

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 1019 of 2015**

1. Vashishtha Narayan Jha, S/o Late Chethru Jha Aged About 75 Years
2. Sudhir Kumar Jha S/o Vashishtha Narayan Jha Aged About 48 Years

Both are R/o. Near Bus Stand, Bishrampur, Police Station And Post Bishrampur, Civil And Revenue District Surajpur (Chhattisgarh)

---- Petitioner

Versus

1. State Of Chhattisgarh Through : Secretary, Urban Administration Development Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District Raipur (Chhattisgarh)
2. Director, Urban Administration And Development, Chhattisgarh Raipur, District Raipur (Chhattisgarh)
3. Joint Director, Urban Administration And Development, Surguja Division, Ambikapur, District Surguja (Chhattisgarh)
4. Nagar Panchayat, Bishampur, Through: Its Chief Municipal Officer, Nagar Panchayat, Bishrampur, District Surajpur (Chhattisgarh)
5. Chief Municipal Officer, Nagar Panchayat, Bishrampur, District Surajpur (Chhattisgarh)
6. Sub-Divisional Officer (Revenue), Surajpur, District Surajpur (Chhattisgarh)
7. President, Nagar Panchayat, Bishrampur, District Surajpur (Chhattisgarh)
8. Collector, Surajpur, District Surajpur (Chhattisgarh)

---- Respondent

And**WPC No. 1055 Of 2015**

- Gurucharan Singh S/o Gurubachan Singh Aged About 49 Years R/o Qtr No. B -4, Bishrampur Police Station And Post Bishrampur, Civil &

Revenue District Surajpur Chhattisgarh

---- **Petitioner**

Vs

1. State Of Chhattisgarh Through Secretary, Urban Administration & Development Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur District Raipur Chhattisgarh
2. Director, Urban Administration And Development, Chhattisgarh Raipur District Raipur Chhattisgarh
3. Joint Director Urban Administration And Development Surguja Division Ambikapur, District Surguja Chhattisgarh
4. Nagar Panchayat Bishrampur, Through Its Chief Municipal Officer Nagar, Panchayat Bishrampur, District Surajpur Chhattisgarh
5. The Chief Municipal Officer Nagar Panchayat Bishrampur, District Surajpur Chhattisgarh
6. Sub Divisional Officer Revenue Surajpur District Surajpur Chhattisgarh
7. President Nagar Panchayat Bishrampur, District Surajpur Chhattisgarh
8. Collector Surajpur, District Surajpur Chhattisgarh

---- **Respondent**

And

WPC No. 1054 Of 2015

- Ravindra Kumar Swain S/o M.K. Swain Aged About 49 Years R/o Near Bus Stand Bishrampur, Police Station And Post Bishrampur, Civil & Revenue District Surajpur Chhattisgarh

---- **Petitioner**

Vs

1. State Of Chhattisgarh Through Secretary, Urban Administration Development Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District Raipur Chhattisgarh
2. Director, Urban Administration And Development, Chhattisgarh Raipur District Raipur Chhattisgarh

3. Joint Director Urban Administration And Development Surguja Division Ambikapur, District Surguja Chhattisgarh
4. Nagar Panchayat Bishrampur, Through Its Chief Municipal Officer Nagar, Panchayat Bishrampur, District Surajpur Chhattisgarh
5. The Chief Municipal Officer Nagar Panchayat Bishrampur, District Surajpur Chhattisgarh
6. Sub Divisional Officer Revenue Surajpur District Surajpur Chhattisgarh
7. President Nagar Panchayat Bishrampur, District Surajpur Chhattisgarh
8. Collector Surajpur, District Surajpur Chhattisgarh

---- Respondent

And

WPC No. 1053 Of 2015

- Indrajeet Singh S/o Niranjan Singh Aged About 42 Years R/o Bishrampur Police Station And Post Bishrampur Civil & Revenue District Surajpur Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through Secretary, Urban Administration Development Department, Mahanadi Bhawan Mantralaya Capital Complex, Naya Raipur District Raipur Chhattisgarh
2. Director, Urban Administration And Development, Chhattisgarh Raipur District Raipur Chhattisgarh
3. Joint Director Urban Administration And Development Surguja Division Ambikapur, District Surguja Chhattisgarh
4. Nagar Panchayat Bishrampur, Through Its Chief Municipal Officer Nagar, Panchayat Bishrampur, District Surajpur Chhattisgarh
5. The Chief Municipal Officer Nagar Panchayat Bishrampur, District Surajpur Chhattisgarh
6. Sub Divisional Officer Revenue Surajpur District Surajpur Chhattisgarh
7. President Nagar Panchayat Bishrampur, District Surajpur Chhattisgarh

