

## IN THE SUPREME COURT OF INDIA

## CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s).6721\_\_\_\_\_ OF 2010  
(arising out of SLP(C)No.2680/2009)

ESTATE OFFICER, CHANDIGARH  
ADMINISTRATION AND ANOTHER

...Appellant(s)

VERSUS

KULDIP SINGH

...Respondent(s)

## O R D E R

Leave granted.

This appeal is directed against order dated 22.9.2008 passed by the National Consumer Disputes Redressal Commission (for short, "the National Commission") whereby revision filed by the appellants against the order of the Consumer Disputes Redressal Commission, Union Territory, Chandigarh (hereinafter described as "the State Commission") was disposed of by directing them to verify the facts relating to deposit of Rs.4,50,000/- by the respondent towards interest besides Rs.1,26,030/- towards the original basic price of the plot and carry out the order passed by the State Commission.

A perusal of the record shows that Shop-cum-flat No.15

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situated in Sub-Urban, Sector-2, Village Dhanas was allotted to Piara Singh subject to the terms and conditions incorporated in allotment letter dated 11.4.1991.

After four months and nine days, Piara Singh executed a registered Will in favour of the respondent. The possession of the site was handed over to Piara

Singh on 28.8.1991. However, he did not feel satisfied and

filed a civil suit for allotment of an alternative site in a developed area.

During the pendency of the suit, Piara Singh died.

Soon

thereafter, the respondent made an application for transfer of the site in his name. Having failed to elicit favourable response from the concerned authority, the respondent filed a suit for mandatory injunction directing the appellants to substitute his name in place of Piara Singh. The same appears to have been referred to the Lok Adalat where it was agreed that the site be transferred in the name of the respondent subject to payment of the outstanding dues. However, instead of paying the amount due to the Chandigarh Administration, the respondent filed a complaint under Section 12 of the Consumer Protection Act, 1986. By an order dated 27.10.2004, District Consumer Disputes Redressal Forum-II, Union Territory, Chandigarh (for short, 'the District Forum') partly allowed the complaint and directed the appellants to provide

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basic amenities like street lights, approach road, drinking water, parking area, toilets and concrete passage to the shop-cum-flat. The District Forum also directed the appellants to pay the cost of Rs.1,000/-. On appeal, the State Commission modified the order of the District Forum and directed the appellants to pay a lump-sum amount of Rs.20,000/- to the respondent by way of compensation on account of physical harassment and mental agony and also reschedule the payment of installment, lease money, yearly rent, penalty and interest till the provision is made for basic amenities. The National Commission referred to an earlier order passed in Joginder Singh Kalia v. Union Territory of Chandigarh and another and virtually confirmed the order passed by the State Commission.

Before proceeding further, we may mention that after seeking time from this Court on 2.7.2010, learned counsel appearing for the respondent filed his client's affidavit which is accompanied by four photographs of the shop-cum-flat constructed at the site allotted to Piara Singh.

We have heard learned counsel for the parties and perused the record including the additional affidavit of the respondent.

We have also seen the coloured photographs of the site produced by the learned counsel for the parties during the course of hearing.

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It is not in dispute that after taking possession of the site, the allottee raised construction and is using a portion of the premises for running a flour mill. The dispute regarding availability of amenities was raised only when the amount of installment became payable along with interest. Before the District Forum and the State Commission, the respondent did not produce any tangible evidence to prima facie prove that the basic amenities necessary for operating the flour mill and using the building constructed over the site were not made available by the Chandigarh Administration. Therefore, the findings and conclusions recorded by the District Forum and the State Commission that basic amenities had not been provided at the site cannot be sustained.

In Municipal Corporation, Chandigarh v. Shanti Kunj Investment (P) Ltd. (2006) 4 SCC 109, this Court examined a somewhat similar issue and held as under:

"26. We have bestowed our best attention to the provisions of the Act and the Rules. On a plain reading of the definition "amenity" [in Section 2(b)] read with Rule 11(2) and Rule 12, it cannot be construed to mean that the allottees could take upon themselves not to pay the lease amount and take recourse to say that since all the facilities were not provided, therefore, they are not under any obligation to pay the instalment, interest and penalty, if any, as provided under the Act and the Rules. It is not possible to accept a sweeping proposition that if all the facilities or amenities are not provided, then the allottees/lessees can take upon themselves not to pay the lease amount, interest and penalty, would be going too far. It has never been the condition precedent. It is true that

