

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

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A.S.No. 74 OF 1997

JUDGMENT:

The 1st defendant in Original Suit No.151 of 1986, on the file of the Court of Principal Subordinate Judge (Now Senior Civil Judge), Tirupati, Chittoor District, preferred this Appeal challenging the decree and judgment dated 07.11.1996; whereunder the suit filed by the plaintiffs was allowed, in part, granting mandatory injunction, against the 1st defendant, by issuing certain directions while dismissing the reliefs against the 2nd defendant.

2. The appellant herein was the 1st defendant, respondents 1 to 4 herein were the plaintiffs and 5th respondent herein was the 2nd defendant before the trial Court in O.S. No.151 of 1986. For convenience of reference, the ranks given to the parties in O.S. No.151 of 1986 will be adopted throughout this judgment.

3. Plaintiffs filed the Suit, before the trial Court, for grant of mandatory injunction directing the defendants to comply with the assurances under the agreement, directing the defendants, in their personal capacity, to pay a sum of Rs.45,000/- towards loss caused to the provisions in the shop of 3rd plaintiff; and, direct the defendants to pay Rs.5,000/- to 2nd plaintiff for causing damage to the machinery and direct the 1st defendant to pay a sum of Rs.2,07,420/- towards compensation for demolition of the buildings, with interest at the rate of 12% p.a. alleging that the 2nd plaintiff is the wife, 3rd and 4th plaintiffs are the sons of 1st plaintiff and all of them belong to a composite family, carrying on their businesses, separately, at different places in Tirumala. Plaintiffs 1 and 3 are the registered dealers under the Andhra Pradesh General Sales Tax Act, 1957 with separate registration certificates. The plaintiffs own residential houses in Perundevi Thota area;

wherein they are residing and carrying on businesses, individually. The house at Perundevi Thota was constructed by the plaintiffs with zinc sheet roofing. Thus, the plaintiffs are residing and carrying on business in the zinc sheet roofed shed. As there was a threat of demolition of entire residential buildings in Perundevi Thota by the defendants, the plaintiffs and other residents therein filed O.S. No.192 of 1985 on the file of Additional Sub-Court, Tiurpati in representative capacity for grant of permanent injunction and obtained temporary injunction against the 1st defendant from restraining the 1st defendant from demolishing any structures till disposal of that Suit. An Advocate Commissioner was also appointed for local inspection and, after inspection, he filed his report with all details of structures existing on the land.

4. While the interim injunction was in force, the Executive Officer and Joint Executive Officer of 1st defendant-Temple, with active and over jealous assistance of 2nd defendant, started demolition of all the structures with his manpower and with the aid of Police personnel on 25.04.1986. When the trial Court was closed for summer vacation, the defendants employed a bulldozer for demolition of the buildings and structures in Perundevi Thota despite informing them about the interim injunction granted in O.S. No.192 of 1985. Having no other alternative, the other residents yielded to the demand of defendants, on their promise to provide alternative accommodation for their residences and business premises, and accepted the promise made by them, signed on stereo typed *pro forma*, as if they gave consent for demolition to avoid contempt proceedings; in the course of demolition work, the zinc sheet roofed shed was totally damaged.

5. The 1st plaintiff was in possession of three structures; in one structure, he was residing and running a provision shop; in the other portion, the 3rd plaintiff was running a provision shop and the rest were in occupation of the tenants. The 2nd plaintiff constructed 7 portions of a house out of them 6

portions were let out to tenants and in one portion, she was running a flour mill in the name and style of 'Maheswari Flour Mill'. The 3rd plaintiff raised two structures consisting of four portions and let out the entire building to tenants. Similarly, 4th plaintiff raised a construction with three portions let out to the tenants. The existence of constructions was noted by the Advocate Commissioner in his report filed in O.S. No.192 of 1985.

