

PRATAP SINGH YADAV

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v.

HARYANA URBAN DEVELOPMENT AUTHORITY & ANR.

(Civil Appeal Nos. 10418-10419 of 2016)

OCTOBER 28, 2016

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[T.S. THAKUR, CJI AND UDAY UMESH LALIT, J.]

Consumer Protection Act, 1986 – Allotment of plot in favour of appellant – Deposit of 25% of the tentative price of the plot – Subsequently application by appellant for surrender of the plot and the allotment in his favour – Application allowed – Refund of amount by respondent – Acceptance of the said amount by appellant without protest – Thereafter, complaint by appellant seeking direction against the respondent for restoration of the plot or for allotment of an alternative plot alongwith compensation of Rs.2,00,000/- – Complaint allowed by the District Forum – However, the State Commission dismissed the complaint – National Commission upheld the said order – On appeal, held: Subsequent developments took place whereby conveyance deed was executed, plot was transferred to the appellant, building plan was approved by the Estate Officer, occupation certificate was placed on record and no due certificate was issued by the Estate Officer – These are vitiated by reason of complicity of the officials working in HUDA and named in the report – HUDA directed to take disciplinary action against those found responsible and to punish them in accordance with law – Even though the appellant has been a beneficiary of a so called fraudulent allotment yet in view of the facts and circumstances of the case demolition of the house and restoration of the plot to HUDA at this stage would be harsh for him/them – Thus, the allotment is allowed to continue subject to the appellant depositing the prevalent price of the plot at the rate of Rs.18,000/- per square meter within the stipulated period – In case the needful is not done, the order passed by National Commission and the State Commission would be affirmed.

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Partly allowing the appeals, the Court

HELD: 1.1 As regards the complicity of officials of HUDA

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A in the entire process, the preliminary report submitted to this Court by the Chief Administrator, HUDA leaves no room for taking a lenient view either by HUDA or by this Court. HUDA is bound to take proper disciplinary action against those found responsible and to suitably punish them in accordance with law. To that extent the direction is issued. [Para 6][832-F-G]

B 1.2 As directed, HUDA filed an affidavit by the Estate Officer stating that the rate for allotment for land in Sector II, Faridabad for the period 2015-16 is Rs.18,000/- per sq. meter. A reading of the order in *Pradeep Sharma vs. Chief Administrator, Haryana Urban Dev. Authority & Anr.* in CA Nos.52-53 of 2016 in almost identical circumstances directing the continuance of allotment made in favour of allottee subject to his paying the prevalent HUDA rate for the plot of land upon which he had constructed a house in Faridabad in almost similar circumstances and in connivance with HUDA officials does support that submission of the petitioners. It is true that the appellant has been a beneficiary of what is and can be said to be a fraudulent allotment yet keeping in view the peculiar facts and circumstances of the case demolition of the house and restoration of the plot to HUDA may at this stage work rather harshly for him/them. The proper course, therefore, is to allow the allotment to continue subject to the appellant depositing the prevalent price of the plot at the rate of Rs.18,000/- per square meter. [Para 7][832-H; 833-A-C, G-H]

F 1.3 The order passed by the National Commission and the State Commission is set aside with the direction that subject to the appellant depositing the price of the plot at the rate of Rs.18,000/- per square meters within a period of six months from today the appellant would be permitted to retain the plot. In case the needful is not done within the time allowed, the order passed by National Commission and the State Commission would be affirmed. In any such event HUDA would be free to dispossess the appellant from the property and resume the possession of the plot along with the superstructure, in case the superstructure is not removed by the appellants within the time granted by HUDA for that purpose. [Para 8][834-A-C]

H *Pradeep Sharma v. Chief Administrator, Haryana Urban Dev. Authority & Anr.* Civil Appeal Nos. 52- 53 of 2016 – referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 10418- A
10419 of 2016.

From the Judgment and Order dated 25.09.2012 of the National
Consumer Disputes Redressal Commission, New Delhi, Revision Petition
No. 186 of 2011.

Madhurendra Kumar, Prakash Kumar Singh, Advs. for Appellant. B

Arun Kumar, Sanjay Kuamr Visen, Advs. for Respondents.

