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BRIJ PAL SHARMA

v.

GHAZIABAD DEVELOPMENT AUTHORITY

AUGUST 18, 2005

B

[ARIJIT PASAYAT AND H.K. SEMA, JJ.]

C

Consumer Protection Act, 1986—Allotment of Plot—Deposit of full amount—However, failure to deliver possession—On the ground of Cancellation of Scheme in one case and prevention of development/construction of work on account of stay order—Interest @ 18% on refunded amount, grant of—Correctness of—Held : Justified—However, no interest would be payable for the period for which development/construction work was prevented by the stay order—Furthermore, the manner in which the Development Authority dealt with public interest deprecated—Development Authority being State is duty bound to act for public interest overlooking private interest—Constitution of India, 1950, Article 12.

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Respondent—Development Authority floated a Scheme for allotment of housing plots. Appellant applied for a plot and deposited the final payment. With regard to Civil Appeal No. 5122 of 2005, the plot could not be allotted as the Scheme was cancelled and new Scheme was floated. With regard to Civil Appeal No. 549 of 2003 possession of the plot could not be delivered to the allottee because the development/construction work was prevented by the stay order granted by High Court. Appellant filed complaint and the District Forum, State Commission and National Commission directed refund of the amount with 18% interest per annum. Hence the present appeals and the contempt petition.

Dismissing the appeals and the Contempt Petition, the Court

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HELD : 1.1. The grant of interest @18% per annum by way of damages and compensation on the refunded amount for non-allotment of plot of land is justified in both the appeals. However, in Civil Appeal No. 549 of 2003, no interest would be payable for the period when the development/construction work was prevented by the stay order and as such the authority could not deliver possession to anybody.

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[772-E, G; 773-A, B]

Ghaziabad Development Authority v. Balbir Singh, [2004] 5 SCC 65, relied on.

1.2. The manner in which the statutory Authority-Development Authority dealt with the public interest is deprecated. The statutory authority, like Ghaziabad Development Authority, being the State within the ambit of Article 12 of the Constitution, is duty bound to act in a manner, which would benefit the public interest, overlooking the private interest. It is trite law that when the private interest is pitted against the public interest, the later must prevail over the former. Furthermore, in future such instances would be examined on their own merits. [773-C, D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5122 of 2005.

From the Judgment and Order dated 26.4.2002 of the National Consumers Disputes Redressal Commission, New Delhi in R.P. No. 1460 of 2000.

WITH

C.A. No. 549/2003 and C.P.(C) No. 614/2004 in C.A. No. 549 of 2003.

S.C. Paul, Manoj Kulshrestha, O.P. Saxena, Ms. Roopa Paul, Sudhir Kumar and Ms. Rekha Pandey, Advs., for the Appellant.

Vijay Hansaria, Ms. Reena Singh, Ms. Bhakti Pasrija and T. Mahipal for the Respondent.

The Judgment of the Court was delivered by

H.K. SEMA, J. : *Civil Appeal arising out of SLP(C) 22736 of 2002.*

Leave granted.

The challenge in this appeal is to the order dated 26.4.2002 passed by the National Consumers Disputes Redressal Commission (in short 'the Commission') in Revision Petition No. 1460 of 2000.

Briefly stated, the facts are as follows:

A The respondent authority, namely the Ghaziabad Development Authority, floated a Scheme called Karpoori Puram Scheme for allotment of housing plots under the Self Financing Scheme. Pursuant thereto, the appellant applied for a plot of land measuring an area of 90 sq. mtrs. This was sometime in the month of July, 1991. On 30th July, 1994, the appellant
B deposited a sum of Rs. 96,948 as total and final payment (i.e. Rs. 81,020 as actual cost and Rs. 15,948 as interest on delayed payment). The allotment of the plot was due sometime in 1997. However, the land in question could not be allotted to the appellant on the ground that the Karpoori Puram
C Scheme had been cancelled and a new scheme had been floated by the name of Swarn Jayanti Puram. Aggrieved thereby, the appellant filed complaint to the District Forum, State Commission and National Commission, which after considering the facts of the case, *inter-alia*, directed refund of the amount alongwith interest @ 18% per annum.

D The grievance of the appellant is that in the guise of the cancellation of Karpoori Puram Scheme another scheme was floated styled as Swarn Jayant Puram over the same plot of land with a view to deprive the innocent citizens of their due share for allotment of plot in their favour for which they had deposited the amount and had legitimate expectations of getting plot of land in their favour. According to the appellant, a fraudulent practice has
E been played by the respondent upon the innocent law abiding citizens, thereby earning wrongful gain at the cost of wrongful loss to the helpless and innocent citizens.