6. On account of demolition of the structures of the plaintiffs, by using force, on the false promise made by the defendants to provide alternative accommodation, the plaintiffs sustained huge loss, more particularly, the provisions worth Rs.45,000/- belonging to the 3rd plaintiff were shifted and kept in Room No. 97 of 1st choultry and it was kept under lock and key. Similarly, the machinery worth Rs.5,000/- in the flour mill of 2nd plaintiff was damaged and though alternative accommodation was provided for running the flour mill in Balaji Nagar Shopping Complex in Room No.3, there was no sufficient space and no amenities were provided for running the flour mill. Thus, the 3rd plaintiff sustained loss to an extent of Rs.45,000/- and 2nd plaintiff Rs.5,000/- towards damage to the machinery and the loss to the structures is about Rs.2,54,570/- as the cost of construction for Square feet was Rs.90/- by the date of said demolition. However, the defendants paid only Rs.17/- for Square feet and in total paid Rs.47,150/- by issuing cheques. Even after deducting the said amount, the defendants have to pay total amount of Rs.2,07,420/- towards loss sustained by the plaintiffs and they are under obligation to provide sufficient alternative accommodation for both their residences and business respectively. Hence, the plaintiffs sought mandatory injunction against the defendants to implement the promise under the agreement between the plaintiffs and defendants for providing alternative accommodation for both their residences and businesses and also for recovery of damages to a tune of Rs.2,07,420/-.

7. The 1st defendant filed written statement and the same was adopted by the 2nd defendant by filing a memo. The 1st defendant denied the material allegations of the plaint *inter alia* contending that due to influx of pilgrims visiting Tirumala day by day, the existing choultries, cottages, guest houses and kalyanamandapams would not be adequate in near future and thought it fit to construct additional cottages, choultries, guest houses and Kalyanamandapams at Tirumala. In view of the proposal to lay rope way and circular railway with the constant increase in immigration of pilgrims to Tirupathi from other parts of the country with an intention to settle there permanently have been creating problems as they are found to be breeding places of slums and abodes of all sorts of nefarious and clandestine activities. Though the entire area of 10.33 Sq. miles around the Temple belonging to T.T.D. in terms of the provisions contained in the G.O.Ms. No.1784 Revenue (Q), Department, dated 04.11.1965 , Revenue and Town survey conducted by the Government, with a view to provide better amenities to the visiting pilgrims, the T.T.D. has no other go than to evict the encroachers including the plaintiffs and their tenants by initiating Land Acquisition proceedings. As the Land Acquisition is an unending process as the encroachers are 300 tenants roughly in Perundevi Thota, the defendants, by private negotiations, carried on demolition after obtaining consent from the plaintiffs and other encroachers on terms settled between them. The terms settled between the plaintiffs and other occupants with the defendants are as follows:

- 1) To pay compensation to the owners of the super-structures in the Perundevi Thota and to take the dismantled materials by the owners of super-structures;
- 2) To provide alternate accommodation at Tirumala to the

owners of the structures if they are residing in the said area;

3) To provide house sites to the tenants at Mangalam near Tirupati. If the owners are willing, they will also be provided;

4) To pay ex-gratia to the tenants and owners at Rs.2,000/- each for erecting temporary shelter at Mangalam in the site to be allotted on dip system;

5) They will be brought under the weaker section programme sponsored by the Andhra Pradesh State Housing Corporation, Chittoor;

6) They will be arranged loan of Rs.10,000/- for their livelihood from the State Bank of India with subsidy of Rs.1,000/- (Vide Resolution No.832, dt.20.03.1986 of the Management Committee, T.T.D.).

