

KANPUR DEVELOPMENT AUTHORITY THR. VICE
CHAIRMAN

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v.

SHEO PRAKASH GUPTA & ANR.
(Civil Appeal No. 6017 of 2012)

AUGUST 24, 2012

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**[G.S. SINGHVI AND SUDHANSU JYOTI
MUKHOPADHAYA, JJ.]**

Notice – Service of – Whether effected on the opposite party – Complaint against appellant-Authority before State Consumer Disputes Redressal Commission – State Commission by ex-parte order allowing the complaint – Appellant-Authority filing appeal before National Consumer Disputes redressal Commission, taking plea that State Commission passed ex-parte order without affording it opportunity to be heard – National Commission rejected the plea of non-service of notice – On appeal, held: There is nothing on record to suggest that notice was issued by State Commission on appellant-Authority – Appeal allowed – Matter remitted to National Commission for deciding whether notice issued by State Commission was properly served on appellant-Authority and then to decide the appeal on merits.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6017 of 2012.

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From the Judgment & Order dated 29.5.2012 of the National Consumer Disputes Redressal Commission, New Delhi in First Appeal No. 42 of 2012.

Abhishek Chaudhary for the Appellant.

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K.P. Sunder Rao, Wajeesh Shafiq, Chandan Kumar Rai for the Respondents.

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A The following Order of the Court was delivered

O R D E R

1. Leave granted.

B 2. Learned counsel for both the sides agree that the appeal may be disposed of at this stage.

C 3. This appeal is directed against the impugned order dated 29th May, 2012 passed by the National Consumers Disputes Redressal Commission, New Delhi (for short 'the National Commission') in First Appeal No.42 of 2012, whereby the appeal filed by the appellant-Kanpur Development Authority (hereinafter referred to as 'Authority') against the order of the State Consumer Disputes Redressal Commission, Uttar Pradesh, Lucknow (hereinafter referred to as the 'State Commission') dated 14th October, 2011 was dismissed.

D 4. According to the appellant-Authority vide its office order dated 31st October, 1992 it was determined that in the matter of allotment of any home or plot, if any dispute arises and it does not remain possible to complete the registration proceedings or to handover the possession in lieu thereof, an alternate house or plot shall not be offered and the amount deposited by the allottee shall be returned back to him alongwith the interest as per the rate of post office saving account.

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F 5. In response to an advertisement issued by the appellant-Authority in the year 2005 for sale of various plots by auction pursuant to the Kakadeo Scheme, the respondents being interested to purchase one of the plots bearing Plot No.6 in Block M admeasuring 1364.15 sq.mtr., participated in the auction. The price of the said plot was fixed by the appellant-Authority at Rs.8,000/- per sq.mtr. with a condition precedent to deposit Rs.11,00,000/- as registration fee.

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H 6. Pursuant to the guidelines dated 31st October, 1992, the respondents filed an affidavit on 18th August, 2005 before

the appellant-Authority, that if in giving the possession of the allotted plot, any delay is caused in land acquisition or judicial processes or due to the non-completion of the contract within the prescribed time or due to any other unavoidable reason, then they shall not be having any right to claim damages. A

7.As the respondents were successful as the highest bidders, they were allotted the aforesaid plot vide a letter No.D/605/JointSecretary/ZoneNo.2 /2005-06 dated 20th August, 2005 whereunder the premium of the said plot was fixed at Rs.11,700/- per sq.mtr. They were informed that the remaining 3/4th of the premium was to be paid in four quarterly installments alongwith 15% of the interest while the amount of the first installment was Rs.32,76,623/-, payable on 1st October, 2005. B C

8. Earlier, the respondents in their affidavit filed before the appellant-Authority stated that they were ready to accept all the terms and conditions in the allotment of the plot. D

9. Before giving possession of the plot to the respondents, in a civil proceeding, the Civil Court, Kanpur issued a temporary injunction. It was immediately conveyed by the appellant-Authority to the auction purchasers-respondents and for the said reason the orders of allotments were cancelled by the appellant-Authority. The respondents thereafter filed a Writ Petition No.27893 of 2006 before the Allahabad High Court wherein the High Court by order dated 23rd May, 2006 directed the appellant-Authority to decide the representation/ application of the respondents within three months. E F

10. The case of the appellant-Authority is that in compliance of the order of the High Court dated 23rd May,2006 the appellant-Authority decided the application of the respondents and refunded their entire deposited amount of Rs.1,53,62,528/- vide Cheque dated 28th October, 2006 as per the rules and in absence of any rule or guideline, no damage was paid. G

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A 11. After the receipt of the amount, the respondents filed a Complaint No.25 of 2007 before the State Consumer Disputes Redressal Commission, Uttar Pradesh, Lucknow for the following reliefs:

B “a. A sum of Rs.32,49,174.67p.; on account of accrued interest @1.5 per mensem on Rs.1,53,62,528/- from the date of deposit till its refund alongwith *pendent lite* and future interest thereon @1.5% per mensem be awarded to the petitioners against the opposite party.

C b. A sum of Rs.10,00,000/- being damages on account of breach of contract may also be awarded to the petitioners against the opposite party.

