

A TAMIL NADU HOUSING BOARD AND ANR.

v.

P. PARTHASARATHI

OCTOBER 4, 1996

B [K. RAMASWAMY AND S.P. KURDUKAR, JJ.]

Urban Development :

C *Tamil Nadu Housing Board—Allotment of plots—Allottee not depositing the required amount—Plot converted into road—After nearly 12 years allottee made application for possession of plot—Meanwhile allottee purchased a flat—Board ready to allot another plot provided allottee gives an undertaking that he did not own any flat/plot—Allottee gave a false undertaking—Application by allottee before State Consumer Disputes Redressal Commission allowed granting him Rs. 5 lakhs as compensation—National*
D *Commission enhancing rate of interest from 12% to 18%—Held, there is no deficiency in service rendered by the Board—Instead, conduct of allottee militated against him to seek any compensation—Orders of both the Commissions set aside.*

E CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 13131-32 of 1996.

From the Judgment and Order dated 9.2.95 of the National Consumer Disputes Redressal Commission, New Delhi in F.A. Nos. 252 and 307 of 1993.

F A. Mariarputham for the Appellants.

Joseph Vellapally and K.V. Mohan for the Respondent.

The following Order of the Court was delivered :

G Leave granted.

We have heard learned counsel for both the parties.

H These appeals arise from the orders of the National Consumer Disputes Redressal Commission, New Delhi in First Appeal Nos. 252 and 307 of 1993, dated February 9, 1995.

The admitted position is that the respondent had applied for allotment of a plot by the appellant on March 1, 1996. He was selected for allotment of the plot of land on February 6, 1987 subject to his depositing 25% of the cost of the plot. It was accordingly communicated to him. In furtherance thereof, the respondent had deposited the requisite amount on March 28, 1987. On April 12, 1967 plot No. 1350 in Anna Nagar, Madras was allotted to the respondent. He had executed lease-cum-sale agreement within two months from the date of allotment. The bone of contention thereafter is that the appellant had not delivered the possession to the respondent and, therefore, he did not comply with the payment of the balance amount in six half-yearly instalments. The contention of the respondent is that he had discharged his obligation but the appellants had not delivered the possession. Be that as it may, the position now remains that the plot is not available for allotment since, admittedly, it was converted into a road for public purpose. On 30.12.1974, when the respondent was directed to deposit the balance amount of Rs. 8,593.80. He, however, had on April 22, 1975, deposited only Rs. 593 and kept quite. The respondent then made an application on July 13, 1981 requesting the Board to hand over the possession of the plot indicating his willingness to take the same though admittedly it was not in existence. By a letter dated March 4, 1985, the Board was threatened to take legal action for non-delivery of possession. In 1985, the respondent purchased a flat. By a communication dated July 21, 1989, he was informed that the plot was not available for allotment since it was already used for public purpose. However, it asked the respondent to give a letter of undertaking that he did not own any flat or plot in the city. In furtherance thereof, he gave an undertaking on November 15, 1989 stating that he did not own any flat or plot either in his own name or in the name of his dependents. It is now an admitted position that he owns flat No. 23 in Paramount Apartments, Mount Road, Madras.

When he filed an application on April 16, 1992 before the State Consumer Dispute Redressal Commission claiming compensation of Rs. 10 lakhs for omission on the part of the appellant-board to render service to him, the State Commission returned the application on the ground that it did not have pecuniary jurisdiction of Rs. 10 lakhs. Resultantly, the respondent amended the claim petition restricting his claim to Rs. 9 lakhs by application dated November 13, 1992. The Commission, after considering the respective contentions, allowed the petition on May 24, 1993

- A granting a sum of Rs. 5 lakhs as compensation with interest at 12% per annum. On appeal by the appellant as well as by the respondent denying liabilities and claiming balance amount separately, the National Commission while dismissing the appeal of the appellant, allowed the appeal of the respondent and enhanced the rate of interest from 12% to 18% per annum.
- B Thus these appeals by special leave.

- C The question is : whether the State Commission as well as the National Commission have correctly appreciated the true legal position when there was no deficiency in service on the part of the appellant to the respondent? It is seen that from 1967 to 1981 the respondent had not raised his little finger as to what had happened to the allotment of plot to him. Suddenly, he woke up in 1981 seeking allotment of the plot but by that date the plot was already utilised for public purpose, viz., laying the Road. Thereby the plot was no longer available for allotment to the respondent. But when the Board was willing to accommodate him by allotting another plot available under their jurisdiction, he was asked to give an undertaking
- D that he did not possess any flat in the city. He gave an undertaking which is now found to be a false statement, as on his own admission, he owns a flat in the aforesaid place as mentioned hereinbefore. Therefore, there is no deficiency in service rendered by the appellant. On the other hand, the conduct of the respondent, as narrated above, militated against him to seek
- E any compensation from the appellant.

The appeals are accordingly allowed. The order of both the Commissions stand set aside, but in the circumstances, without costs. The appellants are directed to return the money deposited by the respondent within one month from the date of the receipt of the order.

F

R.P.

Appeals allowed.