8. The plaintiffs and other occupants, who are 300 in number, have accepted the offer made by the defendants, gave consent letters, consequent on their approval and with the co-operation of all the occupants and their tenants who are in actual enjoyment of the respective residential accommodation in Perundevi Thota surrendered the property under their acknowledgment and, in turn, the defendants demolished the structures. In view of the terms and conditions settled between the encroachers and defendants, the defendants rehabilitated all the persons initially in the transit camp of the choultries at Tirumala/Tirupathi, later; they have been provided alternate accommodation. As agreed, alternate shops to some of the displaced were allotted apart from payment of ex-gratia, providing loan facilities besides payment of compensation to the owners for their structures. The plaintiffs also having accepted and enjoyed all the facilities provided by the defendants, they are estopped from pleading that the 1st defendant-appellant in violation of temporary injunction, removed the super-structures

on the land encroaching. Therefore, the plaintiffs are not entitled to claim any alternative accommodation which they require either for their residence or business, since the defendants already provided alternative accommodation to them. Apart from that, the plaintiffs are also not entitled to claim any damages and prayed to dismiss the Suit.

9. Basing on the above pleadings, the trial Court framed the following issues:

- 1) Did the defendants give any assurance and agree to provide alternate accommodation to plaintiffs as contended in the plaint?
- 2) Was there any valid and legally enforceable assurance and agreement as pleaded by plaintiffs?
- 3) Are plaintiffs entitled for mandatory injunction sought for?
- 4) Are defendants 1 and 2 liable to pay any amount towards loss and damages as claimed in the plaint?
- 5) Is 1st defendant liable to pay any amount towards compensation for the buildings of the plaintiffs?

10. During course of trial, on behalf of the plaintiffs, PWs.1 and 2 were examined and Exs.A-1 to A-54 were marked; on behalf of the defendants, DW.1 was examined and Exs.B-1 to B-28 were marked.

11. Upon hearing argument of both the counsel, considering oral and documentary evidence available on record, the trial Court issued certain directions for providing sufficient alternative accommodation to the plaintiffs by way of mandatory injunction while declining to grant any damages.

12. Aggrieved by the decree and judgment of the trial Court, the 1st defendant in O.S. No.151 of 1986, preferred the appeal on various grounds. The main contentions of the 1st defendant-appellant in this Appeal are that

the plaintiffs having voluntarily surrendered the super-structures for demolition, accepting the promise made by the defendants to provide alternative accommodation etc., the plaintiffs are not entitled to contend now that the demolition was by force but the trial Court on erroneous appreciation concluded that the structures were demolished by using force, however, issued necessary directions by way of mandatory injunction. The plaintiffs have already received the compensation, as agreed in the consent letters, they are not entitled to claim any other compensation or alternative accommodation on the ground of insufficiency etc., and, apart from that, they are only encroachers of the defendants property and not entitled to claim mandatory injunction but the trial Court on erroneous appreciation of facts and law committed a grave error in granting mandatory injunction against the defendants. However, the trial Court, rightly dismissed the claim for payment of damages and, finally, prayed to allow the appeal setting-aside the decree and judgment of the trial Court.

13. During course of argument, Sri M. Adinarayana Raju, learned counsel for the 1st defendant-appellant, would contend that even if any promise is made for providing alternative accommodation in the consent letters, the defendants cannot be compelled to perform their obligation under the promise since the promise was made in pursuant to the resolution of the Executive Board of the 1st defendant-Temple and no provision of any Act permitted to provide such accommodation. Therefore, the promise is contrary to law; in such case, the defendants cannot be compelled to provide alternative accommodation, placed reliance on a Division Bench judgment of this Court in **M. Deva Narayana Reddy and others Vs. Government of Andhra Pradesh and others**^[1]. Yet, another contention of the 1st defendant-appellant is that, if there is any agreement between the plaintiffs and defendants, a suit for mandatory injunction is not maintainable, as

mandatory injunction was not sought to prevent any breach of obligation or to compel performance of certain acts which the Court is capable of enforcing. Therefore, the remedy available to the plaintiffs, at best, is only to enforce the terms of agreement by filing a suit for specific performance and not for mandatory injunction. On this ground also the suit is liable to be dismissed but the trial Court on erroneous appreciation of law and facts decreed the suit.

