

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.623 OF 2014

Kalpataru BMC Employees Co-op.
Hsg. Society Ltd. & Ors.

... Petitioners

Vs.

State of Maharashtra & Ors.

... Respondents

Mr.A.G. Damle, Sr.Advocate i/b Rupesh Lanjekar for the Petitioners
Mrs.Madhubala Kajale, Assistant Government Pleader, for Respondent No.1
Mr.S.U. Kamdar, Sr.Advocate a/w Ms.Vandana Mahadik for Resp. Nos.2 to 7

**CORAM: SMT. VASANTI A. NAIK &
SHRI C.V. BHADANG, JJ.**

DATE: 10th FEBRUARY, 2015

P.C.:

By this petition, the petitioner-society seeks a direction to the respondents to hand over the physical possession of the property bearing No.566B1 to 566B4 and 566B5 in Mahim, Mumbai, on as is where is basis. The petitioners seek a direction to the respondents to permit the petitioners to develop the property.

The petitioners are the cooperative societies of the staff of the municipal Corporation. According to the petitioners, on 15.5.1992, by a resolution of the municipal Corporation, the Corporation had decided to allot the plots of land which are the subject matter of this petition to the

petitioner societies. On 14.5.1996, the Corporation had granted the approval for grant of lease in respect of the plots in favour of the petitioners subject to the decision in the pending suit bearing No.2637 of 1978. The Letters Patent Appeal was decided on 9.6.2001 and according to the petitioners, the persons on the plot of land vacated the same. On 7.7.2002, the Corporation wrote to the petitioners that the request of the petitioners to hand over the possession of the plot in question cannot be granted. It is the case of the petitioners that later, on 11.11.2009, the respondent Corporation agreed to lease the plots to the petitioner societies on the conditions mentioned in the communication. It is averred in the petition that after 11.11.2009, nothing happened in the matter and despite the representations made by the petitioner society, the Corporation failed to hand over the possession of the plot in favour of the petitioners. In this background, the petitioners have sought the relief as mentioned hereinabove.

Mr.Damle, the learned Senior Counsel appearing for the petitioners, submitted that it is clear from the communications annexed to the Writ Petition that the Corporation had agreed to grant the leasehold rights in respect of the plots in favour of the petitioner – societies. It is stated that the principle of promissory estoppel would apply in the facts of the case as

in view of the promise made by the Corporation, the petitioners have deposited a sum of Rs.30,000/- towards security deposit. The learned Senior Counsel relied on the judgment of the hon'ble Supreme Court in ***Motilal Padampt Sugar Mills v. State of U.P.***, reported in (1979) 2 SCC 409 to substantiate his submission. It is stated that a right has been created in favour of the petitioners in view of the promise made by the Corporation and it would be necessary for the Corporation to fulfill the promise.

Mr.Kamdar, the learned Senior Counsel appearing for the Corporation, submitted that the petitioners do not have a right to seek possession of the property. It is stated by placing reliance on the provisions of sections 70 and 71 of the Mumbai Municipal Corporation Act that the Corporation had not entered into any contract with the petitioners and only a contract executed in accordance with the provisions of section 70 (2) of the Act could be binding on the Corporation. It is stated that by a couple of communications, the authorities of the Corporation had merely informed the petitioner about the decision of the Corporation to grant leasehold rights in favour of the petitioners but actually the leasehold rights were never granted by executing an agreement – contract as required by the provisions of section 70 of the Act. It is stated that the

principle of promissory estoppel would not apply to the case in hand as the petitioners have not changed their position even assuming that the Corporation had promised the petitioners that the plots would be allotted in their favour. It is submitted that the judgment in the case of *Motilal Padampt Sugar Mills v. State of U.P.*, reported in (1979) 2 SCC 409, cannot be made applicable to the facts of this case. It is also submitted on behalf of the Respondent - Corporation that in the Development Plan for the City of Mumbai, the plots in question are reserved for conservancy staff quarters and the Corporation is taking steps to construct the staff quarters on the plots. It is stated by referring to the affidavit in reply that in several such matters, the Corporation and the State Government had declined to grant leasehold rights in favour of similarly situated persons and societies. The learned Counsel sought for the dismissal of the Writ Petition.

On hearing the learned Counsel for the parties, it appears that the relief sought by the petitioners cannot be granted. This Court would not be in a position in the circumstances of the case to direct the respondents to hand over the physical possession of the property to the petitioners. No right has been created in the petitioners to claim the possession of the property. We do not find from a perusal of the documents that a contract of creating leasehold rights in favour of the petitioners is executed. Even

the document – communication dated 11.11.2009 merely conveys that the Corporation has taken an administrative decision to hand over the physical possession of the property to the petitioners on the conditions mentioned in the communication. On a reading of the provisions of sections 70 and 71 of the Act of 1888, it is clear that only a contract entered into by the Commissioner on behalf of the Corporation in the manner provided under section 70 of the Act would be binding on the Corporation. We do not find in the circumstances of the case that the Corporation is estopped from refusing to hand over the physical possession of the property in favour of the petitioners. The principle of promissory estoppel would not be strictly applicable to the facts of this case. In the instant case, we do not find that the petitioners had changed their position, even assuming that the Corporation had promised to grant the leasehold rights of the plots in favour of the petitioners. In the case before the hon'ble Supreme Court, the Government had made a categorical representation that the proposed Vanaspati factory of the appellant therein would be entitled to exemption from sales tax for a period of 3 years from the date of commencement of the production if the factory was established in the State of Uttar Pradesh and the appellant therein, acted on the promise and decided to set up a factory for the manufacture of Vanaspati only on account of the sales tax exemption as promised by the government. In the facts of the case, the

hon'ble Supreme Court held that the doctrine of promissory estoppel could have been invoked in that case and the State Government was bound to grant sales tax exemption to the appellant therein. As already stated hereinabove, the doctrine of promissory estoppel cannot be applied to the facts of the present case and the petitioners cannot rely on the said principle for seeking the possession of the property. There is one more hurdle in the way of the petitioners in seeking the possession of the properties from the respondent Corporation. Under the Development Plan for the City of Mumbai, the plots in question are reserved for conservancy staff quarters and in view of the said reservation, the Corporation has expressed its inability to grant the leasehold rights in respect of the plots in favour of the petitioners. We do not find any illegality in the action of the Corporation so as to interfere with the same in exercise of the writ jurisdiction.

In the result, the Writ Petition fails and is dismissed with no order as to costs.

(C.V. BHADANG, J.)

(VASANTI A. NAIK, J.)