

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

Civil Appeal No 435 of 2020
[Arising out of SLP(C) No 18230 of 2018]

Bhubaneswar Development Authority

Appellant

Versus

Sri Brahmananda Hota

Respondent

J U D G M E N T

Dr Dhananjaya Y Chandrachud

1 Leave granted.

2 This appeal arises from a judgment and order dated 22 June 2017 of the National Consumer Disputes Redressal Commission¹.

3 In 1991, the appellant published an advertisement for the allotment of Middle Income Group² plots admeasuring 2400 square feet under the Kalinga Nagar Plotted Development Scheme³. The respondent applied for an MIG plot

1 “NCDRC”

2“MIG”

3 “Scheme”

on 20 July 1991 and was given a registration number⁴. According to the appellant, on 7 September 1993, the price of the plots in the Scheme which was previously determined at Rs 6,50,000 per acre was enhanced to Rs 11,14,000 per acre. It appears that thereafter on 16 October 1995, the appellant addressed a letter to the respondent stating that since his application for allotment was not considered, the initial deposit of Rs 6,000 may be taken back. The appellant addressed another letter to the respondent on 25 June 2004 asking the respondent to take back the deposit money along with interest.

4 The grievance of the respondent is that the letters dated 7 September 1993, 16 October 1995 and 25 June 2004 were not received by him. On 16 October 1995, the appellant informed the respondent that though he had not been allotted a plot under the Scheme, in the event that he was interested to retain his deposit with the authority, he could do so and be considered in any future housing or plotted Scheme. However, it was stated that the authority would not pay any interest on the deposited amount. Subsequently, however on 25 June 2004, the respondent was informed that the authority was not in a position to launch any scheme in near future and that a decision had been taken to pay interest on the money deposited. The respondent, by a letter dated 21 June 2006, sought information in regard to his application for allotment which was made in 1991 against the payment of an initial deposit of Rs 6,000.

4 “KNM 386/93”

5 Eventually, it was only in 2007 that the respondent moved the District Consumer Disputes Redressal Forum⁵, Khurda. By an order dated 11 April 2012, the complaint was allowed with a direction to allot the respondent an MIG plot on receipt of the prevailing cost under the Scheme at par with other allottees or in the alternative, any plot of the same area or a higher area in any other Scheme. The order of the District Forum was challenged before the State Consumer Disputes Redressal Commission⁶, Odisha. The appeal was dismissed on 30 May 2014. The authority carried the proceedings in revision before the NCDRC. The NCDRC placed reliance on the manner in which the case of two other applicants (Hemalata Mishra and Pramila Mishra) have been dealt with by the authority to whom an allotment of MIG plots have been made. In these circumstances, on a parity of reasoning with those two cases, the NCDRC observed that the order of the District Forum should be implemented by making an allotment on the same basis as was made to the said two allottees. However, the respondent was directed to pay interest at the rate of ten per cent per annum from the date the MIG plots were allotted to Hemalata Mishra and Pramila Mishra. Aggrieved by this direction passed by the NCDRC, the Bhubaneswar Development Authority is in appeal.

6 Mr. Sibho Shankar Mishra, learned counsel appearing on behalf of the appellant has submitted that the allotments to the two other allottees, Hemalata Mishra and Pramila Mishra stood on a completely different footing. Those two

5 “District Forum”

6 “SCDRC”

persons, it has been submitted, had approached the authority in 2001, making a grievance to the effect that they had not received any letters or communication from the authority. Insofar as the respondent is concerned, it was urged that the first grievance before the authority was only by a letter dated 21 June 2006, which was nearly fifteen years after the Scheme was published. Hence, it was urged that the authority could not be compelled to make an allotment to the respondent at the rates at which the MIG plots were allotted under the Scheme to the two other allottees. It was urged that the respondent had merely deposited an amount of Rs 6,000 towards registration fees and could not have a vested right to claim allotment at a price prevalent more than a decade earlier.