14. Whereas, Sri Raghavan K. Talapaka, learned counsel for the plaintiffs-respondents 1 to 4, would contend that when the parties agreed on certain terms, it is for the defendants to perform their obligation under the agreement; when the defendants failed to perform their obligation, they can be compelled to perform their obligation by way of mandatory injunction under Section 39 of the Specific Relief Act, 1963. It is further contended that the accommodation provided to the tenants is not sufficient with required amenities and, in such case, it is the duty of the defendants to provide sufficient accommodation with all amenities; otherwise, it is difficult for the plaintiffs to reside and carry on business therein. Therefore, the trial Court rightly granted mandatory injunction in favour of the plaintiffs and against the 1st defendant-appellant. Hence, the decree and judgment of the trial Court do not suffer from any illegality and prayed to dismiss the Appeal confirming the decree and judgment of the trial Court.

15. Considering rival contentions and perusing material available on record including grounds of appeal under challenge, the points that arise for consideration are as follows:

1. *Whether the resolution of the 1st defendant to provide alternative accommodation is in accordance with law, if so, whether the defendants are liable to provide alternative accommodation to the plaintiffs?*
2. *Whether the plaintiffs are entitled to mandatory injunction*

directing the defendants to provide alternative accommodation both residential and commercial?

16. **In Re. Point No. 1:**

The undisputed facts are that the property encroached by the plaintiffs originally belongs to the 1st defendant temple in terms of G.O.Ms.No. 1784 Revenue (Q) Department dated 04-11-1965. The plaintiffs are only encroachers of the site and residing in the said site raising constructions while carrying on business in part of it. The defendants, while proposing to remove encroachments in the land belonging to the 1st defendant, agreed to pay compensation to the owners of superstructures in Perundevi Thota; the owners are entitled to take material of the superstructures; the 1st defendant agreed to provide alternative accommodation at Tirumala to the owners of superstructures if they are residing in the said area; to provide house site to the tenants at Mangalam near Tirupati and, if the owners are willing, they will also be provided. It is further agreed to pay *ex gratia* to the tenants and the owners at Rs.2,000/- each for erecting temporary shelter at Mangalam in the site to be allotted on dip system and finally they agreed to provide loans with subsidy promising to bring the area under weaker section programme sponsored by the Andhra Pradesh State Housing Corporation, Chittoor.

17. Undisputedly, the defendants paid compensation as agreed and provided alternative accommodation but the plaintiffs' contention is that the accommodation provided by the defendants is insufficient for occupation of the plaintiffs both for their residence and business. As the occupation provided by the defendants is not to the satisfaction of the plaintiffs and without proper amenities, they claimed relief of mandatory injunction while demanding payment of compensation but the trial Court, declining the relief of payment of compensation of Rs.2,07,420/-, strangely issued the following direction to the defendants in para No. 66 of the judgment which is extracted hereunder:

"In the circumstances, I hold that, the plaintiffs are entitled for mandatory injunction in respect of the directions given by this Court, while determining Issue Nos. 1 and 2, and the plaintiffs are not entitled for mandatory injunction, as they claimed i.e., with regard to allotment of specific shop rooms. This Issue is answered accordingly."

The trial Court, while deciding issue No. 2, at para Nos. 61 and 62 observed that:

"It is an admitted fact, that, no shop rooms are vacant to club with shop No. 3. Further more, after a period of 10 years, it is not possible to direct the 1st defendant-Devasthanams Authorities to provide another shop room also for doing business. It is clear that, the accommodation provided is not sufficient to run Flourmill. Therefore, the 1st defendant-Devasthanams is directed to consider her grievance and to allot some more space around shop room No. 3, Balaji Nagar, and enable her to run Flourmill. The Devasthanams-authorities are directed to consider her grievance, sympathetically, if she approaches with an application and if there is space around it.

