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**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU**

WP(C) No. 1910/2020

Reserved on 24.02.2023.
Pronounced on 03. 03.2023.

Jammu Development Authority, Jammu and others appellant (s)

Through :- Mr. Sachin Dogra Advocate

V/s

Jag Mohan Wazir and anotherRespondent(s)

Through :- Mr. Manik Wazir Advocate

**Coram: HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE
HON'BLE MR JUSTICE PUNEET GUPTA, JUDGE**

JUDGEMENT

Sanjeev Kumar, J.

1 Jammu Development Authority ['JDA'] has invoked the extraordinary jurisdiction of this Court vested by Article 226 of the Constitution of India for quashing order dated 18.07.2019 passed by the Jammu and Kashmir State Consumer Disputes Redressal Commission, Jammu ["the Commission"] whereby order dated 04.05.2018 passed by the District Consumer Disputes Redressal Forum, Jammu ['the Forum'] has been upheld.

2 Before we advert to the grounds of challenge urged by Mr. Sachin Dogra, learned counsel for the petitioners, in support of his petition, we deem it appropriate to give a brief resume of factual antecedents leading to filing of this petition.

Respondent No.1 instituted a complaint before the Forum on 29.07.2016 seeking, *inter alia*, a direction to the JDA to allot him a plot

measuring 40'x80' at Bantalab Housing Colony, Phase-II [“the subject plot”] on payment of balance amount of Rs.77,400/-. It was averred in the complaint that, in response to an Advertisement Notice issued by the JDA which was published in the daily newspaper “Daily Excelsior” on 15.10.1993 for allotment of residential plots at Bantalab Housing Colony, Phase-II on Amb Gharota Road, respondent No.1 applied on the prescribed format for allotment of a plot by depositing the registration fee of Rs.8600/- through demand draft. On 30.11.1993. the JDA vide its communication dated 08.01.1994 informed respondent No.1 that the subject plot would be allotted to him subject to the terms and conditions mentioned in the said communication. This was followed by another communication dated 02.06.1994 issued by the JDA to respondent No.1 to deposit the balance amount of Rs.77,400/- representing 90% amount of the premium on or before 08.07.1994. Respondent No.1 was also warned that in case he would not deposit the amount on time, he would be liable to pay penal interest at the rate of 18% per annum. Respondent No.1 was also made known that it is only after he deposits the full amount, lease deed shall be executed and possession of the subject plot handed over to him.

It was the complaint of respondent No.1 before the Forum that he visited the Bantalab Housing Colony where the subject plot was located and found that the proposed colony was yet to be developed and was without basic amenities like water and electricity. It was also averred by respondent No.1 that being in the service of Bank, he mainly remained outside Jammu and, therefore, could not deposit the requisite amount. It was claimed by respondent No. 1 that he approached the JDA for allotment of the subject plot in the year 2000 and 2007 by making written representations which were followed by legal notices served on JDA through Advocate on 04.02.2014 and 30.04.2016 but nothing fruitful was done. It is in the background of these allegations of deficiency of service, a complaint was filed before the Forum on 29.07.2016.

The JDA contested the aforesaid complaint by presenting written version of its stand before the Forum. Apart from taking the plea that the complaint filed by respondent No. 1 was highly belated and time barred, the claim of respondent No.1 was also contested on merits. It was submitted that vide communication dated 08.01.1994, the JDA informed respondent No.1 that the subject plot shall be allotted to him provided he deposits 90% of the cost of

plot by way of a bank draft pledged to VC, JDA within a period of six months from the date of issuance of the letter with a further stipulation that penal interest of 18% shall be charged in case of any delay in making the payment of premium. It was submitted that respondent No.1 did not deposit rest of the amount, though he was again reminded to deposit the balance payment vide communication dated 02.06.1994. It was, thus, contended by the JDA that in view of failure of respondent No.1. to pay the balance premium, no lease deed granting leasehold rights in favour of respondent No.1 qua the subject plot could be executed.

To prove the complaint, respondent No.1 filed his own affidavit duly sworn in by way of evidence. No affidavit in evidence was filed by the JDA.