8. Collector Surajpur, District Surajpur Chhattisgarh

---- Respondent

And

WPC No. 1065 Of 2015

- Jasbir Singh S/o Niranjana Singh Aged About 65 Years R/o Near Bus Stand Bishrampur, Police Station And Post Bishrampur, Civil & Revenue District Surajpur Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through Secretary Urban Administration Development Department, Mahanadi Bhawan, Mantralaya, Capital Complex Naya Raipur, District Raipur Chhattisgarh
2. Director, Urban Administration And Development, Chhattisgarh Raipur District Raipur Chhattisgarh
3. Joint Director Urban Administration And Development Surguja Division Ambikapur, District Surguja Chhattisgarh
4. Nagar Panchayat Bishrampur, Through Its Chief Municipal Officer Nagar, Panchayat Bishrampur, District Surajpur Chhattisgarh
5. The Chief Municipal Officer Nagar Panchayat Bishrampur, District Surajpur Chhattisgarh
6. Sub Divisional Officer Revenue Surajpur District Surajpur Chhattisgarh
7. President Nagar Panchayat Bishrampur, District Surajpur Chhattisgarh
8. Collector Surajpur, District Surajpur Chhattisgarh

---- Respondent

And

WPC No. 1064 Of 2015

- Sanjeev Kumar Sarkar S/o N.N. Sarkar Aged About 41 Years R/o Sahu Colony, Bishrampur, Bus Stand Near Bajrangbali Temple, Bishrampur Police Station And Post Bishrampur, Civil & Revenue District Surajpur, Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through Secretary, Urban Administration Development Department Mahanadi Bhawan, Mantralaya Capital Complex, Naya Raipur District Raipur Chhattisgarh
2. Director, Urban Administration And Development, Chhattisgarh Raipur District Raipur Chhattisgarh
3. Joint Director Urban Administration And Development Surguja Division Ambikapur, District Surguja Chhattisgarh
4. Nagar Panchayat Bishrampur, Through Its Chief Municipal Officer Nagar, Panchayat Bishrampur, District Surajpur Chhattisgarh
5. The Chief Municipal Officer Nagar Panchayat Bishrampur, District Surajpur Chhattisgarh
6. Sub Divisional Officer Revenue Surajpur District Surajpur Chhattisgarh
7. President Nagar Panchayat Bishrampur, District Surajpur Chhattisgarh
8. Collector Surajpur, District Surajpur Chhattisgarh

---- Respondent

And

WPC No. 1063 Of 2015

- Javed Iqbal S/o Late Shamshuddin Aged About 42 Years R/o Bishrampur, Police Station And Post Bishrampur, Civil And Revenue District Surajpur Chhattisgarh

---- Petitioner

Vs

1. State Of Chhattisgarh Through Secretary, Urban Administration Development Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur District Raipur Chhattisgarh
2. Director, Urban Administration And Development, Chhattisgarh Raipur District Raipur Chhattisgarh
3. Joint Director Urban Administration And Development Surguja Division Ambikapur, District Surguja Chhattisgarh

4. Nagar Panchayat Bishrampur, Through Its Chief Municipal Officer Nagar, Panchayat Bishrampur, District Surajpur Chhattisgarh
5. The Chief Municipal Officer Nagar Panchayat Bishrampur, District Surajpur Chhattisgarh
6. Sub Divisional Officer Revenue Surajpur District Surajpur Chhattisgarh
7. President Nagar Panchayat Bishrampur, District Surajpur Chhattisgarh
8. Collector Surajpur, District Surajpur Chhattisgarh

---- Respondent

And

WPC No. 1062 Of 2015

- Surendra Prasad S/o Late Bandhu Sao Aged About 49 Years R/o. Near Bus Stand, Kushan Vastralaya, Bishrampur, Police Station And Post Bishrampur, Civil And Revenue District Surajpur (Chhattisgarh)

---- Petitioner

Vs

1. State Of Chhattisgarh Through : Secretary, Urban Administration Development Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District Raipur (Chhattisgarh)
2. Director, Urban Administration And Development, Chhattisgarh Raipur, District Raipur (Chhattisgarh)
3. Joint Director, Urban Administration And Development, Surguja Division, Ambikapur, District Surguja (Chhattisgarh)
4. Nagar Panchayat, Bishampur, Through : Its Chief Municipal Officer, Nagar Panchayat, Bishrampur, District Surajpur (Chhattisgarh)
5. Chief Municipal Officer, Nagar Panchayat, Bishrampur, District Surajpur (Chhattisgarh)
6. Sub- Divisional Officer (Revenue), Surajpur, District Surajpur (Chhattisgarh)
7. President, Nagar Panchayat, Bishrampur, District Surajpur (Chhattisgarh)
8. Collector, Surajpur, District Surajpur (Chhattisgarh)

---- Respondent

For Petitioners : Shri Manoj Paranjpe, Advocate.
For Respondent/State : Shri Adhiraj Surana, Deputy Govt. Advocate.
For Respondents 4, 5 & 7 : Shri Arun Sao, Advocate.