I hold that, the above direction will meet the ends of justice."

Thus, it is clear from the judgment of the trial Court that in case any space is available around shop No. 3, the defendants may consider the request of the plaintiffs sympathetically enabling the 3rd plaintiff to run flourmill in Balaji Nagar Complex but, in the discussion on issue No. 2, more particularly in para No. 61, the trial Court concluded that no shop rooms are vacant to club with shop No. 3. Therefore, question of finding any site around shop No. 3 does not arise. In such a case, providing any vacant site around shop No. 3 of Balaji Nagar complex is meaningless. Hence, the findings of the trial Court are contrary to one another. However, the direction given by the trial Court against the defendants, which is extracted above, is not in the nature of mandatory injunction but it is only a direction to consider the grievance of the plaintiffs sympathetically if they approach with an application. The trial Court also directed the defendants to provide one shop room each to the 1st plaintiff and the 3rd plaintiff within a month on usual terms and conditions. The basis for the conclusion arrived by the trial Court

is only the resolution passed by the 1st defendant. Undisputedly, plaintiff Nos. 1 and 3 are not provided with shop rooms as promised in pursuance to the resolution but the resolution itself is beyond the authority of the 1st defendant.

18. Learned counsel for the defendants would contend that when the site belongs to the 1st defendant on which constructions were raised, the decision, if any, taken by the Trust Board of the 1st defendant is not binding and the defendants cannot be compelled to perform their obligation under the promise whereas learned counsel for the plaintiffs strenuously contended that when the defendants themselves took the decision of providing necessary accommodation both residential and commercial, they must keep up their promise and perform their obligation. Undoubtedly, there was no written agreement for providing alternative accommodation both residential and commercial. However, in the written statement filed by the 1st defendant, the 1st defendant made categorical admissions about the decision taken by the Board of Trustees of Tirumala Tirupati Devasthanam to provide alternative accommodation *etc.* which I referred in the earlier paras. Admittedly, the defendants provided residential accommodation to the plaintiffs at appropriate place and also provided shop No. 3 of Balaji Nagar Complex which is admittedly occupied by the 3rd plaintiff carrying on business but her grievance is that the premises is not sufficient for carrying on flourmill business. Convenience or inconvenience of the plaintiffs is not the criterion and, at best, the 1st defendant may provide alternative accommodation for running flourmill business with minimum amenities. Merely because the defendants promised to provide alternative accommodation, the plaintiffs cannot compel the defendants to provide accommodation according to their wishes and requirements. Admittedly, the plaintiffs were encroachers of the Government site and they are not entitled to continue in possession of the

site belonging to the defendants but the defendants, instead of straightaway removing the constructions raised by the encroachers, obtained consent letters from the plaintiffs and other occupants of the land belonging to the 1st defendant, wherein they agreed to surrender the land voluntarily. Exs.B1 to B4, B6, B8, B10, B13, B14, B16, B19, B20, B22, B23 and B25 are the consent letters obtained by the defendants from the encroachers. The contents of the letter would go to show that encroachers/occupants handed over possession of the site in their possession on their own accord to the 1st defendant after accepting compensation for the superstructures duly signed by the concerned occupant. Therefore, the contention of the plaintiffs that the defendants forcibly evicted the plaintiffs is without any basis and the material on record would clinchingly establish that the encroachments were removed with their consent accepting the compensation agreed to be paid by the defendants. Therefore, the plaintiffs, being encroachers, are not entitled to compel the defendants to provide alternative accommodation.