The Forum accepted the version of respondent No.1 and allowed the complaint filed by him. Consequently, a direction was issued to the JDA to allot the subject plot in favour of respondent No.1 subject to payment of Rs.77,400/-. This was challenged by the JDA by way of an appeal before the Commission. The Commission, instead of addressing the appeal on merits, dismissed the same for non-prosecution vide order dated 18.07.2019. Both the orders i.e the order passed by the Forum dated 04.05.2018 and order of Commission dated 18.07.2019 dismissing the appeal of JDA for non-prosecution, are subject matter of challenge in this writ petition.

3 Having heard learned counsel for the parties and perused the material on record, we are of the view that the order passed by the Forum impugned in this petition is not sustainable in law. The plea of limitation specifically raised by the JDA in its written version, submitted in opposition to the complaint, has though been noticed, yet has not been decided by the Forum. On internal page No.5 of the impugned order, the Forum has noticed the argument of learned counsel for the JDA that the complaint, having been filed after lapse of 22 years after the cause of action, was barred by limitation. However, the Forum has ignored to consider the said plea for the reasons not discernible from the impugned order dated 04.05.2018.

4 Indisputably, pursuant to an Advertisement Notification issued by the JDA for allotment of residential plots at Bantalab Housing Colony, Phase-II in the year 1993, respondent No.1 submitted his application, complete in all respects, accompanied by a demand draft of Rs.8600/- as registration fee. The JDA vide its communication dated 08.01.1994 offered to allot the subject plot subject to the following conditions;

1. Deposit 90% of the cost of plot in Bank draft pledged to VC, JDA within a period of six months from the date of issuance of letter of allotment;
2. Additional premium of 5% to be charged only from the allottees of the corner plot; and,
3. Penal interest of 18% to be charged in case there is delay in payment of premium or fraction thereof.

5 The aforesaid communication itself made it clear to respondent No. 1 that the possession of the plot shall be delivered and the formal lease deed executed only after the payment of entire premium. This letter as is evident from its reading was not an order of allotment of subject plot, but an offer of allotment of plot made to respondent No.1 subject to his fulfilling the conditions laid down therein. There is no dispute that respondent No.1 could not deposit 90% of the costs of plot within a period of six months. Immediately before the expiry of six months, another communication was addressed by JDA to respondent No.1 on 02.06.1994 reminding him that he was under an obligation to deposit the balance amount of Rs.77,400/- representing 90% amount of premium on or before 08.07.94. This communication was also not adhered to. It is, thus, clear that, by not fulfilling the conditions subject to which the subject plot was offered to respondent No.1, no concluded contract for allotment of plot came into existence. It is because of this reason, neither

any lease deed was executed between the parties, nor respondent No.1 was put in possession.

6 We are aware that there is no formal order passed by JDA withdrawing the offer. However, that does not mean that respondent No.1 was given a choice to deposit the premium at his convenience. For almost six years, he was not heard in the matter. In the year 2000, respondent No.1 claims to have filed an application before the Minister of Housing and Urban Development, but there is nothing on record to show that this was actually made, ever processed and reached JDA. There is, however, another communication dated 16.10.2007 made by respondent to the Vice Chairman, JDA seeking allotment of subject plot which was offered to him way back on 08.01.1994. The endorsement on the application shows that the matter was examined for the purpose of returning the registration amount of Rs.8600/-. Where was respondent No.1 from the year 2007 till 2016 when he again raised the issue of allotment with the JDA by issuing a legal notice. As a matter of fact, the issuance of legal notices, one claimed to have been sent to JDA in the year 2014 and another in the year 2016 was only a precursor to the filing of complaint by reviving the cause of action which accrued to respondent No.1 in the year 2007 when his request for allotment of plot was virtually declined by processing his claim for returning of the registration amount of Rs.8600/- paid along with the application form.

