

STATE CONSUMER DISPUTES REDRESSAL COMMISSION
UTTAR PRADESH LUCKNOW

APPEAL NO. 857/1999

(against the judgment and order dated 22.02.1999 in Complaint case no. 300/1995 passed by the District Consumer Forum-II, Lucknow)

Dharma Pal Dua son of Sri Bhagwati Lal Dua,
r/o C11/12 Paper Mill Colony, Lucknow

Appellant

Versus

Lucknow Development Authority,
J. C. Bose Marg, Lucknow

Respondent

BEFORE

HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT

HON'BLE MR. SYED ALI AZHAR RIZVI, MEMBER

HON'BLE MR. RAM PAL SINGH, MEMBER

For the Appellant : Sri Prabhakar Jauhari , Advocate
For the respondent : Sri S.N. Tiwari, Advocate

DATED: 29.10.2010.

JUDGMENT

MR.JUSTICE BHANWAR SINGH, PRESIDENT (ORAL)

Heard learned counsel for both the parties and perused the record.

Apparently, it is an old dispute in respect of the appellant/complainant's right to get possession over a small plot of 240 sq. fts. allotted to him in the year 1970. It was a commercial land located behind Paper Mill Colony, Lucknow. A lease deed in the name of the complainant was executed on 11.5.1987. Obviously it took seventeen years for the LDA to execute the lease deed but still without any fruitful result. When, after execution of the lease deed the complainant went at the site of the plot to take lawful possession, he was shocked to see a large number of land grabbers in occupation of land including the plot allotted to the complainant. His endless efforts to get possession of the land in his favour could not fetch any result, obliging him thus to file his complaint in the year 1995. The LDA expressed its inability to fetch for the complainant, possession over the plot in question but offered another plot of 150 sq. meters in the year 1999 for a price of Rs.3,75,000/-. The complainant being a small trader could not afford to pay the said amount

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nor he needed a larger area of 150 sq. meters as compared to small demand of about 240 sq. ft. (23.23 sq. meters). He therefore, declined the offer and when his request for allotment of smaller plot was not conceded to, he insisted for disposal of his complaint on merit. The District Consumer Forum partly allowed the complaint and directed for refund of the money the complainant had paid to the LDA alongwith 18% interest and Rs.3,500/- as damages. The complainant himself felt aggrieved of this judgment as he was not interested in refund of his money nor there was any prayer to this effect in his complaint, as a consequence he filed the present appeal reiterating his request for possession over the leased property.

Learned counsel for the LDA has with reference to the objections filed against this appeal submitted that the LDA is willing to offer a plot of 28.80 sq. meters (4 small plots of 7.20 sq. meters each) in Vishal Khand -1, Gomti Nagar, Lucknow on the currently applicable rate of Rs. 11,000/- per sq. meter. The total sum payable by the complainant figures as Rs.3,05,607/- but the complainant says that he is not in a position to pay this amount and the LDA on the other hand is not willing to offer the aforesaid plot on the same rate as paid by the complainant in the year 1987. In the back drop of this obstinate attitude of the parties a crucial question which has to be determined by this Commission is :-

“As to whether the LDA is guilty of deficiency in service ?”

At the very out set it may be observed that it is. The complainant/appellant is a poor person and in the year 1970 when the commercial plots/shops were offered by the LDA at the site located behind the Paper Mill Colony he applied for a plot and he deposited the requisite sum as required by the LDA. Thereafter, he kept on waiting for a long period of seventeen years for the lease deed to be executed in his favour but even the execution of the lease deed was of no avail as the possession over the allotted site to the complainant could not be handed over to him on account of the said piece of land having already been encroached by the land grabbers. This fact has not been denied by the

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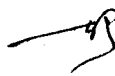
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LDA. Since it is a recurring cause of action and the complainant was sincerely requesting the LDA authorities for an alternative plot he filed his complaint in the year 1995. As his 'claim' and 'right' both were admitted to the LDA and perhaps it was on account of this reason that the LDA allotted to him a bigger plot of 150 sq. meters i.e. 1600.14 sq ft. i.e. four time larger than the plot originally allotted to him and that too for a price of Rs.3,75,000/-. This offer for the complainant was as a mountain-load which he could not bear and afford to pay. Except denial there was no other alternative available to him and he was justified in doing so as he was not economically sound person. But the fact remains that his claim for a plot of his need was well recognized by the LDA during the pendency of his complaint in the year 1999. Therefore, question of his complaint being barred by time would never arise and what more important to note is that till 1999 i.e. during the pendency of the complaint the LDA was willing to accord a due recognition to the complainant's valuable right of possession of the land in respect of which a lease deed had already been executed in his favour more than twelve years ago. The recognition of his right fully entitles him to have a plot of the similar area for the same price. Now the latest offer for allotment of four small pieces of land totalling in measurement to 28.80 sq. meters for a price of Rs.3,05,607/- is as onerous as the earlier offer made in the year 1999 was. The complainant who has been denied for his right for the last four decades is still a poor person and cannot afford to pay as submitted by his learned counsel, the said huge amount. Moreover, a question is as to who is at fault and the answer must figure out in his favour and against the LDA.


In these circumstances we are of the considered view that the complainant shall be entitled to get possession of 23.23 sq. meters of land on the old rate as paid by him in the year 1987 while getting the lease deed executed in his favour and the surplus land at the current rate as recited in LDA's letter dated 07.11.2001. There has been a change in the last 3/4 decades in so far as the policy of the LDA regarding execution of the deeds is concerned. Of late, LDA has adopted a policy of executing


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free hold title deeds in favour of the allottees. The complainant will therefore, be under an obligation to pay the free hold charges in addition to the old and current price of the aforesaid land allotted to him vide letter dated 07.11.2001.

For the reasons disclosed above we are of the decisive view that this appeal deserves to be allowed. Accordingly, the impugned judgment is set aside and the complaint of the appellant for possession over the land allotted to him vide letter dated 7.11.2001 with the terms and conditions as laid above is granted with costs. However, we do not consider it necessary to award any damages as the complainant would be entitled to have possession over the land located in the well recognized commercial area of Gomti Nagar, Lucknow, the value of which in present time is many fold ^u higher to what he had invested in the year 1970.


(JUSTICE BHANWAR SINGH)
PRESIDENT


(SYED ALI AZHAR RIZVI)
MEMBER


29.10.10
(RAM PAL SINGH)
MEMBER

Asif