19. Admittedly, there was no written agreement between the plaintiffs and the defendants for providing any alternative accommodation but the executive committee of the 1st defendant passed resolution accepting to provide alternative accommodation both residential and commercial as admitted in the written statement *vide* resolution No. 832 dated 20-03-1986. Taking advantage of the admission in the written statement, the plaintiffs contended that the alternative accommodation provided to the plaintiffs is not sufficient. A Division Bench of this Court had an occasion to deal with a similar issue in ***M. Deva Narayana Reddy and others Vs. Government of Andhra Pradesh and others***^[2], wherein, discussing about the doctrine of promissory estoppel, it was held as follows:

"Promissory estoppel:

This question does not survive requiring any further adjudication in view of our finding that the very decision of the Trust Board of Devasthanams to allot the land in

question to the appellants is not in accordance with law. Ultra vires decisions do not give rise to any cause attracting the equitable doctrine of promissory estoppel. The Trust Board of Devasthanams acted not within the scope of its authority in passing resolution proposing to allot the land to the appellants. The act was ultra vires and therefore the "doctrine of estoppel" could not be invoked. It is very well settled that there cannot be any estoppel against statute. The equitable doctrine of promissory estoppel cannot be allowed to operate so as to validate an ultra vires act or to override the clear words of statute. Prof. Wade states:

In public law the most obvious limitation on the doctrine of estoppel is that it cannot be invoked so as to give an authority powers, which it does not in law, possesses. In other words, no estoppel can legitimate action, which is ultra vires.

The "no estoppel principle" is applicable to cases where the acts performed in reliance are contrary to statute. In such cases the fact that the Government or governmental authorities are involved is really not a determining factor, for no person can be stepped into a position contrary to law. The doctrine of estoppel could not be used to give de facto validity to ultra vires decisions. That a statutory body can only perform the acts that it is empowered to perform. "When the Government is unable to enforce the law because the conduct of its agents has given rise to an estoppel, the interest of the citizenry as a whole in obedience to the rule of law is undermined.

To sum up, the equitable doctrine of promissory estoppel cannot be used against or in favour of the administration so as to give de facto validity to ultra vires acts.

Neither the provisions of the Act nor the rules framed thereunder do confer any power or authority on the Board to pass resolution allotting sites to those persons whose lands were acquired under the provisions of the Land Acquisition Act and adequate compensation was already paid."

In the facts of the above judgment, the respondents acquired certain land for public purpose while promising to provide alternative land after paying compensation fixed by Acquisition Department and passed a resolution. Therefore, the Court held that passing of such resolution proposing to allot alternative land is without any authority and, therefore, such resolution passed by the Tirumala Tirupati Devasthanam Board cannot operate as promissory estoppel. The facts of the present case are worse than the facts of the above judgment for the reason that the land belongs to the 1st defendant on which the plaintiffs raised constructions. Thus, the plaintiffs are encroachers, sufficient compensation was paid for removal of their superstructures by private negotiations and the same was accepted. When once the plaintiffs accepted compensation, they cannot turn around and demand for providing alternative accommodation at their whims and

fancies. Since the decision taken by the 1st defendant is without any power under statute, the defendants cannot be compelled to perform such obligation to provide alternative accommodation. Even though the defendants provided alternative accommodation but it is not sufficient to the needs of the 2nd plaintiff. Sufficiency and insufficiency of amenities required to run flourmill depends upon individual case. However, when the decision taken by the defendants is beyond their authority, the plaintiffs cannot compel the defendants to provide all amenities and accommodation sufficient to their needs etc.,. By applying the principle laid down in the above judgment, I find that there is substance in the contention of learned counsel for the defendants. Moreover, by the date of deciding the present suit by the trial Court, the decision referred *supra* was not available for consideration. In view of the law laid down by a Division Bench of this Court, I am totally disagreeing with the finding of the trial Court for grant of mandatory injunction since the promise made by the defendants is beyond their authority and the Trust Board is only competent to take necessary decisions for administration of properties and day to day affairs of the 1st defendant and they are under obligation to protect property of the 1st defendant since the property exclusively belongs to the institution *i.e.* Tirumala Tirupati Devasthanam. When the defendants acted in derogation to the powers conferred on them, they are incompetent to make promise of providing alternative accommodation and such promise would not confer any right on the plaintiffs to claim accommodation according to their convenience.

