NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1077 of 2015

1. Vinod Agrawal S/o Late Birbal Prasad Agrawal Aged About 50 Years,
2. Krishna Dewangan S/o Jagat Dewangan Aged About 55 Years,
3. Nand Tamboli S/o Shri Dhan Singh Tamboli Aged About 50 Years,
4. Bahoran Dewangan S/o Late Shri Salbo Dewangan Aged About 60 Years,

All are R/o Village- Pipariya, P.S. Pipariya, Civil & Revenue Distt. Kabirdham (Chhattisgarh)

---- Petitioners

Versus

1. State of Chhattisgarh Through- The Secretary, Department of Urban Administration And Rural Development, Mantralaya, Mahanadi Bhawan, Naya Raipur, Distt. Raipur (Chhattisgarh)
2. The Collector Kawardha, Distt. Kabirdham (Chhattisgarh)
3. The Chief Municipal Officer Municipal Council, Pipariya, Distt. Kabirdham (Chhattisgarh)

---- Respondents

For Petitioners	:	Shri Hemant Kesharwani, Advocate
For Respondents-State	:	Ms. Kirti Rao, PL for the State
For Respondent No.3	:	Shri Bhupendra Singh, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

13/04/2016

1. In this petition under Article 226/227 of the Constitution of India, the petitioners have prayed for quashment of the impugned auction notice

dated 10-6-15 for auction of shops situated at Bade Bazaar Chowk, Late Bodhi Mandal Commercial Complex, issued by respondent No.3, The Chief Municipal Officer Nagar Panchayat, Pipariya, Distt. Kabirdham with further prayer to direct the respondent authorities to consider allotment of shops to the petitioner under the Rehabilitation Scheme.

2. It is argued by learned counsel for the petitioners that they were carrying on business from the area in question for the last 30 years, however, under a drive for removal of encroachment they have been removed and now a commercial complex has been constructed which is going to be auctioned vide Annexure P-1. It is thus submitted that the petitioners being previous occupiers, they are entitled for allotment of shop or any other alternative arrangement to earn their livelihood. It is further argued that the respondents have assured the petitioners for allotment of shop but the promise was not kept, therefore, the petitioners are entitled for allotment of shop under the principle of legitimate expectation and promissory estoppel.

3. Learned State counsel and learned counsel appearing for respondent No.3 as well would oppose the prayer made in the writ petition.

4. It is quite apparent that the petitioners were never granted any lease or alloted shops by the Municipal Council. They had encroached the area and were carrying on business but had no right, title or interest over the land or the shop. The documents available on record would clearly demonstrate that for construction of new shops the

encroachment made by the petitioners have been removed. There is no document either to the effect that the petitioners have been extended any promise for allotment of shop.

5. The entire case of the petitioners is built upon principle of legitimate expectation and promissory estoppel. The sublime principle and the bedrock for its implementation has been enunciated by the Supreme Court in the celebrated case of **M/s Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and others**[1]. After considering the plethora of foreign judgments and its own previous judgments, the Supreme Court held that in order to invoke doctrine of promissory estoppel, it is enough to show that the promisee has, acting in reliance on the promise, altered his position and it is not necessary for him to further show that he has acted to his detriment. It was further said, the Government was therefore bound on the principle of promissory estoppel to make good representation made by it. Of-course, it may be pointed out that if the UP Sales Tax Act, 1948 did not contain a provision enabling the Government to grant exemption, it would not be possible to enforce representation against the Government, <u>because the Government cannot be compelled to act contrary to the statute</u>.

6. In **Motilal Padampat** (Supra), it was further held that the doctrine of promissory estoppel was not limited only to cases where there was some contractual relationship or other pre-existing legal relationship between the parties. The principle would be applied even when the promise is intended to create legal relations or affect a legal

1 (1979) 2 SCC 409

relationship which would arise in future. The Government was held to be equally susceptible to the operation of the doctrine in whatever area or field the promise is made – contractual, administrative or statutory. However, the Supreme Court also laid down limitations for the application of the said doctrine which are as follows:-

> “(1) Since the doctrine of promissory estoppel is an equitable doctrine, it must yield when the equity so requires. But it is only if the Court is satisfied, on proper and adequate material placed by the Government, that overriding public interest requires that the Government should not be held bound by the promise but should be free to act unfettered by it, that the Court would refuse to enforce the promise against the Government. (SCC p.443, para 24)
>
> (2) <u>No representation can be enforced which is prohibited by law in the sense that the person or authority making the representation or promise must have the power to carry out the promise</u>. If the power is there, then subject to the preconditions and limitations noted earlier, it must be exercised. <u>Thus, if the statute does not contain a provision enabling the Government to grant exemption, it would not be possible to enforce the representation against the Government, because the Government cannot be compelled to act contrary to the statute</u>. But if the statute confers power on the Government to grant the exemption, the Government can legitimately be held bound by its promise to exempt the promisee from payment of sales tax. (SCC p.453)”

