

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 234 of 2014**

- Mohd.Shabbir Khan S/o Shri Mohd. Mahboob Khan Aged About 50 Years Occupation Betel Shop, R/o Village Kusmi, Ps & Tah Kusmi, Distt Balrampur, Cg

---- Petitioner**Versus**

1. The State of Chhattisgarh Through Secretary, Department Of Urban Administration And Development, Mahanadi Bhawan, New Raipur, Ps Rakhi, Distt Raipur, Cg
2. The Collector Balrampur, Distt Balrampur, CG
3. Nagar Panchayat- Kusmi Through Chief Municipal Officer, Nagar Panchayat Kusmi, Distt Balrampur, Cg

---- Respondents**And****WPC No. 312 Of 2014**

1. Mohd.Tahseem S/o Shri Mohd. Gulam Rasool Aged About 36 Years Occupation Motorcycle Repair Shop
2. Mohd. Shaukat Ali S/o Shri Anwar Ali Aged About 47 Years Occupation Shoe Shop
3. Mohd. Kyamuddin S/o Shri Nasarat Aged About 65 Years Occupation Betel Shop

All R/o Village Kusmi, Police Station & Tahsil Kusmi, Distt. Balrampur C.G.

---- Petitioners**Vs**

1. The State of Chhattisgarh Through Secretary, Department Of Urban Administration And Development, Mahanadi Bhawan, New Raipur, P.S. Rakhi, Distt. Raipur C.G.

2. The Collector Balrampur, Distt. Balrampur C.G.
3. Nagar Panchayat Kusmi, Through Chief Municipal Officer, Nagar Panchayat, Kusmi, Distt. Balrampur C.G.

---- Respondents

For Petitioners	:	Shri Sudeep Agrawal, Advocate
For Respondents-State	:	Shri S. Majid Ali, PL for the State
For Respondent No.3	:	Shri Awadh Tripathi, Advocate

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

20/01/2017

1. Petitioners would call in question the impugned auction notice dated 08.01.2014 issued by the Nagar Panchayat, Kusmi, district Balrampur-Ramanujganj for auction and subsequent allotment of 9 shops situated at bus-stand premises Kusmi.

2. Petitioners' claim is based on the submission that they were allotted land on the subject premises over which they had raised construction of shops and were regularly paying license fee or rent or donation to the Nagar Panchayat, therefore, they are entitled to preference in the matter of allotment. Since the Nagar Panchayat has issued auction notice without making any reservation in favour of the petitioners, challenge is thrown to the auction notice on the ground that the same is arbitrary and illegal being opposed to Article 14 of the Constitution of India as also in violation of their legitimate expectation.

3. Per contra, learned counsel for the respondent Nagar Panchayat would submit that the petitioners had earlier preferred two successive writ petitions before this Court and having failed therein they sought liberty to approach the appropriate forum under the provisions of law, but once again the present petitions have been preferred wherein interim order is operative for the last about 3 years and development of bus-stand premises at Kusmi is held up. Learned State counsel would also support the contention raised by the Nagar Panchayat and would conclude that Kusmi being a tribal area, development should take place at the earliest.
4. Having considered the rival submissions, it would appear that the petitioners have not submitted any document to substantiate their submission that they are the previous allottee of the subject premises or the terms and conditions thereof. Of course, some documents have been filed to demonstrate that Mohd. Tahseem Khan and Mohd. Shabbir Khan were provided space by the erstwhile Gram Panchayat, Kusmi over which they had constructed shop, however, pursuant to the said resolution in favour of Mohd. Tahseem Khan (Annexure P-2 in WPC No.312/2014) no agreement or lease was executed between the parties. The petitioners had preferred two earlier writ petitions challenging the action of removal of encroachment in which they

were affected, however, the above plea was never raised before this Court in the earlier writ petitions.

5. Be that as it may, 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.

6. 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 a

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.

7. In the case at hand also, the petitioners Mohd. Tahseem Khan and Mohd. Shabbir Khan have raised plea of being previous allottee, however, the resolution of Gram Panchayat refers to Mohd. Tahseem and not to Mohd. Shabbir Khan, in whose favour there is some receipts of payment of amount of rent or otherwise to the Nagar Panchayat. There is no document executed by any competent authority i.e. the Secretary of the Gram Panchayat in favour of petitioners entitling them to remain in occupation. In the case of grant of lease of immovable property by a Gram Panchayat, which is a body corporate, mere resolution would not suffice but there has to be some consequential documentation creating right in favour of a lessee but no such document is on record, therefore, it is difficult to conclude that the petitioners were allotted any shop by issuing any formal indenture in their favour. Even otherwise, petitioners had already preferred a suit before the jurisdictional civil Court at Ambikapur, which is pending consideration.

8. For the aforesaid reasons, this Court does not find any substance in the writ petitions. The impugned auction notice not being in violation of any statutory provision, it cannot be set aside in

exercise of powers under Article 226 of the Constitution of India. Accordingly, the writ petitions are dismissed. It will remain open for the Nagar Panchayat to consider petitioners' request for rehabilitation, if permissible in law.

Sd/-

Judge

Prashant Kumar Mishra

Ashu