20. Undoubtedly, the defendants provided residential accommodation but failed to provide commercial accommodation, as evidenced by Exs.A69 and A70 and other documents, except to the 2nd plaintiff. However, in the plaint itself, the plaintiffs admitted that they were provided with accommodation. The 2nd plaintiff admitted that commercial space was provided in shop No. 3

at Balaji Nagar Complex to run flourmill but the sole grievance of the 2nd plaintiff is that it is not sufficient and not provided amenities. When the plaintiffs themselves are encroachers, they are not entitled to claim amenities to their satisfaction and shops for their convenience. Hence, I find no justification in the grievance of the plaintiffs to provide sufficient accommodation both residential and commercial.

21. In view of the law declared by a Division Bench of this Court and in view of the admitted facts about providing necessary accommodation, no further direction need be given compelling the defendants to perform any obligation. The trial Court, on erroneous appreciation of facts and law, issued such direction which I extracted in the earlier paras. Hence, the same is hereby set aside holding this point in favour of the defendants and against the plaintiffs.

22. **In Re. Point No. 2:**

The main relief claimed by the plaintiffs is mandatory injunction that means sought a direction against the defendants for allotment of both residential and commercial accommodation sufficient to their needs. In fact, there was no agreement between the plaintiffs and the defendants to surrender the premises on condition to provide alternative accommodation but the defendants, with a view to provide accommodation both residential and commercial to the occupants/encroachers so as to enable them to have their home and avocation *i.e.* to carry on business, took a decision totally disregarding the power of the defendants under the Act which is *ultra vires* to the provisions of the Endowments Act. However, the defendants provided accommodation both residential and commercial and there are admissions in the evidence of witnesses examined on behalf of the plaintiffs regarding allotment but inconvenience to carry on business of flourmill in Balaji Nagar Complex.

23. According to Section 39 of the Specific Relief Act, 1963 (for short, 'the

Act of 1963'), the Court may exercise discretion to grant an injunction to prevent breach of an obligation if the Court finds it necessary to compel the performance of certain acts which the Court is capable of enforcing. Thus, it is clear that the relief of mandatory injunction is purely discretion of the Court and, before exercising such discretion, the Court has to satisfy itself that the defendants are likely to commit breach of obligation and that the Court has to record its satisfaction that it is necessary to compel performance of such acts. In the instant case, the trial Court did not record its satisfaction about the requirement under Section 39 of the Act of 1963 but issued a direction to consider the request of the plaintiffs sympathetically if they approach with an application while declining to grant damages claimed by the plaintiffs. Therefore, the decree and judgment of the trial Court are erroneous on the face of record since the trial Court did not record its satisfaction about prerequisites for exercising such discretion under Section 39 of the Act of 1963. In a suit seeking mandatory injunction, Court is required to see the obligation and its breach and enforcement, while in a suit for specific performance, Court to see the existing valid enforceable contract. In the present case, the plaintiffs claimed that there was an agreement or understanding, may be oral. Hence, they should have filed suit for specific performance of a contract and suit for mandatory injunction was not at all maintainable as held in ***State of Punjab Vs. Phoola Singh***^[3]. Mandatory injunction has to be granted with care and caution. Care and caution is meant that, in granting or withholding an injunction, the Court should exercise a judicial discretion, and weigh the amount of the substantial mischief done, or threatened to be done, to the plaintiff, and compare it with that which the injunction, if granted, would inflict upon the defendant. In the instant case, the trial Court did not exercise care and caution while exercising judicial discretion but, because of the inconvenience expressed by the plaintiffs, a direction referred above was issued in the form of mandatory injunction. Even the direction given by the

