

A GHAZIABAD DEVELOPMENT AUTHORITY

v.

VED PRAKASH AGGARWAL  
(Civil Appeal No.794 Of 2001)

MAY 14,2008

B [TARUN CHATTERJEE AND HARJIT SINGH BEDI, JJ.]

C *Monopolies and Restrictive Trade Practices Act, 1969 –*  
*s.36 – Unfair trade practice – Complainant's case that land*  
*allotted to him by Ghaziabad Development Authority under*  
*the Scheme and after many years cancelled arbitrarily – Com-*  
*plaint alleging unfair trade practice against GDA – Allowed by*  
*MRTP Commission and GDA directed to allot alternate plot*  
*to complainant at the price fixed – Held: Complainant was*  
*successful in draw of lots, thus, act of GDA amounted to unfair*  
*trade practice – However, MRTP Commission has no juris-*  
*isdiction to direct GDA to hand over possession of vacant plot*  
*to complainant – It cannot assume powers of Civil Court – It*  
*has power to impose damages or compensation – Thus, mat-*  
*ter remitted back to MRTP Commission for a fresh decision*  
*on compensation.*

F In 1988, the Ghaziabad Development Authority  
floated the housing Scheme for allotment of certain land  
in its Govindpuram Scheme. It is the respondent's case  
that GDA allotted land and cancelled the same after many  
years. Respondent filed complaint before MRTP Commis-  
sion against the GDA alleging unfair trade practice under  
the Monopolies and Restrictive Trade Practices Act, 1969.  
GDA contended that the respondent was not allotted any  
land and as such there was no question of cancellation  
and the refund was offered. MRTP Commission held that  
land was allotted to the respondent by letter dated  
10.02.1989 and cancellation of respondent's allotment  
when other allottees had been given plots in the same

circumstances amounted to unfair trade practice under s.36 of the MRTP Act. It directed the GDA to allot an alternative plot of land to the respondent at the previously fixed price under the MRTP Act. Hence the present appeal. A

Allowing the appeal, and remanding the matter to MRTP Commission the Court B

HELD: 1.1 It is difficult to conceive that the respondent was unsuccessful in the draw of lots as alleged by the GDA, which is the excuse given by them for not giving the possession of the plot to the respondent. It is an admitted fact that the GDA had already issued a reservation/allocation letter to the respondent and it is also a finding of the MRTP Commission that the respondent had paid the full amount of Rs.58000/-. This shows that the respondent was successful in the draw of lots because otherwise, where was the need for the GDA to issue the reservation/allocation letter to the respondent which also required him to make the necessary payments. In this view of the matter, the finding of the MRTP Commission that the act of the GDA amounted to an unfair trade practice is affirmed. [Para 6] [682-F-H, 683-A] C D E

1.2. The MRTP Commission was clearly in error in directing the GDA to handover possession to the respondent. Under the Monopolies and Restrictive Practices Commission, there are provisions for inquiries that can be instituted by the MRTP Commission while s.36D read with s. 12A and 12B lay down the powers of the MRTP Commission in dealing with instances of Unfair trade practices. None of the provisions seem to indicate that the MRTP Commission has the authority to do what it did in the instant case. The MRTP Commission has the power to impose damages or give compensation to the respondent as a mode of redressal for harm caused by the unfair trade practices, but it certainly cannot assume the F G H

A powers of the civil court because the action of the MRTP Commission in this case virtually amounts to grant of specific performance. [Para 7] [683-B-D]

B 1.3. In view of the foregoing reasons, it is appropriate to remand this appeal to the MRTP Commission for decision afresh on the compensation, which may be given to the respondent in accordance with law along with refund of the amount deposited by the respondent with the GDA with simple interest. [Para 8] [683-E,F]

C CIVIL APPELLATE JURISDICTION : Civil Appeal No. 794 of 2001

From the Order dated 3.8.2000 of the Monopolies & Restrictive Trade Practices Commission, New Delhi in R.U.T.P.E. No. 82 of 1998

D Vijay Hansaria, Reena Singh and Jatinder Kumar Bhatia for the Appellant.

Gaurav Jain and Abha Jain for the Respondents.

