

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 185 of 2017**

- Safdar Ali S/o Late Husain Ali, Aged About 53 Years Caste Musalman, R/o Village Bamhnidih, Tahsil & District Janjgir Champa, (Chhattisgarh)

---- **Petitioner****Versus**

1. State of Chhattisgarh Through Secretary, Panchayat And Rural Development Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur (Chhattisgarh)
2. Chief Executive Officer, Janpad Panchayat, Bamhnidih, District Janjgir Champa, (Chhattisgarh)

---- **Respondent**

For Petitioner	:	Shri CJK Rao, Advocate
For Respondents-State	:	Shri AS Kachchwaha, Addl. AG for the State

Hon'ble Shri Justice Prashant Kumar Mishra**Order On Board****25/01/2017**

1. Petitioner has preferred this writ petition seeking quashment of the auction notice Annexure P-1 whereby the Janpad Panchayat, Bamhnidih has notified the date of auction for allotment of 18 shops situated at Atal Bazar, Bamhnidih.
2. Petitioner claims to be in possession of shops built in the Atal Bazar area. On the strength of his previous possession, the concerned Gram Panchayat passed a resolution on 09.06.2016 directing allotment of shop to each of the 7 previous possession holder, including the petitioner.
3. Shri Rao, learned counsel for the petitioner would submit that the petitioner is not an encroacher, therefore, the shop resolved to be allotted to him

cannot be put to auction by the Gram Panchayat.

4. Disposal of immovable property of a Gram Panchayat is governed under the Chhattisgarh Panchayat (Transfer of Immoveable Property) Rules, 1994 (for short 'the Rules, 1994'). Rule 5 thereof provides that no transfer of immovable property by sale or lease shall be made except by public auction. Provided that if the Panchayat is of the opinion that it is not desirable to transfer such property by public auction, it may with the previous sanction of the State Government or the officer authorised by it under Section 65 effect such transfer without public auction for a consideration which shall not be less than the prevalent market value of such property. Under Rule 6 conduct of auction of immovable property of a Gram Panchayat shall be conducted by the CEO, Janpad Panchayat for the concerned Gram Panchayat.
5. There is no document on record to substantiate that the earlier resolution of the Gram Panchayat was passed with the previous sanction of the State Government for allotting the shop to the petitioner without public auction. Allowing the petitioner to remain in possession of the shop and to quash the impugned auction proceedings would be in-contravention of the Rules, 1994.
6. In a similar matter concerning a municipal body in the matter of **Vashishtha Narayan Jha & another Vs. State of Chhattisgarh & Others {WPC No.1019/2015}** and other connected writ petitions, decided on 12.04.2016, this Court while dealing with similar dispute concerning claim made by the erstwhile shopkeepers who had challenged the auction of shops by the Nagar Panchayat, held thus in para 9 to 14:-

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.

7. This Court then referred to **M.I. Builders Pvt. Ltd. Vs. Radhey Shyam Sahu and Others {(1999) 6 SCC 464}**, **H.S. Rikhy (Dr) Vs. New Delhi Municipal Committee {AIR 1962 SC 554}** and **R.K. Mittal and Others Vs. State of Uttar Pradesh and Others {(2012) 2 SCC 232}** to conclude that the said petitioners are not entitled to any benefit nor they can be permitted to invoke principle of legitimate expectation or promissory estoppel. In the said case, resolutions passed by the Nagar Panchayat at an earlier point of time was found not assisting the petitioners as they were contrary to the statutory provisions contained in the CG Municipalities (Transfer of Immovable Property) Rules, 1996.
8. For the foregoing, the auction notice Annexure P-1 does not suffer from any infirmity rather it is inconsonance with the Rules, 1994.
9. There is no substance in the writ petition. It is accordingly, dismissed. Petitioner may participate in the auction proceedings, if he so desires.

Sd/-

Judge
Prashant Kumar Mishra

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