The Judgment of the Court was delivered by

T. S. THAKUR, CJI 1. Leave granted. C

2. These appeals call in question the correctness of orders dated
25th September, 2012 and 26th November, 2012 passed by the National
Consumer Disputes Redressal Commission, New Delhi (for short, “the
National Commission”) whereby the Commission has dismissed Revision
Petition No.186 of 2011 and Review Application No.191 of 2012 in the
process affirming order dated 4th October, 2010 passed by the State
Consumer Disputes Redressal Commission, Haryana (for short, “the
State Commission”). The State Commission had in turn while setting
aside the order passed by the District Forum declared that since the
appellant had voluntarily surrendered the disputed plot of land and
accepted the refund amount, he had ceased to be a consumer. He was
not, therefore, entitled to file any complaint and that the claim was time
barred, hence not maintainable. D E

3. The facts giving rise to the proceedings may be summarized as
under: F

Residential Plot No.2342 situate in Sector II, HUDA, Faridabad
was allotted in favour of the appellant in terms of allotment letter dated
18th November, 1998. The appellant had pursuant to the said allotment
deposited 25% of the tentative price of the plot in installments within the
time stipulated by the allotment letter. On receipt of a letter dated 30th
October, 2000 from the respondent-Haryana Urban Development
Authority (for short, “the HUDA”), the appellant appeared before the
Estate Officer, Faridabad on 13th November, 2000 and filed an application
for surrender of the plot and the allotment in his favour. That application
was allowed by the Estate Officer and after deducting 10% of the earnest G

- A money, the balance amount deposited by the appellant was refunded to him by a cheque dated 1st December, 2000, which was received and encashed by the appellant without protest. A consumer complaint, all the same, was filed by the appellant before District Consumer Forum, Faridabad, in which the appellant prayed for a direction against the respondent for restoration of the plot in question or for allotment of an
- B alternative plot of similar size at the same price besides compensation of Rs.2,00,000/- for the harassment and mental agony suffered by him. By an order dated 26th October, 2005, the District Forum allowed the complaint filed by the appellant and directed the respondent-HUDA not only to pay interest at the rate of 12% per annum on the deposit made by
- C the appellant from the date of the deposit till the amount was refunded but also to deliver the possession of the plot to the appellant. The District Forum further ordered payment of a sum of Rs.50,000/- to the appellant towards compensation for the mental agony and harassment caused to him. Litigation expenses of Rs.5,000/- were also awarded in favour of the appellant by the District Forum.
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Aggrieved by the order passed by the District Forum, the respondent HUDA preferred an appeal before the State Consumers Disputes Redressal Commission which appeal was allowed by the State Commission by its order dated 4th October, 2010. The State Commission while setting aside the order passed by the District Forum and dismissing the complaint held that the appellant was not a consumer within the meaning of the Consumer Protection Act, 1986 (for short, "the Act") since he had voluntarily surrendered the plot in question. It was further held that the complaint filed by the appellant was beyond the period of limitation prescribed, hence, liable to be dismissed on that ground also.

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Aggrieved by the order passed by the State Commission, the appellant filed Revision Petition No.186 of 2011 before the National Commission. The National Commission has, as noticed earlier, dismissed the said revision and affirmed the order passed by the State Commission. Review Application No.191 of 2012 filed by the appellant also having

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G failed, the present special leave petition seeks to assail orders passed by the State Commission and the National Commission.

4. We have heard learned counsel for the parties at some length and perused the orders under challenge. When the matter earlier came up before us for hearing on 13th September, 2013, our attention was drawn by learned counsel for the appellant to a Conveyance Deed dated

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9th January, 2008, whereby the disputed plot was transferred to him pursuant to the order passed by the District Forum. Our attention was also drawn to a Sanction Order dated 22nd July, 2008 passed by the Estate Officer of the HUDA whereby building plans submitted by the appellant for construction over the disputed plot were sanctioned. Occupation certificate was also placed on record besides a no due certificate issued by the Estate Officer on 15th March, 2009. It was, on the basis of the above mentioned subsequent developments, argued on behalf of the appellant that since the appellant had already constructed a house over the plot in question which is evident from the photographs of the buildings filed by him, the appeal could be allowed and disposed off. We had, taking note of the above developments, issued a direction to the Chief Administrator, HUDA to hold a preliminary fact finding inquiry as to how a Conveyance Deed in relation to the plot in question could have been executed in favour of the appellant even when the order passed by the District Consumer Forum was not only challenged in appeal before the State Commission but had been set aside by the Commission. The sanction of the building plans culminating in the construction of a building over the plot in question without any formal order of allotment was also found surprising by this Court especially when HUDA was, on the one hand, challenging the entitlement of the appellant to secure the allotment of the plot and sanctioning the building plans and transferring the title in the plot to the appellant, on the other. The operative portion of our order dated 13th September, 2013 was in the following words:

"We accordingly direct the Chief Administrator, HUDA to hold a preliminary fact finding inquiry into the above aspects and submit a report to this court setting out the circumstances in which the developments referred to above have taken place while the matter was sub judice before the State Commission and the National Commission. Those responsible for granting permission and executing the conveyance deed in respect of the plot in question without a proper and formal order of allotment in favour of the petitioner shall also be identified. Pending further orders from this Court the demolition/dispossession of the petitioner from the plot in question shall remain stayed. The report of the Chief Administrator shall reach this Court within three months."