Court is ineffective. Therefore, when the trial Court granted mandatory injunction without exercising proper care and caution while exercising discretion, it is liable to be set aside. The normal principle is that while granting mandatory injunction, the Court has to see whether grant of compensation is adequate if no mandatory injunction is granted. If pecuniary compensation would afford adequate relief, the Court shall not pass a decree for mandatory injunction issuing any direction but, in the present case, the trial Court did not express any opinion that grant of monetary compensation would not afford sufficient relief if mandatory injunction is withheld. On this ground also, the decree for mandatory injunction granted by the trial Court cannot be sustained. The remedy of mandatory injunction should be granted only in exceptional circumstances subject to the satisfaction of the trial Court about existence of certain conditions. If the Court comes to conclusion that grant of monetary compensation would not sufficient, the Court can grant mandatory injunction. While exercising discretion, the Court has to look into the injury that is likely to be caused in the event no mandatory injunction is granted and weight the amount of the substantial mischief done, or threatened to be done, to the plaintiff, and compare it with that which the injunction, if granted, would inflict upon the defendant. The plaintiff must establish a substantial, and not fanciful or visionary loss, which cannot be adequately compensated for by damages. In the present case, except expressing inconvenience in enjoying both residential and commercial accommodation provided by the defendants, no substantial loss that was caused to the plaintiffs is established and the trial Court also did not record its satisfaction about the requirements for grant of mandatory injunction contained under Section 39 of the Act of 1963 but issued a bald direction. I have already recorded a finding that the decision taken by the executive committee of the 1st defendant is in derogation to the power conferred on the executive board and such illegal act cannot be enforced in a Court of law

exercising discretion under Section 39 of the Act of 1963 by way of mandatory injunction. Hence, mandatory injunction cannot be granted.

24. One of the major contentions of the defendants is that when the plaintiffs pleaded that there is an agreement or understanding, which can be enforced in a Court of law, the remedy available to the plaintiffs is only to file suit for specific performance to compel the defendants to perform their obligation under the agreement or understanding if any subsisting but not by way of mandatory injunction. In the present set of circumstances, when the plaintiffs are unable to establish the requirements to grant mandatory injunction under Section 39 of the Act of 1963 and when they pleaded that there is subsisting agreement, which can be enforced in a Court of law, the remedy is to approach the Court under Chapter II of the Act of 1963 for specific performance of agreement/contract of sale. Admittedly, the defendants allotted alternative accommodation in view of both evidentiary and judicial admissions on record but providing open space around shop No. 3 at Balaji Nagar Complex does not arise as it is a shop surrounded by several shops in shopping complex. Even if any mandatory direction is issued, it is impossible for the defendants to provide such open space to the 2nd plaintiff and, in such a case, it is difficult to exercise discretion weighing the mischief that is likely to be caused to the plaintiffs and the defendants if the said direction is issued or declined.

25. In any view of the matter, the plaintiffs are only entitled to seek relief of specific performance and not mandatory injunction under Section 39 of the Act of 1963. Hence, I hold that the finding of the trial Court is erroneous on the face of record and not supported by any legal reasoning to exercise discretion under Section 39 of the Act of 1963 to grant mandatory injunction. Therefore, the same is liable to be set aside holding this point in favour of the defendants and against the plaintiffs.

26. In view of my foregoing discussion and finding on point Nos. 1 and 2, the appeal deserves to be allowed in view of the legal infirmity pointed out by me in the earlier paras.

27. In the result, the appeal is allowed setting aside the decree and judgment passed in O.S.No. 151 of 1986 on the file of the Court of Principal Subordinate Judge, Tirupati, dated 07-11-1996. Pending miscellaneous petitions in this appeal, if any, shall stand closed in consequence. No order as to costs.

M.SATYANARAYANA

MURTHY, J.

Date: 20-02-2015.

JSK

[\[1\]](#) 2004 92) ALT 65 (DB)

[\[2\]](#) 2004 (2) ALT 65 (D.B.)

[\[3\]](#) 2011 AIR CC 990 (991) (P&H)