

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR.

S. B. CIVIL WRIT PETITION 7793/ 2010
Executive Officer, Nagar Palika Mandal
Versus.
State Consumer Disputes Redressal Commission
& ors.

DATE OF ORDER : 28/ 05/ 2010

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. GK Garg, for petitioner.

Counsel submits that the matter was initially taken up at the Consumer Forum, however, attained finality after the decision passed by the National Commission upholding the order passed by the State Commission dt. 30/11/2006 (Anx.2). The operative part of the order of the State Commission, which is relevant for the present purpose, is reproduced here as under:-

“उपरोक्त विवेचन के आधार पर अपीलार्थी की अपील आंशिक रूप से स्वीकार की जाने योग्य है। अतः अपीलार्थी की अपील आंशिक रूप से स्वीकार की जाती है तथा आलोच्य आदेश दिनांक 15.05.1998 निम्न प्रकार संशोधित किया जाता है-

1. प्रत्यर्थी- विपक्षी "परिवादी- अपीलार्थी को बसन्त बिहार योजना में डी- 134, डी- 143, डी- 145, डी- 216, डी- 235, में से एक भूखण्ड उसी कीमत पर आवंटित करेगा, जो कीमत विपक्षी ने परिवादी से पूर्व

में आवंटित प्लॉट संख्या ए- 14 हेतु 833.3 वर्गगज के लिए वसूल की थी।

2. इस प्रकरण में प्रत्यर्थी अपीलार्थी से 833.3 वर्गगज से अधिक दी जा रही भूमि की कीमत को आज की आरक्षित दर से वसूल करेगा।

3. परिवादी-अपीलार्थी द्वारा दिनांक 04.03.1975 को जमा कराई गई 5,000/- रुपये की राशि पर वैकल्पिक भूखण्ड आवंटित करने की तिथि तक 06 प्रतिशत प्रतिवर्ष की दर से ब्याज अदा करेगा।

4. जहां तक परिवाद व्यय का प्रश्न है, इस संबंध में आलोच्य आदेश पुष्ट किया जाता है।

5. दोनों पक्षकारान अपील का खर्चा अपना-अपना स्वयं वहन करेंगे।

Counsel submits that the plots, which have been mentioned by the State Commission in its order falling in Scheme Basant Vihar are measuring 111.11 square yards and Plot No. D-134 is measuring 240 square yards but the then authority of the Municipal Council, Jhunjhunu projected before the State Commission that these plots are measuring 1000.00 square yards each which is factually incorrect. However, after the judgment of the State Commission was affirmed by the National Commission, there was no other alternative available with the petitioner but to file review application before the State Commission seeking clarification about the factual position in regard to the existing size of the plots which are available in compliance of the final order

passed by the State Commission referred to supra but the review application filed by the petitioner has been rejected without appreciating the factual aspect of the matter on the premise that the order of the State Commission being affirmed by the National Commission, the review application is not maintainable, is not legally sustainable.

Counsel submits that the petitioner is ready to approach the National Commission where the remedy lies as observed by this Court but the consumer forum is bent upon to take punitive action against the Executive Officer of the Municipal Council, Jhunjhunu and if reasonable time is not afforded to the petitioner to seek remedy before the National Commission, prejudice will cause to him

Taking note of the submissions made and perusal of the record, which is always subject to the appreciation to be made by the competent authority but at the same time this Court, in the peculiar facts and circumstances of the instant case, would like to observe that the respondent No.2-District Consumer Disputes Redressal Forum, Jhunjhunu is restrained from taking coercive action against the petitioner for a period of two months and the petitioner

is at liberty to approach the National Commission against the order Anx. 7 dt. 04/05/2010, if so advised.

With these directions and observations, the writ petition stands disposed of.

[AJAY RASTOGI], J.