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Delayed Dreams: Mental Agony during Possession Delays through the Lens of Ghaziabad Development Authority v Union of India & Anr

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INTRODUCTION

It is no surprise to hear about legal cases involving Realtors and Development Authorities delaying the promised possession due to a plethora of quoted reasons. However, along with the delayed possession, this case also factors in the element of mental suffering one may experience due to the actions of the respective Realtor or Development Authority.

The case of Ghaziabad Development Authority v Union of India & Anr¹ was decided by a dual-judge bench. The appellant was the Ghaziabad Development Authority, which was established under Section 4 of the 1973 Uttar Pradesh Urban Planning and Development Act². Many people who had registered for the program complained about failure or unusually long delays in completion in numerous forums. Others submitted complaints to the Monopoly and Restrictive Trade Practices Commission and the Consumer Disputes Redressal Forum,

¹ *Ghaziabad Development Authority v Union of India* (2000) 6 SCC 113

² Uttar Pradesh Urban Planning and Development Act 1973, s 4

respectively. Furthermore, the case revolved around the issue of awarding the claimant compensation for mental anguish, due to delayed possession.

BRIEF OF FACTS

The Indirapuram Scheme was a program for the distribution of developed plots that was announced by the Ghaziabad Development Authority in C.A. No. 8316/1995. The claimants were advised by the authority that a plot measuring 35 square meters had been set aside for them, with an estimated cost of Rs. 4,20,000 payable over some time.³ The plot's allocation was also notified. The claimants were then notified that there had been a delay in giving them possession because of certain unforeseen circumstances and incomplete development work. After an excessive amount of waiting, the claimants contacted the MRTP Commission. In *G.D.A. v Brijesh Mehta*⁴, the MRTP Commission held the claimants were entitled to an amount of Rs.50,000/- payable as compensation for mental agony suffered by the claimants for the failure of the Authority to make available the plot as promised by it.

LEGAL ISSUES

ISSUE 1: Can the claimants get compensation for their mental suffering?

ISSUE 2: Is it possible to order the payment of interest on the sum that the Ghaziabad Development Authority determined to be due and payable to the claimants in the absence of any contract or commitment made by the Authority?

ISSUE 3: If so, what is the rate at which interest may be required to be paid?

ARGUMENTS BY PETITIONER

- There was no stated or implicit agreement for the Authority to pay interest to the claimants in any of the cases under appeal that can be found in the Authority's brochure or their contract with one another.

³ *Ghaziabad Development Authority v Union of India*, (2000) 6 SCC 113

⁴ *Ghaziabad Development Authority v Brijesh Mehta* C App No 8316/1995

- Any clause of the Monopolies and Restrictive Trade Practices Act 1969⁵, the UP Urban Planning and Development Act 1973⁶ or the Consumer Protection Act 1986⁷ that permits the award of such interest had not been brought to the court's attention.
- They also referred to the case of *Sovintorg (India) Ltd. v State Bank of India*⁸, highlighting similar circumstances in the case.

ARGUMENTS BY RESPONDENT

- The Respondents cited the case of *Lucknow Development Authority v M.K. Gupta*⁹ to highlight the court's remark that the MRTP should not have granted compensation for mental anguish. In that case, this Court upheld the Commission's decision to award a compensation of Rs. 10,000/- for mental harassment.
- The basis for such an award can be found in paragraphs 10 and 11, where this Court declared, among other things, that when it is determined that a discretionary decision was made in bad faith and the complainant is entitled to damages for physical and mental harassment, the officer can no longer assert that they are protected.¹⁰
- As a result, the respondents' attorneys asked the court to uphold the MRTP Commission's decision to award a Rs.50,000 compensation for mental anguish.

OBSERVATION OF THE SUPREME COURT

In its observation, the Supreme Court stated that:

The brochure released by a Development Authority for public information is an invitation to offer when it presents a plan for the assignment of plots. Many members of the public may submit applications to profit from the initiative. Such submissions represent offers. The legal

⁵ Monopolies and Restrictive Trade Practices Act 1969

⁶ U P Urban Planning and Development Act 1973

⁷ Consumer Protection Act 1986

⁸ *Sovintorg (India) Ltd. v State Bank of India* (1999) 6 SCC 406

⁹ *Lucknow Development Authority v M.K. Gupta* (1994) 1 SCC 243

¹⁰ *Ghaziabad Development Authority v Union of India* (2000) 6 SCC 113

relationship governing the performance and consequences flowing from the breach would be worked out under the provisions of the Contract Act¹¹ and the Specific Relief Act¹².

The approval of some of the bids under the defined priorities or preferences of the Authority results in a contract between the applicant and the authority. If one party breaches a contract, the other party may be held liable for damages.¹³ This depends on how the other party violated the contract. Such damages may take the form of liquidated or unliquidated damages.