(Emphasis supplied)

7. In two recent judgments in the matters of **Union of India and Others Vs. Shri Hanuman Industries and Another**[2] and **Devi Multiplex and Another Vs. State of Gujarat and Others**[3], the Supreme Court has reiterated the principles laid down in **Motilal Padampat** (Supra).

2 (2015) 6 SCC 600
3 (2015) 9 SCC 132

8. This Court shall now examine the statutory provisions under which an immovable property can be transferred by a Municipality by way of lease.

9. In the case at hand, disposal of immovable property by a Municipality is governed under the Rules, 1996. Rule 3 provides thus:-

> "**3**. No immovable property which yields or is capable of yielding an income shall be transferred by sale, or lease or otherwise conveyed except to the highest bidder at a public auction or offer in a sealed cover:
>
> Provided that if the Council is of the opinion that it is not desirable to hold a public auction or to invite offers in sealed covers for such transfer, the Council may, with the previous sanction of the State Government, effect such transfer without public auction or inviting offers in sealed covers:
>
> Provided further that the Council may, for reasons to be recorded in writing, transfer such immovable property to a bidder other than the highest bidder, with the previous sanction of the State Government :
>
> Provided also that in any such transfer by lease, a reasonable premium shall be payable at the time of granting lease and annual rent shall also be payable during the whole terms of the lease."

10. The petitioners were not previous allottees so that they were having some relationship with the Municipal Council for the subject land/shop which was to be re-constructed and then allotted to the petitioners. They had encroached on Government land reserved and were removed under due process of law. If the shops are allotted to the petitioners without adhering to the auction mode, the Nagar Panchayat shall sustain loss of revenue.

11. In the matter of **M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others**[4], the Supreme Court, after referring to its earlier judgment in

---

4 (1999) 6 SCC 464

H.S. Rikhy (Dr) Vs. New Delhi Municipal Committee[5], has held that where a statute makes a specific provision that a body Corporate has to act in a particular manner and in no other, that provision of law being mandatory and not directory has to be strictly followed. It is further held that this principle will apply both as regards holding of meeting of the Mahapalika and execution of contract on its behalf and further that there is no estoppel against a statute.

12. In the matter of **R.K. Mittal and Others Vs. State of Uttar Pradesh and Others**[6], the Supreme Court has held thus in paragraphs-67 & 73:-

> "**67.** The ground of legitimate expectation taken by the lessees on the premise that public notice had been issued by the Development Authority proposing to permit mixed user in the residential sector binds the Authority. Firstly, the action of the Development Authority in issuing the notices is not in accordance with law. Secondly, this argument is without any substance and is misconceived. The doctrine of reasonable expectation has no applicability to the present case and there cannot be any waiver of statutory provisions as well. The user of a sector is provided under the Master Plan and in furtherance to the Regulations and the provisions of the Act. It is incapable of being administratively or executively altered. The lessees, who have changed the user contrary to law, are liable to be proceeded against as per the terms of the lease deed and the provisions of the Act.
>
> **73.** The concept of public accountability and performance of public duties in accordance with law and for the larger public good are applicable to the statutory bodies as well as to the authorities functioning therein. We find no justification, whatsoever, for the respondents to act arbitrarily in treating equals who are similarly placed as unequals. There is also no justification for the Development Authority to issue a public notice in the fashion in

5 AIR 1962 SC 554

6 (2012) 2 SCC 232

> which it has done. A few officers of the Development Authority cannot collectively act in violation of the law and frustrate the very object and purpose of the Master Plan in force, the Regulations and provisions of the Act."

(Emphasis supplied)

13. In the case at hand, there is no dispute about the fact that the petitioners want allotment of shop *de hors* the provisions contained in Rules, 1996. Such plea is not maintainable because it will violate the statutory provisions. Since the petitioners are not previous allotees but were encroachers, they are not entitled to invoke the principle of legitimate expectation and promissory estoppel.

14. For the foregoing, the petitioners have failed to make out any case worth interference or for issuance of direction, therefore, the writ petition being sans substance, it deserves to be and is hereby dismissed.

Judge
Prashant Kumar Mishra

ashu