Hon'ble Shri Justice Prashant Kumar Mishra

C A V Order

Passed on :12/04/2016

1. These Writ Petitions have been preferred challenging the auction notice dated 10.6.2015 issued by the Nagar Panchayat, Bishrampur, as also for a direction to the respondent authorities to consider the petitioners' cases for allotment of shops in the light of earlier decision taken by the Nagar Panchayat, with further prayer for a direction to the State Government to consider grant of approval for allotment of shops in question to the petitioners.
2. Facts of the case, briefly stated, are that the subject land over which Nagar Panchayat, Bishrampur (henceforth 'Nagar Panchayat') have constructed shops was reserved for bus stand. The petitioners have encroached over the said area and were carrying on business by erecting shops. A Panchanama of the said land was prepared by the Patwari on 20.8.2000 and thereafter proceedings under Section 248 CG Land Revenue Code, 1959 (for short 'the Code') were initiated for removal of encroachment. Naib Tehsildar passed a detailed order on 25.11.2000

imposing fine of Rs.2500/- as also for removal of encroachment. Gram Panchayat, Bishrampur was upgraded and converted into Nagar Panchayat on 6.3.2003. Petitioner Vashishth Narayan Jha preferred a suit for permanent injunction as also claiming issuance of temporary injunction in Civil Suit No.74-A/2004. The said application was dismissed by the Civil Judge, Class-I, Surajpur on 24.6.2008. Similar suit/application filed by Niranjana Singh was also dismissed on the same date in Civil Suit No.79-A/2004 and that of Gurcharan Singh in Civil Suit No.80-A/2004 and of Jasbir Singh in Civil Suit No.78-A/2004.

3. The Nagar Panchayat thereafter passed a resolution on 24.1.2009 to the effect that list of such shop keepers whose pucca shops/Gumpti were removed and demolished be obtained so that shops can be made available to them. A communication seeking list of shop keepers was sent to SDO(Revenue), Surajpur on 26.6.2009. Another resolution for obtaining list for further processing was passed on 10.8.2009. However, when such list was not provided by the SDO (Revenue), the Nagar Panchayat issued an order on 17.2.2010 inter alia stating that such list has been prepared on the basis of memory and decision has been taken to allot one shop each to 11 shop keepers. By another resolution dated 22.12.2010, Nagar Panchayat resolved that the proposed allottees shall be liable to pay cost of the land, cost of construction of shops, 10% supervisory charges and monthly rent of Rs.1,000/- per shop. After approval by the State Government, allotment shall be made, however, remaining 5 shops shall be auctioned. The matter was sent to the

Commissioner, Urban Administration and Development Raipur for approval and auction for remaining 5 shops was advertised on 29.8.2011.

4. Pursuant to the proposal for resolutions sent to the State Government, the Directorate of Urban Administration sent the matter to the Secretary, Government of Chhattisgarh, Department of Urban Administration and Development on 3.3.2011. By a communication dated 18.2.2013, the State Government desired the Nagar Panchayat to provide particulars regarding size of the shops, the names of the beneficiaries, cost of the land and the shops as per the Collector's guidelines, letter of consent from the Collector/SDO and additional information on 12 points as required under the CG Municipalities (Transfer of Immovable Property) Rules, 1996 (for short 'the Rules, 1996'). The Nagar Panchayat thereafter sought permission/consent from the Collector by sending a communication on 3.3.2013 and a reminder was sent to the Collector on 1.6.2013. However, the Collector, Surajpur vide its communication dated 7.5.2015 (Annexure-R/7) suspended execution of resolutions passed by the Municipality on 10.8.2009, 10.11.2009, 22.12.2010, 30.4.2012 and 11.3.2015 in exercise of powers under Section 323 of the CG Municipalities Act, 1961. In the meanwhile, auction pursuant to the impugned advertisement was conducted in which the Municipality has received offer of more than Rs.1 crore for 12 shops. The auction has not been finalized in view of the interim order passed by this Court.