In this situation, the remoteness damages rule will be put into action. Only where such losses directly result from the breaching party, may the breaching party be responsible for damages. Losses that immediately result from a party's violation must be covered by that party if it is found to be responsible for damages. According to Chitty on Contracts¹⁴ statement, 'Normally, no damages in the contract will be awarded for injury to the plaintiff's feelings, or his mental distress, anguish, annoyance, loss of reputation or social discredit caused by the breach of contracts. The exception is limited to a contract whose performance is to provide peace of mind or freedom from distress. Damages may also be awarded for nervous shock or an anxiety state (an actual breakdown in health) suffered by the plaintiff, if that was, at the time the contract was made, within the contemplation of the parties as a not unlikely consequence of the breach of contract.'

Despite these advancements, the Court of Appeal **rejected** the request for damages for mental anguish and ruled that a standard commercial contract does not allow for the awarding of damages for distress and vexation brought on by a breach of the agreement. Furthermore, in the court's view, the MRTP Commission could not have given compensation for mental anguish in the same manner.¹⁵

¹¹ Indian Contract Act 1872

¹² Specific Relief Act 1963

¹³ Indian Contract Act 1872, s 73

¹⁴ *Chitty on Contracts* (27th edn, vol 1, Sweet & Maxwell 1996) para 26.041

¹⁵ *Ghaziabad Development Authority v Union of India* (2000) 6 SCC 113

When respondents referred to the case of Lucknow Development Authority v M.K. Gupta¹⁶, this Court affirmed the Commission's decision to pay Rs. 10,000 in compensation for mental harassment, the Supreme Court found and stated that the officer can no longer contend that they are under the protective cover if it is determined that the exercise of discretion was made in bad faith and the complainant is entitled to compensation for both mental and physical harassment. When a citizen requests compensation from a public authority for harms they sustained because of the authority's arbitrary use of power and the National Commission determines this to be legally supported, it is required by law to grant such compensation. The Court also ordered that the law enforcement officers who harassed and tormented the plaintiffs be held accountable for their actions and that the compensation must then be deducted from their salaries.¹⁷

As for the Interest component of the observation, the Court highlighted that there was no agreement between the parties about the payment of interest on delayed deposits or on account of the other party's delay in providing the services. Because its provisions have not been explicitly made relevant to the procedures under the Act, interest cannot be claimed under Section 34 of the Civil Procedure Code¹⁸.

However, we believe that the general provision of Section 34, which is grounded in justice, equality, and good conscience, would allow the Redressal Forums and Commissions to additionally issue interest following each case's circumstances. The appellant was rightfully awarded interest by the State Commission and National Commission, but the court determined that the 12% interest rate was insufficient given the appellant's financial hardship and the winding-up procedures under the Companies Act. The court determined that a rate of 15% annually was sufficient to uphold the rules of justice.

The Court emphasized that, in proper circumstances, such as in the case of Sovintorg (India) Ltd.¹⁹, interest may be granted on equitable grounds. To reach a judgment on the proper

¹⁶ *Lucknow Development Authority v M.K. Gupta* (1994) 1 SCC 243

¹⁷ *Ghaziabad Development Authority v Union of India* (2000) 6 SCC 113 [3]

¹⁸ Code of Civil Procedure 1908, s 34

¹⁹ *Sovintorg (India) Ltd. v State Bank of India* (1999) 6 SCC 406

interest rate, however, the parties have not offered any supporting documentation. The court feels that in the situations under consideration, granting interest at a rate of 12% annually would be equitable and proper and serve the interests of justice. The Development Authority's clause stating that it is not required to pay interest if the sum of money is returned should only be implemented in situations where the claimant is accountable for establishing the conditions leading to the refund. Since the Authority was at fault, there is no reason for the Authority to object to the claimant's money being refunded together with interest.

PROCEDURAL HISTORY

Under Article 226²⁰, the High Court has been involved in two civil writ petitions where the petitioners are asking for a return of the money they have paid or deposited with the Authority. The Authority was found guilty of unnecessarily delaying the implementation of the stated program or failing to fulfil the promise made to the claimants by the Court or Commission. The High Court ordered that the money that each claimant had paid or deposited be refunded, plus interest.

According to the Authority's brochure, there would be no interest due in situations of withdrawal or surrender in the cases brought before the High Court of Allahabad. According to the High Court, this term violates Article 14²¹ and is unjust and arbitrary. The High Court ordered that interest be applied to the sum due and payable from the date of deposit until the date of reimbursement at a rate of 12% per annum. The sum owed and payable to the respective claimants, along with interest, is to be paid by the Commission's or Forum's ruling.e., along with interest @ 12% annually.