F In fact, in an identical case, cancellation of Karpoori Puram Scheme had been considered by this Court in the case of *Ghaziabad Development Authority v. Balbir Singh*, [2004] 5 SCC 65 wherein this Court had deprecated the manner in which the statutory authority had dealt with the public interest as sought to be done in the present case. This Court in the facts and circumstances of that case had held that the grant of interest @ 18% per
G annum by way of damages and compensation was quite justified. In paragraph 21 of Balbir Singh's case (*supra*), this Court held as under:

“21. In a scheme known as “Karpuripuram Scheme” plots were allotted, monies collected. However, thereafter the Scheme was cancelled. In some of the matters we have seen that the District

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Forum has recorded that the authority could give no explanation as to why the Scheme was cancelled. Before us some sort of explanation is sought to be given. In our view, irrespective of whether there was genuine reason to cancel or not, the monies must be returned with interest at the rate of 18%. We say so because it is clear that even if the body has not already floated another scheme on the same land it is clear that the body is going to derive great profit from this land and therefore compensating the allottee with interest at 18% per annum is just and fair.”

In our view, therefore, having regard the facts and circumstances of the case in hand are squarely covered by the decision of this Court in Balbir Singh (supra). In this view of the matter, we are of the view that nothing remains to be considered further, though we deprecate the conduct of the concerned authority, as already pointed out.

For the reasons aforesated, the appeal stands dismissed with no order as to costs.

Civil Appeal No. 549 of 2003

This appeal is directed against the judgment and order dated 28.5.2002 passed by the National Consumer Disputes Redressal Commission (herein-after ‘the Commission’) in Revision Petition No. 460 of 1999.

Briefly stated, the facts are as follows:

A Scheme known as Govindpuram Scheme was floated by the Ghaziabad Development Authority (in short ‘GDA’) on 2.10.1988 for residential houses and plots. Pursuant thereto, the appellant applied for a plot on 31.10.1988 measuring 200 sq. mtrs. and paid the registration amount of Rs. 13,000 and costs Rs. 1,27,000 on 31.10.1988. On 31.7.1989, the GDA confirmed the allotment of plot measuring 200 sq. mtrs. in favour of the appellant. The GDA also directed the appellant to deposit the balance amount in six half-yearly instalments commencing from 5.8.1989 and ending on 30.3.1992 with interest @ 15% per annum in the self financing scheme by way of the reservation letter. It is stated that the appellant had deposited the entire amount without any default. It is further stated that the total amount paid by the appellant comes to Rs. 1,27,000 towards cost of the plot and Rs.

A 23,100 as interest totaling to Rs. 1,50,100. Despite assurances that the appellant will be intimated about the actual date of possession, no intimation was received by the appellant even upto 2002. It is stated that instead, the Vice-Chairman, GDA called a Press Conference on 10.9.1994 stating that the delivery of possession to allottees of Govindpuram Scheme would not
B be made, due to the reason that the GDA was facing shortage of funds on account of which work of laying sewer lines, construction of roads and electrification work was incomplete.

C *Per contra*, it was contended on behalf of the GDA that the possession of the plot in question could not be delivered to the allottee as the stay order granted by the Allahabad High Court on 24.4.1991 remained in force upto 16.12.1993 and that during the period the stay order was operative, the development and the construction work was stalled. In the given facts and circumstances of the case, the Commission awarded interest @ 18% per annum on the refunded amount by way of damages and compensation.

D The grievance of the appellant in this appeal is that the Commission has awarded interest @ 18% per annum only on the refunded amount but failed to direct the GDA either to hand over the allotted plot or in alternate allot a plot in the subsequent scheme at the cost, to be charged from the appellant, who had applied for in the original scheme. In our view, this
E contention is not tenable, as the appellant is not permitted to say that he is entitled both the best of the world. The interest at the rate of 18% is granted by way of damages and compensation for non-allotment of plot of land.

F In the case of *Ghaziabad Development Authority v. Balbir Singh*, [2004] 5 SCC 65 facts of this case have also been considered elaborately by this Court (in para 12 at page 82 SCC) justifying the grant of interest @ 18% per annum by way of damages and compensation.

G In the given facts and circumstances of the case, as recited above, we are clearly of the view that the grant of interest @ 18% per annum was justified in the present case also.

In that view of the matter this case is also covered by the decision in *Balbir Singh's case* (supra).

H In this case also, admittedly, an interim order granted by the Allahabad

High Court was in operation for the period from 24.4.1991 to 16.12.1993. The Commission held that no interest is payable for the aforesaid period basing on the report submitted by the Vice-Chairman of the authority that the development/construction work was prevented by the said stay order and because of that the authority could not deliver possession to anybody. We have accepted the said finding of the Commission in paragraph 25 (at page 86 SCC) of our judgment in *Balbir Singh* (supra). A
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In the given facts and circumstances of the case, as recited above, we are of the view that there is no merit in this appeal and it is accordingly dismissed with no order as to costs. C

We, however, clarify that dismissal of the appeal should not be construed as approval of the conduct of the statutory authority in the manner in which it is sought to be done. The statutory authority, like GDA, being the State within the ambit of Article 12 of the Constitution, is duty bound to act in a manner, which would benefit the public interest, overlooking the private interest. It is trite law that when the private interest is pitted against the public interest, the later must prevail over the former. If such instances are brought to the notice of the court in future, they would be examined on their own merits. D

Contempt Petition (Civil) No. 614 of 2004 E

In Civil Appeal No. 549 of 2003

In view of our order in Civil Appeal No. 549 of 2003, the contempt petition does not survive and it is accordingly closed. F

N.J. Appeals and contempt petition dismissed.