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in order to fully enjoy the allotment, proper linkage is necessary. But to say that this is a condition precedent, that is not the correct approach in the matter. "Amenity" has been defined under Section 2(b) of the Act which includes roads, water supply, street lighting, drainage, sewerage, public building, horticulture, landscaping and any other public utility service provided at Chandigarh. That is a statutory obligation but it is not a

condition precedent as contended by learned counsel for the respondents. It is true that the word "enjoy" appearing in the definition of the word "premium" in Rule 3(2) of the Rules means the price paid or promised for the transfer of a right to enjoy immovable property under the Rules. It was very seriously contended before us that the word "enjoy" immovable property necessarily means that the Administration should provide all the basic amenities as appearing under Section 2(b) of the Act for enjoying that allotment. The expression "premium" appearing in the present context does not mean that the allottees/lessees cannot enjoy the immovable property without those amenities being provided. The word "enjoy" here in the present context means that the allottees have a right to use the immovable property which has been leased out to them on payment of premium i.e. the price. This is only the price to enjoy that allotted/leased property. Otherwise, walking over that property will mean to trespass. This is only a permissive possession. Since the allottees had paid the price or promised to pay after the transfer of the right to enjoy the immovable property, this cannot be construed that the property cannot be enjoyed without providing the basic amenities. It is the common experience that for full development of an area it takes years. It is not possible in every case that the whole area is developed first and allotment is served on a platter. Allotment of the plot was made on an as-is-where-is basis and the Administration promised that the basic amenities will be provided in due course of time. It cannot be made a condition precedent. This has never been a condition of the auction or of the lease. As per the terms of allotment upon payment of 25 per cent, possession will be handed over and rest of the 75 per cent of the lease amount to be paid in a staggered manner i.e. in three annual equated instalments along with interest at the rate of 10 per cent. If someone wants to deposit the whole of the 75 per cent of the amount, he can do so. In that

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case, he will not be required to pay any interest. But if a party wants to make payment within a period of three years then it is under the obligation to pay 10 per cent interest on the amount of instalment. This is the obligation on the part of the allottee as per the condition of lease and he cannot get out of it by saying that the basic amenities have not been provided for enjoying the allotted land, therefore he is not entitled (sic liable) to pay the interest. This construction is not borne out from the scheme of the Act and the Rules. It is true that the Administration has an obligation but it is not a condition precedent in the present case.....

28. It is true that once allotment of the land has been made in favour of the allottee, he can take possession of the property and use the same in accordance with the Rules. That does not mean that all the facilities should be provided first for the so-called enjoyment of the property as this was not the condition of auction. The party knew the location and condition prevailing thereon. The interpretation given by the Division Bench of the

High Court of Punjab and Haryana and contended before us cannot be accepted as a settled proposition of law. In the present case, as per the Act and the Rules it is never a condition precedent of the auction or as per the lease that all the facilities like road, water supply, street lighting, drainage, sewerage, public building, horticulture, landscaping shall be a condition precedent. Nowhere in the conditions of lease or in the auction is it provided that this will be done first though it had been contended by the Administration that the basic amenities have already been provided. Be that as it may, in the present context it cannot be construed that it is a condition precedent....."

By applying the ratio of the aforesaid judgment to the facts of this case, we hold that the District Forum and the State Commission committed jurisdictional error by entertaining and allowing the complaint filed by the respondent. The impugned order is also vitiated by an error of law apparent on the face

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of the record because the issue relating to non availability of basic amenities at the site has not at all been considered by the National Commission.

In the result, the appeal is allowed. The impugned order as also the orders passed by the State Commission and the District Forum are set aside. The competent authority of Chandigarh Administration shall calculate the amount due from the respondent in accordance with the Chandigarh Leasehold of Sites and Building Rules, 1973, which will necessarily include the element of interest and ground rent, and issue demand notice to the respondent, who shall pay the amount within two months from the date of receipt of the demand notice.

.....J.  
(G.S. SINGHVI)

.....J.  
(ASOK KUMAR GANGULY)

NEW DELHI,  
AUGUST 16, 2010.

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).2680/2009  
(From the judgement and order dated 22/09/2008 in RP No. 2215/2005  
of The NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, NEW DELHI)

ESTATE OFFICER, CHANDIGARH ADMIN. & ANR. Petitioner(s)

VERSUS

KULDIP SINGH Respondent(s)

(With prayer for interim relief and office report)

Date: 16/08/2010 This Petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE G.S. SINGHVI  
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Ms. Kamini Jaiswal, Adv.  
Mr. Divyesh Pratap Singh, Adv.

For Respondent(s) Mr. Aman Preet Rahi, Adv.  
For Mr. Ashok K. Mahajan, A.O.R.

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

Leave granted.

In terms of signed order, the appeal is allowed. The impugned order as also the orders passed by the State Commission and the District Forum are set aside. The competent authority of Chandigarh Administration shall calculate the amount due from the respondent in accordance with the Chandigarh Leasehold of Sites and Building Rules, 1973, which will necessarily include the element of interest and ground rent, and issue demand notice to the respondent, who shall pay the amount within two months from the date of receipt of the demand notice.

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(A.D. Sharma) (Phoolan Wati Arora)  
Court Master Court Master  
(Signed Order is placed on the file)