5. In the above-stated factual matrix, it is argued on behalf of the petitioners that a promise was extended to them by the Nagar Panchayat, therefore, the petitioners had legitimate expectation of allotment of shops and the principle of promissory estoppel would operate against the respondents. Hence the impugned notice for auction deserves to be quashed being illegal and arbitrary. It is also argued that the conduct of the State authorities in proceeding to advertise for the auction is neither fair nor reasonable in the facts and circumstances of the case. Reliance has been placed in the matters of **M/s Motilal Padampat Sugar Mills Co. Ltd., Vs. State of Uttar Pradesh and others¹**, **State of Punjab Vs. Nestle India Ltd. and Another²**, **Union of India and Others Vs. Shri Hanuman Industries and Another³**, **Devi Multiplex and Another Vs. State of Gujarat and Others⁴**, **Lalaram and others Vs. Jaipur Development Authority and another⁵**, and **Ahmedabad Municipal Corporation Vs. Nawab Khan Gulab Khan and Others⁶**.
6. Per contra, learned counsel for the Nagar Panchayat and the State Counsel as well would argue that the petitioners being encroachers were not entitled for any preferential treatment to receive allotment of shops without following the procedure prescribed under the Rules, 1996. It was argued that an act contrary to the statute confers no right on person

1 (1979) 2 SCC 409

2 (2004) 6 SCC 465

3 (2015) 6 SCC 600

4 (2015) 9 SCC 132

5 2015 AIR SCW 6849

6 (1997) 11 SCC 121

on the principle of legitimate expectation or promissory estoppel. It was lastly argued that the petitioners have concealed pendency of the civil suit, therefore, they are not entitled for any relief.

7. This Court has thoughtfully considered the rival submissions made by learned counsel for the petitioners and perused the record.
8. 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 **Motilal Padampat** (Supra). 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, because the Government cannot be compelled to act contrary to the statute.
9. 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 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) 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. If the power is there, then subject to the preconditions and limitations noted earlier, it must be exercised. 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. 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)

10. In two recent judgments in the matters of **Shri Hanuman Industries** and **Devi Multiplex** (Supra), the Supreme Court has reiterated the

principles laid down in **Motilal Padampat** (Supra).

11. To appreciate and apply the principles of promissory estoppel in the facts and circumstances of the case, it needs specific mention that the petitioners were encroachers of Government land which was reserved for bus stand. It is not that they were running their business on their own land and while removing them from the place of their business a promise was held to allot them shops to be built on their own land. On the contrary, the petitioners, who were found to be encroachers, were removed after following due process of law by order passed by the Tehsildar under Section 248 of the Code. It is not a case where they altered their position on account of promise held to them. It also needs reference that after the order under Section 248 of the Code passed by the Tehsildar, the petitioners preferred a suit for permanent injunction in which their application for grant of temporary injunction was rejected. Moreover, neither the Municipality nor the State Government has been authorized or empowered under the Rules, 1996 to transfer the subject shops on lease without following the procedure prescribed under the Rules. Therefore, any promise by the Nagar Panchayat was contrary to the statutory provisions. The Nagar Panchayat was thus clearly not entitled in law to make such promise which was in direct conflict with the statutory provision. Applying the principles settled in **Motilal Padampat** (Supra), the Nagar Panchayat could not have made any promise for allotment of shops contrary to the statutory provisions.

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

13. 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.”

14. Admittedly, in the case at hand, the procedure prescribed in the Rules, 1996 have not been followed by the Nagar Panchayat inasmuch as allotment of shops can only be made by auction and not by merely passing resolution. 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 for bus stand and removed under due process of law after an order passed

against them under Section 248 of the Code. The Nagar Panchayat was thus not competent to pass a resolution contrary to the statutory prescription. If the shops are allotted to the petitioners without adhering to the auction mode, the Nagar Panchayat shall sustain loss of Rs.1 crore approximately because auction conducted during the pendency of the Writ Petition has fetched this amount.

15. In the matter of **M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others**⁷, the Supreme Court, after referring to its earlier judgment in **H.S. Rikhy (Dr) Vs. New Delhi Municipal Committee**⁸, 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.

16. In the matter of **R.K. Mittal and Others Vs. State of Uttar Pradesh and Others**⁹, 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

7 (1999) 6 SCC 464

8 AIR 1962 SC 554

9 (2012) 2 SCC 232

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 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)

17. In view of the above settled legal position, the petitioners are not entitled to any benefit nor can they be permitted to invoke principle of legitimate expectation or promissory estoppel. The resolutions passed by the Nagar Panchayat being contrary to the statutory provisions contained in the Rules, 1996 and Nagar Panchayat being not authorized to held any such promise, in the absence of any enabling provision under the Rules, 1996, promise itself was in violation of law. Therefore, the reliefs claimed in the Writ Petitions are not admissible.
18. The petitioners have failed to make out any case worth interference or for issuance of direction, therefore, the Writ Petitions being sans

substance deserve to be and are hereby dismissed.

19. No order as to costs.

Sd/-
Judge
(Prashant Kumar Mishra)

Barve