- A 5. Pursuant to the above direction an enquiry has been conducted by HUDA and a Report dated 16th December, 2013 relating to the same filed in this Court along with an affidavit sworn in by the Estate Officer, HUDA. On a perusal of the Report it appears that HUDA has found Smt. Sushma Gulati and Shri Bihari Lal, Assistant and Shri Jai Bhagwan, Deputy Superintendent responsible for dereliction of their duties. The report suggests that these officers have failed to bring the full facts of the case to the notice of the then Estate Officer. The Report further suggests that Shri J.S. Ahlawat, Administrator, Faridabad was responsible for approving the allotment of the plot pursuant to the execution petition filed against HUDA. This appears to have been done on the advice of
- B Shri Harkesh, Assistant District Attorney and Shri Mahinder Singh Kaushik, Deputy District Attorney. The report also holds several other officials responsible for lapses in the matter of granting approval for the allotment of plot, execution of Conveyance Deed, approval of the building plans and issue of full occupation certificate. Suffice it to say that the entire process leading to the allotment of the plot, execution of conveyance deed, approval of building plan, issue of full occupation certification has been vitiated by reason of complicity of the officials working in the HUDA and named in the Report.
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- E 6. Two issues arise for consideration in the above backdrop. The first concerns the action which ought to be taken against the officials of HUDA found responsible for the mischief while the second relates to the approach that needs to be adopted with regard to the allotment and subsequent construction of the house by the beneficiary of the mischief. As regards the complicity of officials of HUDA in the entire process, the preliminary report submitted to this court by the Chief Administrator, HUDA leaves no room for taking a lenient view either by HUDA or by
- F this Court. HUDA is bound to take proper disciplinary action against those found responsible and to suitably punish them in accordance with law. To that extent there is no difficulty in issuing a direction, which we do hereby issue.

- G 7. Coming to the second aspect we had by our order dated 29th April, 2016 directed HUDA to file an affidavit indicating the prevalent rate of land in Sector II, Faridabad for the period 2015-16 of plots of the size of 235 sq. meter. HUDA has accordingly filed an affidavit by the Estate Officer stating that the rate for allotment for land in Sector II,

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Faridabad for the period 2015-16 is Rs.18,000/- per sq. meter. It was A
contended on behalf of the petitioners, who happen to be the legal heirs
of the deceased allottee that this Court has in *Pradeep Sharma vs. Chief*
Administrator, Haryana Urban Dev. Authority & Anr. in Civil Appeal
Nos.52-53 of 2016 in almost identical circumstances directed the
continuance of allotment made in favour of allottee subject to his paying B
the prevalent HUDA rate for the plot of land upon which he had
constructed a house in Sector 64 of Faridabad in almost similar
circumstances and in connivance with HUDA officials. A reading of the
said order does support that submission. That too was a case where the
complainant had received the refund of the amount deposited by him
and then approached the District Forum for restoration of his allotment. C
The District Forum had as in the present case ordered restoration of the
allotment to the complainant after adjustment. While an appeal was
pending before the State Commission, the complainant had in that case
filed an execution petition and got the allotment restored along with the
possession of the plot. The State Commission had subsequently set aside D
the order passed by the District Forum and dismissed the complaint but
the complainant had in the meantime constructed a building over the plot
in question. It was in that background that we had, as in the present case
directed an enquiry into the circumstances in which the allotment of the
plot and other steps like sanction of the building plans and no encumbrance
certificate and other certificates were issued to the complainant. The E
HUDA had accordingly conducted an enquiry as is the position in the
instant case also and found that some of the officials had been responsible
for conniving with the complainant in that case. This Court had taking
into consideration all the circumstances and especially the fact that the
complainant had already constructed a house over the plot in question F
directed the appellant would retain the same on his depositing the
prevailing cost of the plot in dispute after adjusting the amount already
deposited. We have no reason to deny similar relief to the appellant in
the instant case also. It is true that the appellant has been a beneficiary
of what is and can be said to be a fraudulent allotment yet keeping in
view the peculiar facts and circumstances of the case demolition of the G
house and restoration of the plot to HUDA may at this stage work rather
harshly for him/them. The proper course, therefore, is to allow the
allotment to continue subject to the appellant depositing the prevalent
price of the plot at the rate of Rs.18,000/- per square meter as indicated
above.

- A 8. We accordingly allow these appeals but only in part and to the extent indicated above and set aside the order passed by the National Commission and the State Commission with the direction that subject to the appellant depositing the price of the plot at the rate of Rs.18,000/- per square meters within a period of six months from today the appellant shall be permitted to retain the plot. In case the needful is not done
- B within the time allowed, this appeal shall stand dismissed and order passed by National Commission and the State Commission affirmed. In any such event HUDA shall be free to dispossess the appellant from the property and resume the possession of the plot along with the superstructure, in case the superstructure is not removed by the appellants
- C within the time granted by HUDA for that purpose.

9. Ordered accordingly. No costs.

Nidhi Jain

Appeals partly allowed.