

A.F.R.

STATE CONSUMER DISPUTES REDRESSAL COMMISSION
UTTAR PRADESH LUCKNOW

APPEAL NO. 2403 OF 2000

(against the judgment and order dated 28.4.1994 in Complaint case no. 583/1991 passed by the District Consumer Forum, Lucknow)

P.K. Bhandari

Versus

Appellant

U.P. Avas Evam Vikas Parishad & others

Respondents

BEFORE

HON'BLE MR. JUSTICE BHANWAR SINGH, PRESIDENT
HON'BLE MR. CHANDRA BHAL SRIVASTAVA, MEMBER
HON'BLE MR. YASH PAL SHARMA, MEMBER

For the Appellant : Sri P.K. Bhandari, himself
For the Respondents : Sri N.N. Pandey, Advocate

DATED: 23.03.2011

JUDGMENT

MR.JUSTICE BHANWAR SINGH, PRESIDENT (ORAL)

Heard Sri P.K. Bhandari the appellant/complainant in person and Sri N.N. Pandey, learned counsel for the Avas Evam Vikas Parishad.

This appeal is directed against the judgment and order dated 28.04.1994 of the District Consumer Forum, Lucknow whereby the complaint of the appellant was dismissed mainly on the ground of the said complaint being barred by time. The facts giving rise to this appeal may be narrated in brief as below :-

The appellant Sri P.K. Bhandari, an engineer in Government Service now leading a retired life, was an allottee of house no. B-1098 Indira Nagar, Lucknow. He secured the allotment of the said house in lottery draw held by the Avas Evam Vikas Parishad. He got the possession of the house in due course of time. However, before the sale deed could be executed the Avas Evam Vikas Parishad served him with a notice for cancellation on the ground that the residential house in his

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occupation was being used for a commercial purpose. A school was functional in the aforesaid house and one Smt. Manjula Chaturvedi was the proprietor cum principal of the said school. However, during the course of arguments Sri P.K. Bhandari made an endeavour to pose him as owner of the property but having rented it out to Smt. Manjula Chaturvedi as care taker to run the school. The Avas Evam Vikas Parishad took serious note of the house being used as a school and it was on this ground that cancellation of the allotment was issued on 05.11.1980 and subsequently the house had been allotted to Km. Rama Singh. She was inducted in ^{the} possession of the said house with the help of police and sale deed too had been executed in her favour. The complainant felt aggrieved of the cancellation order and perhaps kept on persuading the authorities of the Parishad to withdraw the cancellation order but none of the officials of the Parishad was willing to oblige him and when as said by him, he had no other course of action open for him, he filed his complaint ten years after on 21.9.1991.

Amongst the other pleas of defense, the Avas Evam Vikas Parishad contested the complaint on the ground that the complaint was obviously barred by time.

The District Consumer Forum having scanned the pleadings of the parties and the evidence adduced in support thereof, recorded a finding that the complaint was barred by time and on the basis of this reasoning it was dismissed on 28.04.1994. It appears that the appellant was not serious this time also while opting for filing his appeal. This appeal was filed by him in the year 2000. There is no application for condonation of delay on record nor in the main script of his memorandum of appeal he has offered any explanation for delay on his part in filing this appeal. In the absence of any explanation for delay we are inclined to hold that this appeal suffered from the limitation period prescribed by Section 15 of the Consumer Protection Act. He could have filed the appeal within thirty days from the date of judgment but he did not prefer to do so rather kept

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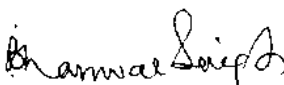
on persuading the unwilling and non-obliging authorities to give him rescue but all in vain. Be that as it may, there are serious laches on the part of the appellant not only in filing the instant appeal but also in filing his complaint. There is an old dictum that the law does not help those who are indolent towards their rights or in other words those who do not awake from their slumber in time. Accordingly, we hold that the present appeal being barred by the prescribed period of limitation deserves to be dismissed on this ground alone.

And, even on merit the appellant does not have any credit to his account. Despite being a Government servant he has rented out his house for a non residential purpose to one Smt. Manjula Chaturvedi, whom Sri Bhandari has during the course of arguments before us, referred to as a care taker. She may be a care taker or she might be occupying any other status vis a vis the appellant but the fact was that she was running a school and even Sri Bhandari admits that she was the principal of the said school. Since the house was being used for a non residential purpose the Avas Evam Vikas Parishad was well within its competence to have cancelled the allotment and it had taken a decision in its discretion, issued the cancellation order on 5.11.1980 and subsequently allotted the accommodation to Km. Rama Singh. While Km. Rama Singh is stated to be no more but her death will not enure any advantage to the complainant whose rights over the property in question stood terminated on issuance of the cancellation order on 05.11.1980. The contention of the appellant that the Avas Evam Vikas Parishad could not produce the cancellation (in favour of the complainant) order and the order of allotment in favour of Smt. Rama Singh, will not provide any relief to him as the misplacement of the file pertaining to the house in question might be the result of a mischief and without casting any aspersion on any one including the complainant, it may be observed that genuine misplacement of the record may not be ruled out. Be that as it may, the admission of the complainant as recited in para 4 of his complaint regarding cancellation order dated 5.11.1980 having been issued by the Housing Commissioner is more than

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enough for us to hold that he was deprived of the allotment right in consequence whereof all his rights stood terminated. He can not gain any advantage of the non production of record. Before the Right to inform Act Commissioner, his admission is enough to dislodge his own case. Not only that he admitted cancellation of allotment order but he also admitted that the house was subsequently allotted to one Km. Ram^{ke}Singh. Obviously enough he has no merit in his complaint case which is liable to be dismissed being devoid of substance. He may however, get refund of his money amounting to Rs.13,716/- which he deposited against the outstanding price of the house i.e. Rs.50,000/-. The refund shall be made in accordance with the terms and conditions of the allotment as also the provisions of residential scheme.

The appeal stands dismissed with cost which we quantify at Rs.5,000/-.


(JUSTICE BHANWAR SINGH)
PRESIDENT


(CHANDRA BHAL SRIVASTAVA)
MEMBER


(YASH PAL SHARMA)
MEMBER

Asif