DECISION

- In Civil Appeal No. 8316/1995, the Court upheld the MRTP Commission's decision and ordered the Development Authority to pay Rs.50,000 as compensation for the respondent's mental suffering. In all other situations, the directive calling for interest to

²⁰ Constitution of India, 1950, art 226

²¹ Constitution of India, 1950, art 14

be paid at a rate of 18% should be changed to one calling for interest to be paid at a rate of 12% annually.

- In Civil Appeal No. 8482/1997, the MRTP Commission determined that the claimant was qualified to receive a flat allocation. The claimant had the option to reject the apartment, in which case the Commission would reimburse their money plus interest at a rate of 18% annually.
- The claimant, however, refused to accept the Authority's unit because of its remote location and exorbitant cost. The Commission's directive on the return is still in effect, but the interest rate was at 12%.²²

ANALYSIS

The way the case develops, the court's remarks appear inconsistent. The observation begins with defining the term 'Invitation to offer' in connection to the Development Authority's brochure. Thereafter, it is acknowledged that the Indian Contract Act²³ and the Specific Relief Act²⁴, which provide for the recovery of damages from a party that violates a contract, would govern the case.

The court then reiterates that the concept of the remoteness of damages will be applied in this case by quoting *Chitty on Contracts*²⁵ which states specifically that, in most cases, no compensation is granted for the plaintiff's feelings, mental anguish, or distress, but that this exception is only applicable to contracts where the performance is intended to bring about peace of mind or freedom from distress.

Even after additional explanations and citations of the relevant statutes, the court itself rejected the claim for damages for mental anguish, holding that a typical commercial contract does not permit the awarding of damages for distress and vexation brought on by a breach of the

²² *Ghaziabad Development Authority v Union of India*, (2000) 6 SCC 113

²³ Indian Contract Act 1872

²⁴ Specific Relief Act 1963

²⁵ *Chitty on Contracts* (27th edn, vol 1, Sweet & Maxwell 1996) para 26.041

agreement. After that, the MRTTP Commission's choice to grant compensation for mental suffering was also criticized by the court.²⁶

However, the respondents brought up the case of Lucknow Development Authority v M.K. Gupta²⁷, in which compensation of Rs 10,000 was given for mental harassment. The Supreme Court concluded that the officer can no longer claim to be covered by the protective shield if it is proved that the exercise of discretion was done in ill- faith and in such a case, the complainant is entitled to damages for both mental and bodily harassment.²⁸

When the National Commission determines that a person was harmed as a result of the authority's arbitrary exercise of power, the law mandates public authorities to abide by citizen applications for compensation. Additionally, the Court ordered that when law enforcement officials are found accountable for their actions, their salaries would be withheld until they have received the appropriate penalty. The plaintiffs were subjected to harassment and abuse.²⁹

The most notable aspect of this case is the court's inconsistent treatment of the situation. They start by describing and identifying the specific laws, validating the formation of the disputed contract and its breach. The court then refers to Chitty's contracts, which take into consideration the exemption clause when the subject of mental suffering is raised.

On the one hand, the court denies the plea for compensation under the category of mental pain while citing all applicable legislation and criticizes the MRTTP Commission's decision to award compensation for mental agony.

On the other hand, the court emphasized the significance of legislation to abide by the citizens' petition for compensation for any mental and physical harassment they had experienced. Additionally, the court is mandating that compensation be deducted from the salary of the officers who harassed the citizens.

²⁶ *Ghaziabad Development Authority v Union of India* (2000) 6 SCC 113

²⁷ *Lucknow Development Authority v M.K. Gupta* (1994) 1 SCC 243

²⁸ *Ibid*

²⁹ *Ibid*

The claimant spent Rs. 4,20,000 over the years, and its current assessed worth is Rs. 45,15,000, which is a considerable sum for a typical Indian. One key expectation of a Development Authority, for such projects, is timely possession, but given the status of the Ghaziabad Development Authority, this looked dubious. The citizens pay for their homes with their hard-earned money. Additionally, a person is very likely to experience mental agony because of a delay in possession from the Development Authority's end. Eventually, the court agreed to grant the compensation of Rs.50000 as done by the MRTP commission but this contradictory approach led to confusion and complexities.

CONCLUSION

The ruling in the matter of Ghaziabad Development Authority v Union of India & Anr is not a famous one, but it is special since it not only emphasizes contract violations but also the emotional pain that can result from them. The stereotypical perception of real estate agents and development authorities is that of a well-oiled machine with knowledge of ways to delay projects and connections to politicians and local government officials through which they can exert control over the procedures and remain largely unaffected in default situations. Justice was eventually delivered after 5 years, despite the Supreme Court's comments being contradictory, which is not surprising given Nick Robinson's comment about the 'Top-heaviness of the Judicial System'.³⁰

³⁰ Nick Robinson, 'Judicial Architecture and Capacity' in Sujit Choudhry, Madhav Khosla and Pratap Bhanu Mehta (eds), *The Oxford Handbook of Indian Constitutional Law* (OUP 2016)