7 On the other hand, it has been urged on behalf of the respondent that the NCDRC has in its decision come to the conclusion that there was a parity between the case of the respondent and the two other allottees. The respondent was not included in the draw of lottery for his failure to deposit an additional amount towards registration fees, but this was because he had not received any letter from the authority. It was urged that the respondent stood on the same footing as the two other allottees and therefore there could be no distinction between them.

8 Whether the respondent had received the letters of the authority dated 7 September 1993, 16 October 1995 and 25 May 2004 is in dispute. Even if it is assumed that the respondent had not received those letters, the fact remains

that the respondent addressed a communication to the authority only on 21 June 2006. The consumer complaint was filed before the District Forum in 2007. The respondent waited for nearly sixteen years after the date of the initial registration to ventilate his claim. The District Forum was, in our view, not justified in issuing a direction that the respondent should be allotted an MIG plot at the prevailing cost at par with the other two allottees. The NCDRC sought to draw a parity between the respondent and the other two allottees. In the counter affidavit which has been filed by the respondent, relevant file notings of the appellant have been annexed. From the file notings, we find that the two other allottees had moved the authority in 2001, and their grievances were duly remedied. The respondent did not take any steps to pursue his legal remedy until 2007 when he moved the District Forum. The respondent could not have been oblivious to the developments which were taking place in the meantime and did not make any enquiries in regard to the status of the Scheme. The respondent who is an applicant under the Scheme of 1991 cannot be allotted a plot of land based on allotments made to two other allottees in 2001-2002 as this would be manifestly inequitable and contrary to law.

9 When notice was issued by this Court on 2 July 2018, the statement of learned counsel for the appellant was recorded that an allotment can be made provided the respondent pays the prevalent market value. Hence, a direction that can be issued by this Court is that an allotment of a plot can be made to the respondent at the current market value. In the event that the respondent is

desirous of seeking an allotment at the current market value, he shall communicate his willingness to the authority within a period of one month from today. The authority shall consider the representation made by the respondent and determine whether an allotment can be made either in the same Scheme in the event that any vacant plot is available or in any other scheme on the basis of the current market value. This would be subject to the respondent fulfilling all other terms and conditions including eligibility. Since the respondent has complied with the order of the NCDRC by making a deposit before the District Forum, the deposit, if made, would be adjusted against the final amount. In the event that the respondent is not desirous of proceeding ahead with an alternative allotment in terms of the present order, he would be at liberty to withdraw the said amount. In that event, the amount paid by the respondent at the time of registration shall also be refunded to him with interest at nine per cent per annum.

10 The appeal is accordingly allowed in the above terms and the order of the NCDRC dated 22 June 2017 is set aside. No order as to costs.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Hrishikesh Roy]

New Delhi;
January 20, 2020

ITEM NO.41

COURT NO.7

SECTION XVII-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (C) No.18230/2018

(Arising out of impugned final judgment and order dated 22-06-2017 in RP No. 3995/2014 passed by the National Consumers Disputes Redressal Commission, New Delhi)

BHUBANESWAR DEVELOPMENT AUTHORITY

Petitioner(s)

VERSUS

SRI BRAHMANANDA HOTA

Respondent(s)

Date : 20-01-2020 This petition was called on for hearing today.

CORAM :

HON'BLE DR. JUSTICE D.Y. CHANDRACHUD
HON'BLE MR. JUSTICE HRISHIKESH ROY

For Petitioner(s) Mr. Sibor Sankar Mishra, AOR
Mr. Niranjana Sahu, Adv.

For Respondent(s) Mr. Ashok Kumar Mohapatra, Adv.
Mr. Mushtaq Ahmad, AOR
Mr. B. Hota, Adv.

UPON hearing the counsel the Court made the following
O R D E R

Leave granted.

The appeal is allowed in terms of the signed reportable judgment.

(Chetan Kumar)
A.R. -cum-P.S.

(Saroj Kumari Gaur)
Court Master

(Signed reportable judgment is placed on the file)