment of total dues towards excess area of the plot, which was found to be 4,484.66 sq. yards against 3750 sq.

yards, which had been allotted. The complainant also did not pay the additional cost of the plot amounting to Rs. 16,67,184 in connection at which

the complainant filed writ petition before the High Court of Punjab and Haryana which is stated to be pending. According to learned Advocate for

the OP, the total amount due from the complainant is to the tune of Rs. 86,05,256 as on 30.11.2008.

16. IN the facts and circumstances of the case, we are of the considered opinion that a consolidated compensation of Rs. 5 lakh is sufficient to be

paid to the complainant by the OP which shall bear 9% interest from the date of filing of the complaint till payment. The complainant shall be

entitled to a sum of Rs. 25,000 as cost of litigation. The complaint is accordingly allowed in aforesaid terms. Complaint allowed.