7 The “cause of action” is not something which can be generated by a party by making repeated representations or legal notices. The “cause of action” would mean a situation or state of facts that entitles a party to maintain an action in a court of law or a Tribunal; a group of operative facts giving rise to one or more basis for suing; a factual situation that entitles one person to

obtain a remedy in court from another person. Putting it in other words, “the cause of action” means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the Court. Viewed thus, the “cause of action”, in the instant case, accrued to respondent No.1 immediately after expiry of six months’ period from the date of offer of allotment of subject plot made to respondent No.1 i.e 08.07.1994. Having failed to accept the offer by complying the conditions laid down in the offer, respondent No.1 lost the right to enter into a contract for granting leasehold rights qua the subject plot by the JDA in his favour. Even if we assume that the cause of action accrued to respondent No.1 only when his request made in the year 2007 for allotment of subject plot on receipt of balance payment, was rejected by the JDA, even then, the complaint was filed after 08 years, that too, without offering any explanation. The legal notices issued by the respondent reiterating his request for allotment of plot which were not responded to by the JDA were issued only as a precursor to the filing of a complaint and with a view to generating fresh cause of action. Such course of action is not permitted in law.

8 As we have said above and reiterate that the “cause of action” is something that is relatable to the facts and circumstances forming infraction of right or giving immediate occasion for the action and, therefore, cannot be generated at will by making repeated representations and issuing legal notices. We are, thus, of the considered view that the Forum erroneously entertained a highly belated complaint filed by respondent No.1, more so, when there was no explanation tendered for such delay. As a matter of fact, the Forum did not advert to the issue of maintainability of complaint being barred by limitation.

9 Otherwise also, we do not find any case in favour of respondent No.1 on merits. Way back in the year 1994, complainant No.1 was offered allotment of subject plot by JDA subject to deposit of balance amount of Rs.77,400/- representing 90% of the total premium of the plot. The amount was required to be deposited within a period of six months Thereafter, JDA was to enter into a lease agreement with respondent No.1 and respondent No.1 was to be put in possession of the allotted plot. Respondent No.1 could not deposit the said amount within a period of six months and, thus, having failed to accept the offer of JDA, the claim of respondent No.1 to the allotment of subject plot that would have accrued to him on deposit of the balance amount came to be forfeited. Respondent No.1 claims to have approached the Minister concerned in the year 2000. However, there is no record of such representation, if any, made by respondent No.1. The record would reveal that respondent No.1 approached JDA for the first time on 16.10.2007. From the endorsement made on the application dated 16.10.2007 placed on record by respondent No.1 clearly indicates that the request was not accepted, but instead a direction was issued by the competent authority to examine the proposal for returning the amount of Rs. 8600/- which respondent No.1 had paid by way of a draft along with his application form as registration fee. Respondent No.1 perhaps accepted his fate and kept quiet till he decided to file a complaint before the Forum in the year 2016. As a prelude to the filing of a compliant, two legal notices seems to have been issued to revive the cause of action .

10 So far as the order passed by the Commission is concerned, it is trite law that the Commission, under the Jammu and Kashmir Consumer Protection Act, 1987 had no power to dismiss the appeal for non-prosecution. The Commissioner ought to have adjudicated the appeal on merits, rather than

dismissing it for non-prosecution. Be that as it may, the fact remains that the complaint filed by respondent No.1 before the Forum was highly belated and barred by limitation. Neither there was an application for condonation of delay nor has the Forum applied its mind and determined the issue of limitation by giving any reasons. Even on merits, there was no substance in the allegation of deficiency of service made in the complaint. Respondent No.1 lost the right to have the subject plot allotted in his favour by his inaction. No-one can be permitted to claim the benefit of his own wrong.

11 For the foregoing reasons, we find enough merit in this petition and the same is, accordingly, allowed. The impugned order passed by the Forum is set aside. However, before parting, we find that though respondent No.1 is not entitled to be allotted the subject plot having lost that right by his inaction and by efflux of time, he, however, shall be entitled to refund of Rs. 8600/- deposited by him along with interest at the rate of 6% per annum, to be calculated from the date the said amount was deposited with JDA till same is actually disbursed to respondent No.1. We order accordingly.

(PUNEET GUPTA)
JUDGE

(SANJEEV KUMAR)
JUDGE

Jammu
03 .03.2023
Sanjeev

Whether order is speaking:Yes

Whether order is reportable:Yes