E The Judgment of the Court was delivered by

F **TARUN CHATTERJEE, J.** 1. This appeal at the instance of Ghaziabad Development Authority (in short "the GDA") is filed against the judgment and order dated 3<sup>rd</sup> of August, 2000 passed by the Monopolies and Restrictive Trade Practices Commission, New Delhi (in short 'the MRTP Commission') in R.T.P.E. No.82 of 1998 by which the MRTP Commission had directed the GDA to deliver possession of a plot of 90 sq. mtrs. to the complainant/respondent in Govindpuram Scheme or any adjacent scheme at a price prevalent in the year 1988.

G 2. The dispute in this appeal pertains to the allotment of certain land by the GDA in its Govindpuram Scheme. In the complaint filed before the MRTP Commission by the respondent, it was alleged that the GDA had first allotted certain land to him and after many years, cancelled the allotment arbitrarily. The H. respondent also claimed the refund of the invested amount.

Challenging the cancellation of allotment as arbitrary and also for refund of the invested money, a proceeding was initiated at the instance of the respondent before the MRTP Commission alleging that the cancellation of the allotment by the GDA was not only arbitrary but also indicative of its monopolistic hold on the land and therefore, it amounted to an unfair trade practice under the MRTP Act. The GDA entered appearance and denied the allegations made in the complaint, inter alia, alleging that no specific allotment order was made by the GDA and, therefore, cancellation of the same did not arise at all. It was further stated by the GDA in their written objection to the complaint that the long delay was attributable to the fact that the scheme was tied up in litigation for many years and when that litigation was over, the draw prescribed for allotment of land was held. Since the respondent had failed in this draw, the allotment of the land could not be made and therefore, the refund was offered. After hearing the parties and on the basis of the available records, the MRTP Commission held that the land was indeed allotted to the respondent and the cancellation of the respondent's allotment when other allottees had been given the plots in the same circumstances amounted to an "unfair trade practice" under Section 36 of the MRTP Act. The MRTP Commission also held that the respondent had suffered pecuniary losses and damages. Based on these findings, the MRTP Commission directed the GDA to allot 90 sq. mtrs. of plot to the respondent in Govindpuram Scheme and in case the plot was not available, to hand over the possession of vacant plot of the same size to the respondent in other schemes nearby the Govindpuram Scheme at the previously decided price. Feeling aggrieved by this order, the GDA has come up in appeal in this Court.

3. Having heard the learned counsel for the parties and after going through the order of the MRTP Commission as well as the other available records, two questions crop up before us for decision of this appeal: -

(i) Whether any unfair trade practice was resorted to by the GDA;

A (ii) Whether the MRTTP Commission had the jurisdiction to direct the GDA to allot an alternative plot of land to the respondent at the previously fixed price under the MRTTP Act.

B 4. Before we go into these questions, we may, at this stage, narrate certain other facts also, which would be required for decision in this appeal. In October 1988, the GDA had floated a housing scheme the particulars of which are reproduced as under.

C *Col.3.40 – This scheme relates to pay plan which says that the plots/houses under these schemes are being constructed under lump sum plan (code 1), self financing plan (code 2) and hire purchase plan (code 3).*

D *Col.3.43 The reservation amount, as mentioned in column 8 of table 1 is to be paid within 30 days from the date of reservation letter.*

E *Col. 3.66 If payment fixed for such allotment of land is not made within three months after its due date along with penal interest, if any, the allotment shall be treated as cancelled without notice. The GDA reserves its right to cancel for non-payment within the time specified in column 3.66 without notice.*

F *Col.8 The allotment will be made by a manual computerized draw in the presence of applicants who wish to be present as per the serial Nos. of the application forms. Claim for any particular house by any applicant will not be acceptable. Dates of lottery for reservation and allotment shall be published in the newspaper. Col.9 speaks about unsuccessful applicants.*

G *Col.9.10 Those applicants, who have not been allotted/ reserved plots/houses, will be returned their registration amount without interest if the period of deposit of such money with the GDA is less than one year.*

H *Col.9.20 If the period of deposit is more than one year*

*5% simple interest shall be paid for the entire period of deposit. Co.9.30 For the purpose of calculation of period of deposit the month of deposit & refund shall not be counted. Any period after the date of start of refund of registration amount of unsuccessful applicants, shall not be counted for the purpose of calculation of 'period of deposit'."*

Keeping the columns, as noted herein above, in mind, let us now proceed with the other subsequent relevant documents. A letter dated 10<sup>th</sup> of February, 1989 issued by the GDA to the respondent is one of the important documents that needs to be considered by us in disposing of this appeal. This letter indicates reservation of Plot E in Govindpuram Scheme and the estimated cost is shown as Rs.55, 800/-. The payment schedule as appearing from the same is as under: -

The due date for payment is 10<sup>th</sup> of March, 1989 and the amount due indicated in the said letter is Rs.50, 000/-.