D c. A sum of Rs.25,000/- being cost of litigation incurred by the petitioners in the present case before 4th A.C.M.M. Kanpur Nagar and the Hon’ble High Court of Judicature at Allahabad and present petition may also be awarded to the petitioners against the opposite party.

E d. Any other relief which this Hon’ble Court may deem fit and proper under the circumstances of the case may also be awarded to the petitioners against the opposite party.”

F 12. The State Commission by an ex parte order dated 14th October, 2011 observed that the appellant-Authority despite receiving the entire amount did not give the possession of the disputed land to the complainants and without any reason vide
G Cheque dated 28.10.2006 returned the said amount to the complainants. It was held to be a deficiency in the part of the appellant-Authority and, therefore, the appellant-Authority was held to be guilty of adopting unfair trade practices. The application was allowed with the direction to the appellant-
H Authority that, on the amount deposited by the respondents-

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complainants till the date of filing of the complaint, the total interest accrued i.e. Rs.32,49,175/- be paid to the complainants alongwith an interest @ 18% per annum for the period of the pendency of the complaint till the actual realisation of the amount. It was also held that the respondents-complainants are also entitled to receive from the appellant-Authority, a sum of Rs.50,000/- towards mental harassment and Rs.10,000/- towards litigation expenses.

13. Against the aforesaid ex parte order of the State Commission, the appellant-Authority preferred a First Appeal No.42 of 2012 before the National Commission after a delay of 69 days. In paragraph 3 of the appeal the appellant-Authority made the following statement:

“That the impugned order was passed on 14.10.2011. That thereafter coming to know of the order, the appellant checked for the records wherein it was found that no notice has been received in the matter. Thereafter on 26.11.2011, the office was directed to trace the record of the file.”

14. Before the National Commission the very first ground raised by the appellant-Authority was that the State Commission did not afford them an opportunity to be heard and decided the complaint ex-parte. But the National Commission rejected the aforesaid plea of non-service of notice with the following observation:

“On the other hand, documents placed on record by the appellant include a letter from the postal department which shows that the registered cover was delivered to the KDA on 21.12.2006. The impugned order categorically notes that notice had been issued to the respondent/KDA but no body had appeared on their behalf. The State Commission had therefore decided to proceed ex-parte against the respondent. We, therefore, do not find any reason to accept this plea of absence of opportunity before the State Commission.”

A 15. For the very same reason, the ground of delay in preferring the appeal was not accepted and the appeal was dismissed both on the ground of delay as well as on merits and the order of the State Commission was confirmed.

B 16. Learned counsel for the appellant-Authority reiterated the grounds as were taken in the First Appeal and argued that the State Commission did not afford them an opportunity to be heard and decided the complaint *ex parte*. He has further taken us to the date of filing of the Complaint No.25 of 2007 which was verified on 3rd May, 2007 to suggest that the question of service of notice by registered cover on 21st December, 2006 does not arise and that the National Commission erred in holding that the registered cover was delivered to the appellant-Authority on 21st December, 2006.

D 17. Learned counsel appearing on behalf of the respondents, could not lay his hand on the record to suggest that the notice of Complaint No.25 of 2007 was served on the appellant-Authority, though from the order of the State Commission it was brought to our notice that the notice was issued on the appellant-Authority.

F 18. From the perusal of Complaint No.25 of 2007, we find that the respondents before filing the complaint, gave a notice of demand to the appellant-Authority on 20th December, 2006 and it was stated to be served personally on 21st December, 2006 and lastly on 21st January, 2007. Relevant paragraph No.18 of the Complaint No.25 of 2007 filed by the respondents reads as follows:

G “18. That the cause of action for the petition arose to the petitioner against the opposite party firstly on 20.8.05 with the allotment letter was issued and thereafter continued to accrue on each and every date when the payments of balance premium amount were made to the opposite party and then on 28.10.06 when the opposite party made the refund of Rs.1,53,62,528/- to the *petitioners and then on*

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20.12.06 when the notice of demand was got issued which was personally served on 21.12.06 and lastly on 21.1.07, when the notice period expired within the limitation and jurisdiction of this learned Forum.” A

19. The order of the State Commission dated 14th October, 2011, suggests that a notice was issued on the appellant-Authority but nobody appeared on its behalf. The relevant portion of the order reads as follows: B

“The notice was issued to the respondent but nobody appeared on its behalf. Therefore, directions were given for ex-parte proceedings.” C

However, there is nothing on the record to suggest that the notice issued by the State Commission was served on the appellant-Authority. D

20. The appellant-Authority specifically pleaded that no notice was served by the State Commission on it but the National Commission failed to appreciate the submission and erred in holding that a notice was served on 21st December, 2006, though the Complaint No.25 of 2007 was filed before the State Commission much thereafter on 3rd May, 2007. E

21. In the result, the appeal is allowed, the impugned order and judgment passed by the National Commission is set aside and the matter is remitted to the National Commission for deciding whether the notice issued by the State Commission was properly served on the appellant-Authority and to decide the First Appeal No.42 of 2012 on merits. F

K.K.T.

Appeal allowed & Remitted Back.