The conditions for taking account for non-payment is shown in the following manner -

- (i) The grace period of one month shall be given for payment of the above amount after the due date.
- (ii) If the amounts payable to the GDA are not paid within the prescribed time limit, penal interest at the rate of 18% per annum shall be payable along with the payable amounts. If the payment is not made within three months after its due date along with penal interest, if any, the allotment shall be treated cancelled without notice.

The reservation of Plot E in Govindpuram Scheme so far as the respondent was concerned was subject to rules and regulations in force, prescribed from time to time by the GDA or the State Government. It was also stated in the letter that the terms and conditions as stipulated in the brochure of above scheme hold good and the allocation was subjected to those conditions. Draw for specific plot number was to be held separately.

A 5. Having considered the relevant materials, as noted here-  
inabove, let us now look at the findings of the MRTP Commis-  
sion based on which it has passed the impugned order. The  
findings are as under: -

B 1. By a reservation letter dated 10.2.1989, the GDA  
intimated the complainant regarding reservation/  
allocation of a plot in Plot E category in Govindpuram  
Plots Scheme in the name of the complainant and  
was allotted/reserved allottee code no. 539 700 0070  
for an approximate area of 90 sq. metres.

C 2. The complainant deposited Rs. 45000/- vide demand  
draft dated 10.4.1989 with the GDA within grace  
period and the balance Rs. 5000 was paid vide  
demand draft dated 7.1.1990 with 18 %penal interest  
amounting to Rs. 750/- and therefore, the  
D complainant had deposited a total sum of Rs. 58000/  
- by the end of January, 1990.

E 3. *The order of the Allahabad High Court in Satya  
Prakash Vs. State of UP dated 24.4.1991 nowhere  
mentioned that the area of the Govindpuran scheme  
had been reduced and therefore the reason given  
by the GDA was not supported by this order of the  
Allahabad High Court.*

F 6. We have examined the findings of the MRTP Commis-  
sion in the light of the materials on record. Having done that, it  
is difficult to conceive that the respondent was unsuccessful in  
the draw of lots as alleged by the GDA, which is the excuse  
given by them for not giving the possession of the plot to the  
respondent. It is an admitted fact that the GDA had already  
G issued a reservation/allocation letter to the respondent and it is  
also a finding of the MRTP Commission that the respondent  
had paid the full amount of Rs.58000/-. This shows that the re-  
spondent was successful in the draw of lots because otherwise,  
where was the need for the GDA to issue the reservation/allo-  
H cation letter to the respondent which also required him to make

the necessary payments. In this view of the matter, we affirm the finding of the MRTP Commission that the act of the GDA amounted to an unfair trade practice. A

7. Having decided issue no.1 in the manner indicated above, the other question that we need to decide is whether the MRTP Commission had the jurisdiction to direct the GDA to handover possession of a vacant plot of 90 sq. mtrs. to the respondent in the Govindpuram scheme or if not available, an alternative plot in some other scheme. So far as this question is concerned, we hold that the MRTP Commission was clearly in error in directing the GDA to handover possession to the respondent. Under the Act, there are provisions for inquiries that can be instituted by the MRTP Commission while Section 36D read with Section 12A and 12B lay down the powers of the MRTP Commission in dealing with instances of Unfair trade practices. None of the provisions seem to indicate that the MRTP Commission has the authority to do what it did in this case. The MRTP Commission has the power to impose damages or give compensation to the respondent as a mode of redressal for harm caused by the unfair trade practices, but it certainly cannot assume the powers of the civil court because the action of the MRTP commission in this case virtually amounts to grant of specific performance. B  
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8. In this view of the matter and in view of the foregoing reasons, we consider it appropriate to remand this appeal to the MRTP Commission for decision afresh on the compensation, which may be given to the respondent in accordance with law along with refund of the amount deposited by the respondent with the GDA with simple interest. The appeal is thus allowed to the extent indicated above. No costs. F

N.J. Appeal allowed G